Auburn Stabling Project (Stage 1)
Design and Construction Contract (ASP-01-D&C)

Transport Construction Authority
Laing O'Rourke Australia Construction Pty Ltd
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Auburn Stabling Project (Stage 1)

Transport Construction Authority (ABN 28 458 799 157), a statutory corporation and a NSW Government agency established by section 18A of the Transport Administration Act 1988 (NSW) as a continuation of the former legal entity, Transport Infrastructure Development Corporation, of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (Principal).

Laing O'Rourke Australia Construction Pty Ltd (ACN 112 099 000) of Level 4, Innovation Place, 100 Arthur Street North Sydney, NSW 2060 (the Contractor).

TCA is a statutory corporation constituted under the Transport Administration Act 1988 (NSW), and is responsible for developing certain major railway systems and other major projects.

TCA is responsible for developing the Auburn stabling yards.

The Works comprise the first stage of the works that will together comprise the Auburn stabling yards.

The Contractor has agreed to undertake the Contractor's Activities for the Principal in accordance with this Deed.

Definitions and Interpretation

In this Deed, unless the context otherwise indicates:

*Act of Prevention* means:

(a) a breach of this Deed by the Principal;

(b) any other act or omission of the Principal, the Principal's Representative, or an Other Contractor engaged by the Principal (other than an Interface Contractor), not being an act or omission:
(i) expressly permitted or allowed by this Deed (other than a matter referred to in paragraph (c));

(ii) which is within a timeframe expressly permitted, or allowed by this Deed (other than a matter referred to in paragraph (c)); or

(iii) to the extent the act or omission is caused or contributed to by a breach by the Contractor of this Deed or any negligent, or unlawful, act or omission of the Contractor; or

(c) a Variation the subject of a direction by the Principal's Representative under clause 6.2, except where that Variation is directed in the circumstances described in clause 8.2(c) or approved under clause 6.9(b). The valuation of entitlements to money under clauses 3.5(e), 8.4(a), 10.1, and 13.3 is not a Variation for the purposes of this definition of Act of Prevention.

**AFC Design Documentation** means the Design Documentation which:

(a) in the Contractor's opinion, is sufficiently developed and complete that it can be used for the purpose of constructing that part of the Works and may be submitted for review by the Principal's Representative under clause 9.14;

(b) is submitted by the Contractor in accordance with clause 9.14(g)(i)(D) and 9.14(g)(ii);

(c) has received a Configuration Change Notice;

(d) is marked by the Contractor "AFC" or "Approved for Construction"; and

(e) is issued by the Contractor to the Principal for its records.

**Approved for Construction (or AFC)** means that stage in the development of the Design Documentation when it has achieved AFC Design Documentation status by satisfying the requirements set out in the definition of "AFC Design Documentation".

**Approved for Construction (or AFC) Review** has the meaning given to that term in the TCA Standard Requirements.

**Asset Lands** are the lands so identified in Schedule 22.

**Asset Management Information** has the meaning given to that term in the TCA Standard Requirements.

**Authority** includes 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 RailCorp), and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Works or the Contractor's Activities.

**Authority Approval** means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from...
Auburn Stabling Project (Stage 1)

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 or any other spoil 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;

(d) the DECCW Licence;

(e) an Engineering Authority from RailCorp for each member of the Contractor's
design team that is required to authorise Design Documentation submissions
in accordance with RailCorp's Engineering Design Competency System (EPA
241); and

(f) the Third Party Agreements.

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

Change in Codes and Standards means a change in the Codes and Standards taking
effect after the date of this Deed.

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

(a) a change in an existing Law (other than a change in an Authority Approval); or

(b) a new Law (other than a new Authority Approval),

compliance with which:

(c) has a direct effect on the Contractor carrying out the Contractor's Activities; and

(d) directly results in an increase or decrease in the Contractor's costs of carrying
out the Contractor's Activities, or a delay to the Contractor achieving
Completion of the Works or a Portion by the relevant Date for Completion in
accordance with clause 10.7(a),

but excludes a change in an existing Law or a new Law in respect of Taxes.

Claim includes any claim for an increase in the Contract Sum, for payment of money
(including damages), for an extension of time to a Date for Completion or for any other
form of relief:

(a) under, arising out of, or in any way in connection with, this Deed, including any
direction of the Principal's Representative;
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 Deed; or

(c) otherwise at Law including:

(i) under or for breach of any 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 Building Code of Australia), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Deed (including the Disability (Access to Premises – Buildings) Standards 2010);


(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 Deed.

**Commencement Date** means the date identified in Schedule 1.

**Commissioning, Systems Integration and Operational Readiness** means each of the activities identified for the Contractor to perform by use of the phrase “D&C” in the table at Appendix C to the TCA Standard Requirements TSR-01.

**Common Dispute** has the meaning given to that term in clause 15.15(a).

**Completion** means the stage in the execution of the Contractor’s Activities when:

(a) the Works are, or a Portion is, complete in accordance with this Deed except for minor Defects:

(i) that do not prevent the Works or the Portion from being reasonably capable of being used for the intended purpose of the Works or the Portion;
that can be rectified without prejudicing the convenient intended use of
the Works or the Portion; and

in respect of which the Contractor has reasonable grounds for not
promptly rectifying;

(b) the Contractor has:

(i) carried out and passed all tests that:

(A) are required under this Deed to be carried out and passed
before the Works or a Portion reaches Completion; or

(B) must necessarily be carried out and passed to verify that the
Works or a Portion is in the condition this Deed requires the
Works or Portion (as the case may be) to be in at Completion;

(ii) without limiting clause 2.3(c)(vi), obtained all Authority Approvals that it
is required under this Deed to obtain before Completion of the Works or
a Portion and provided such Authority Approvals to the Principal's
Representative;

(iii) given to the Principal's Representative all other documents and
information:

(A) required (including in accordance with the TCA Standard
Requirements) for the use, operation, maintenance and repair
of the Works or a Portion; and

(B) that are to be handed over to the Principal's Representative
before Completion;

(iv) complied with all performance requirements that this Deed requires to
be verified before Completion of the Works or a Portion;

(v) provided the Principal's Representative with the Contractor's Certificate
of Portion Completion and the Designers' Certificates of Portion
Completion;

(vi) in respect of the Works (but not a Portion), completed all
Commissioning, Systems Integration and Operational Readiness in
accordance with this Deed; and

(c) the Contractor has done everything else that it is required to do under this
Deed before Completion of the Works or a Portion including those things
referred to in Schedule 1.

Completion Payment Claim has the meaning given to that term in clause 11.10.

Condition Survey has the meaning given to that term in clause 3.12(b).

Confidentiality Undertaking means a confidentiality undertaking in the form provided
for in Schedule 4.
**Configuration Change Notice (or CCN)** means a notice of that name issued by RailCorp in respect of Design Documentation.

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

**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) which is:

- at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (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; or
- toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

**Contamination Report** means the report headed "Report on Contamination Assessment" prepared by Douglas Partners and dated July 2010 which forms part of the Information Documents and Materials.

**Contemporaneous Work** means work carried out:

- by Other Contractors on or after the date of this Deed;
- on or adjacent to the Site; and
- upon or by which the proper execution of the Contractor's Activities is dependent or may be appreciably affected by its compliance or completeness.

**Contract Control Group** means the group described in clause 9.7.

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

- all Design Documentation;
- the Signalling Design; and
- 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 TCA Standard Requirements, as developed, amended or updated from time to time in accordance with this Deed.

**Contract Particulars** means Schedule 1.
Contract Sum means the Original Contract Price increased or decreased by the amounts by which this Deed requires the Contract Sum to be increased or decreased.

Contractor means the person named as the Contractor in Schedule 1.

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

(a) the design, construction, commissioning and handover of the Works;
(b) the provision of Temporary Works and Construction Plant;
(c) Reimbursable Work;
(d) Commissioning, Systems Integration and Operational Readiness; and
(e) anything incidental or ancillary to the obligations in paragraphs (a) to (d).

Contractor's Certificate of Construction Compliance means a certificate from the Contractor in the form provided for in clause 6.1 of Schedule 6 certifying that the procurement and construction of the work packages complies with the requirements of this Deed.

Contractor's Certificate of Design Compliance means a certificate from the Contractor in the form provided for in clause 5.1 of Schedule 5 certifying that the Design Documentation complies with the requirements of this Deed.

Contractor's Certificate of Portion Completion means a certificate from the Contractor in the form provided for in clause 7.1 of Schedule 7 certifying that Completion of a Portion has been achieved in accordance with this Deed.

Contractor's Environmental Management Plan means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TCA Standard Requirements.

Contractor's Representative means the person notified to the Principal's Representative in accordance with clause 9.5(a)(i) as being the Contractor's Representative.

Critical Design Review has the meaning given to that term in the TCA Standard Requirements.

Crown Building Work has the meaning given to that term in section 109R of the Environmental Planning and Assessment Act 1979 (NSW).

Date for Completion means in respect of the Works or a Portion the date, or the last day of the period of time, specified in Schedule 1 for the Works or that Portion, as adjusted under this Deed by an extension of time determined by the Principal's
Representative or pursuant to any determination by the Dispute Resolution Board or any arbitration under clause 15.

**Date of Completion** means:
(a) the date of Completion of the Works or a Portion, set out in a Notice of Completion; or
(b) where another date is determined in any determination by the Dispute Resolution Board or any arbitration under clause 15 as the date upon which Completion was achieved, that date.

**Date of Final Completion** means:
(a) the date determined in accordance with clause 12.8(e)(i) as the date Final Completion was achieved; or
(b) where another date is determined in any determination by the Dispute Resolution Board or any arbitration under clause 15 as the date upon which Final Completion was achieved, that date.

**DECCW Licence** means the environmental protection licence to be granted by the Department of Environment, Climate Change and Water under the *Protection of the Environment Operations Act 1997* (NSW) for the installation of the Rail Track and ancillary works, being the scheduled activity of “railway systems activities” under Schedule 1 of the *Protection of the Environment Operations Act 1997* (NSW).

**Deed of Disclaimer** means Exhibit F.

**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 Deed, including non-compliances, non-conformances and non-conformities.

**Defects Rectification Period** means the period stated in Schedule 1, as may be extended by clause 8.6.

**Design Development** means all design work undertaken by the Contractor to develop the Principal’s Design in accordance with this Deed to the point where each relevant design package is Approved for Construction, but excluding:
(a) work involved in the Signalling Design;
(b) any amendments to AFC Design Documentation after it is Approved for Construction (unless requested by the Principal in accordance with this Deed);
(c) condition surveys, topographical surveys or geotechnical surveys;
(d) development of as built drawings, asset management documents or operation and maintenance manuals;

(e) development of commissioning plans or test procedures; and

(f) correction of errors in the design work undertaken by the Contractor.

*Design Documentation* means all design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, calculations, drawings, digital records, computer software and all other relevant data) in computer readable and written forms, or stored by any other means, required by this Deed or necessary to be produced by the Contractor or a Designer to design and construct the Works and Temporary Works, but excludes the Signalling Design.

*Designer* means each Subcontractor engaged by the Contractor to undertake the design of the Works and, to the extent relevant, the Temporary Works.

*Designers' Certificates of Construction Compliance* means the certificates from:

(a) the most senior member of the Designer's Team (and where there is more than one design discipline involved in the relevant package or element, then the most senior member in each relevant discipline); and

(b) where relevant, each of those members of the Designer's Team who hold Engineering Authority,

involved in the design of the relevant package or element in the form provided for in clause 6.2 of Schedule 6 certifying that the procurement and construction of the work packages complies with the requirements of this Deed.

*Designers' Certificates of Design Compliance* means the certificates from:

(a) the most senior member of the Designer's Team (and where there is more than one design discipline involved in the relevant package or element, then the most senior member in each relevant discipline); and

(b) where relevant, each of those members of the Designer's Team who hold Engineering Authority,

involved in the design of the relevant package or element in the form provided for in clause 5.2 of Schedule 5 certifying that the Design Documentation complies with the requirements of this Deed.

*Designers' Certificates of Portion Completion* means the certificates from:

(a) the most senior member of the Designer's Team (and where there is more than one design discipline involved in the relevant Portion, then the most senior member in each relevant discipline); and

(b) where relevant, each of those members of the Designer's Team who hold Engineering Authority,
in the form provided for in clause 7.2 of Schedule 7 certifying that Completion of the Works has been achieved in accordance with this Deed.

*Designer's Team* means the team of persons (including the Designers) engaged in the design of the Works and, to the extent relevant, the Temporary Works.

*Detailed Services Survey* means the report titled "DSS Survey for Auburn Stabling Yard" compiled by the Principal and dated 14 March 2011.

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

*Dispute Resolution Board* means the board consisting of Graham Easton, Barry Tozer and the third member as chairperson who signs the DRB Agreement under clause 15.1(a) or their replacements, referred to in clause 15.5.

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

*DRB Agreement* means the agreement which appears in Schedule 28.

*Engineering Authority* means the engineering authority from RailCorp issued in accordance with RailCorp's Engineering Design Competency System (EPA 241).

*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)–(c).

*Environmental Management Representative* means the person identified in Schedule 1 as the environmental manager appointed by the Principal, or any replacement notified to the Contractor by the Principal's Representative.

*Excepted Risk* means any one of:

(a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, terrorism, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;

(b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its Subcontractors or either's employees or agents; or

(c) any other event so described in Schedule 1.

*Excluded Claim* means any claim:

(a) with respect to a Change in Law under clause 2.3(g);
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(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 to any Date for Completion under clause 10.8; or
(d) for payment under clause 11, including a claim under clause 11.10.

Extra Land means the land referred to in clause 3.4(b)(i).

Final Completion means the stage in the execution of the Contractor's Activities when:

(a) all Defects Rectification Periods (including any extension under clause 8.6) have expired;
(b) the Contractor has:
   (i) carried out and passed all tests which:
      (A) are required under this Deed to be carried out and passed before the Works reach Final Completion; or
      (B) must necessarily be carried out and passed to verify that the Works are in the condition this Deed requires them to be in at Final Completion;
   (ii) obtained all Authority Approvals that it is required under this Deed to obtain but which were not obtained before Completion of the Works or are to be obtained prior to Final Completion, and provided such Authority Approvals to the Principal's Representative;
   (iii) given to the Principal's Representative all other documents or information referred to in this Deed:
      (A) which are required for the use, operation, maintenance and repair of the Works but which were not obtained before Completion of the Works; or
      (B) which are required to be handed over to the Principal's Representative before Final Completion; and
   (iv) complied with all performance requirements under this Deed that must be verified before Final Completion; and
(c) the Contractor has done everything else which it is required to do under this Deed before Final Completion.

Final Payment Claim has the meaning given to that term in clause 11.12.

First Hundred Day Program means the program titled "First Hundred Day Program" the initial version of which is prepared by the Contractor and provided to the Principal on the date of this Deed, as updated in accordance with clause 10.2(e).

The references to the "First Hundred Day Program" in this Deed only apply where they are stated to apply in Schedule 1.
First Statement of Outstanding Claims has the meaning given to that term in clause 11.10(b).

Force Majeure Event means earthquake, act of terrorism, act of a public enemy, war (declared or undeclared) or revolution.

General Conditions means clauses 1-18 of this Deed.


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

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.

Hold Point means a verification point identified in the TCA Standard Requirements beyond which the relevant part of the Contractor's Activities may not proceed without the verification and subsequent written authorisation of the Principal's Representative or the relevant person nominated in the TCA Standard Requirements.

Incident means any occupational health and safety or environmental or security incident arising from the performance of (or failure to perform) the Contractor's Activities including:

(a) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;
(b) loss of containment, escape of or migration of Contamination off-site and into the Environment;
(c) any fire or dangerous event on the Site;
(d) a security breach;
(e) any unauthorised removal of trees;
(f) a non-compliance with an Authority Approval; or
(g) any public complaint.

Industrial Relations Management Plan means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TCA Standard Requirements.

Information Documents and Materials means:

(a) the items specified in Schedule 17; and
(b) 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 Deed, including anything which is expressly stated by this Deed to form part of the Information Documents and Materials.

**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 Deed 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;

(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 scheme of arrangement (other than a solvent scheme of 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;
a mortgagee of any property of the corporation takes possession of that property; or

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 authorised deposit taking institution holding an authority to carry on banking business in Australia under the terms of the *Banking Act 1959* (Cth).

**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, which is listed in Schedule 10 identified by the Principal's Representative, that is carrying out, or that will carry out, Interface Work.

**Interface Work** means the work to be executed by Interface Contractors, which will interface with or affect or be affected by the Contractor's Activities and the Works, including that described in the Works Brief.

**Latent Condition** means:

(a) adverse geotechnical conditions on the Site which differ materially from the geotechnical conditions which a competent and experienced contractor could reasonably have been expected to anticipate (at the time of the Contractor's Tender) if it had:

(i) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering (including the Geotechnical Report); and

(ii) examined all information (including the Geotechnical Report) relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and

(iii) inspected the Site and its surroundings; or

(b) any Service on the Site which is:

(i) not identified in the Detailed Services Survey or not reasonably able to be inferred from the Detailed Services Survey; or
(ii) not capable of otherwise having been anticipated by a competent and experienced contractor (at the time of the Contractor's Tender) if it had:

(A) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering (including the Detailed Services Survey); and

(B) examined all information (including the Detailed Services Survey) relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and

(C) inspected the Site and its surroundings; or

(iii) discovered only after the Contractor has undertaken potholing of the Services identified in the Detailed Services Survey to confirm their exact location.

Law means:

(a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, 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).

Local Industry Participation Plan means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TCA Standard Requirements.

Monument has the meaning given to that term in the Surveying and Spatial Information Regulation 2006 (NSW).

Nominated Subcontractor means a Subcontractor identified in Schedule 1 to whom the Contractor must Subcontract the relevant Nominated Subcontract Work.

Nominated Subcontract Work means that supply of goods or services specified in Schedule 1 that may only be performed by the relevant Nominated Subcontractor.

NOTC means no objection to construction as marked by the Contractor on a design package (following the Critical Design Review of that design package and resolution of all issues raised by that review) and received by the Principal.

Notice of Completion means a notice issued under clause 12.3(d)(i) by the Principal's Representative stating that Completion of the Works or a Portion has been achieved.

OH&S means occupational health and safety.
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**Operational Readiness** has the meaning given to that term in the TCA Standard Requirements and is:

(a) comprised of stages 7 (accreditation of new infrastructure), 8 (pre-commercial operations and RailCorp staff training), 9 (handover of assets from the Principal to RailCorp), and 10 (setting to work for commercial operation); and

(b) a part of Commissioning, Systems Integration and Operational Readiness.

**Option** means an option referred to in Schedule 25.

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

**Other Contractor** means RailCorp or any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work, other than the Contractor and its Subcontractors.

**Overhead Costs** means the costs referrable to the items described in Schedule 33.

**Parent Company Guarantee** means the deed which appears in Schedule 30.

**Payment Schedule** means Schedule 2.

**Performance and Compliance Incentive Payment Table** means the table set out in Schedule 27.

**Performance Category** means each of the categories identified in column 1 of the Performance and Compliance Incentive Payment Table.

**Planning Approval** means:

(a) the Authority Approval set out in Exhibit E as it may be modified from time to time and any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning (acting in their capacity as determining authority) in respect of the Works; and

(b) any mitigation measures and statement of commitments referred to in the documents referred to in paragraph (a).

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

**Preliminary Design Review** has the meaning given to that term in the TCA Standard Requirements.

**Principal** means TCA.

**Principal Supplied Items** means the items set out in Schedule 34.

**Principal's Design** means Exhibit J.
Principal's Representative means:

(a) the person nominated in Schedule 1; or

(b) any other person appointed from time to time by the Principal under clause 9.2,

and includes any appointee under clause 9.3.

Progress Claim has the meaning given to that term in clause 11.2(h).

Prohibited Subcontractor means any Subcontractor:

(a) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or

(b) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in;

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

(c) employing an employee in respect of whom paragraphs (a) or (b) apply.

Project Safety Management Plan means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TCA Standard Requirements.

Provisional Sum Work means the work detailed as such in Schedule 1.

RailCorp means a New South Wales government agency constituted by section 4(1) of the Transport Administration Act 1988 (NSW) of Level 20, 477 Pitt Street, Sydney NSW 2000.

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 Systems and Services has the meaning given to that term in clause 1.1 of the TCA Standard Requirements TSR-01.

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

Reimbursable Signalling Installation Works means those activities undertaken by the Contractor necessary to install, test, commission and handover those parts of the rail signalling system on the Site identified in section 4.22.1(a) of the Works Brief (but excludes supply and manufacture) as more particularly identified in column "B" in Appendix C2 of the Works Brief. It excludes:
(a) all activities associated with the production of the Signalling Design; and
(b) correction of errors in those activities or the rectification of defects in such works.

Reimbursable Work

(a) means the following specific activities:
   (i) Reimbursable Signalling Installation Work;
(b) but only where those specific activities are undertaken by the Contractor's identified personnel listed in Schedule 9 (or such other personnel as may be approved from time to time by the Principal's Representative); and
(c) excludes personnel for the project management, coordination and supervision of those specific activities.

Reimbursable Work Price means the amount calculated in accordance with Schedule 9 which, by this Deed, the Principal is required to pay to the Contractor in respect of the Reimbursable Work.


Remote Sites are lands other than the Site on which Remote Works must be constructed.

Remote Works are those parts of the Works that must be constructed on Remote Sites, including:
(a) minor roadworks;
(b) public art;
(c) landscaping;
(d) any item of work required by the Planning Approval to be constructed outside the Site;
(e) any item of work required by the Third Party Agreements to be constructed outside the Site; and
(f) connections to, augmentation of, and construction of any Service.

Required Rating means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc.

Safety Interface Agreement means the Interface Agreement of that name that is set out in Exhibit I.

Second Statement of Outstanding Claims has the meaning given to that term in clause 11.12(b).
Service includes any service, facility or item of public or private infrastructure (including railway systems, pedestrian and vehicular corridors, water, electricity, gas, ethane, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service) which is (or may be) affected by the Contractor's Activities, whether it is on or adjacent to, or affecting, the Site or any Remote Site.

Signalling Commissioning has the meaning given to that term in the TCA Standard Requirements, including as shown in Appendix C to TSR-01.

Signalling Commissioning Period means the period between 20 and 27 October 2013.

Signalling Design means those elements of AFC Design Documentation identified in section 3.1 (c) of the Works Brief which comprises 3 packages:

(a) signalling plan (Signalling Design Package No. 1);
(b) track insulation plan (Signalling Design Package No. 2);
(c) cable running charts, power calculations, signalling air system and final configuration circuit books (Signalling Design Package No. 3),

all as set out in the Works Brief.

Signalling Design Package Due Date means:

(a) for Signalling Design Packages No. 1 and No. 3, the date which is 3 months after the date on which the Design Documentation for track alignment is Approved for Construction.
(b) for Signalling Design Package No. 2, the date which is 3 months after the date on which the Design Documentation for overhead wiring is Approved for Construction.

Site means:

(a) the Asset Lands, Temporary Lands, and other places described in Schedule 22; and
(b) any other lands and places made available to the Contractor by the Principal for the purpose of this Deed,

and excludes the Remote Sites.

Site Conditions means any physical conditions (excluding Latent Conditions) encountered in the execution of the Contractor's Activities above, upon, under or over the surface, or in the vicinity, of the Site and includes:

(a) surface water, ground water, ground water hydrology and the effects of any de-watering;
(b) physical and structural conditions, above, upon and below the Site, including old footings, underground structures, buildings, improvements, partially completed structures or in-ground works;
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(c) topography of the Site, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site;

(d) climatic and weather conditions including rain, surface water run off and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of climatic and weather conditions;

(e) all existing systems and Services, above or below ground level and all facilities with which such systems and Services are connected;

(f) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;

(g) any Contamination, or other spoil or waste; and

(h) underground strata forming part of the Site.

Site Management Plan means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TCA Standard Requirements.

Source Code means, in respect of a computer program, the human readable code of that computer program, and includes associated software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code) and all documentation necessary to operate, maintain and modify the executable code copy of that computer program including all technical documentation and specifications in respect of that computer program.

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

Subcontractor includes a consultant or a supplier of goods or services (including professional services and plant hire) or both.

Survey Certificate has the meaning given to that term in the Surveying and Spatial Information Regulation 2006 (NSW).

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

System Definition Review has the meaning given to that term in the TCA Standard Requirements.

Systems Integration has the meaning given to that term in the TCA Standard Requirements and is:

(a) comprised of stages 5 (integration with RailCorp railway network) and 6 (acceptance tests); and

(b) a part of Commissioning, Systems Integration and Operational Readiness.

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.

TCA means Transport Construction Authority (ABN 28 458 799 157), a statutory corporation and a NSW Government agency established by section 18A of the Transport Administration Act 1988 (NSW), as a continuation of the former legal entity, Transport Infrastructure Development Corporation.

TCA Standard Requirements means the documents which appear as Exhibit A to this Deed.

Temporary Lands are the lands so identified in Schedule 22.

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, including that identified in Schedule 3.

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

Tender Form means the tender form submitted by the Contractor as part of its Tender.

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

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

Third Party Agreements means the agreements referred to in Schedule 1 in respect of which:

(a) where the agreement has been executed by all parties to the agreement, a copy of the agreement; or

(b) where the agreement has not been signed, a draft of the agreement, appears in Exhibit I.

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.

Valuable Find means any and all:

(a) valuable minerals, fossils, or coins;

(b) articles or objects of value or antiquity; and

(c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological, or other special interest, found on or under the surface of the Site.

Variation means:
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(a) any change to the Works or the Temporary Works including:
   (i) any addition or increase to, or decrease, omission or deletion from, the Works or the Temporary Works; or
   (ii) any change to the character or quality, or demolition or removal, of any material or work; or
   (iii) any change to the levels, lines, positions or dimensions of any part of the Works or the Temporary Works; or
(b) any changes to the boundaries of the Asset Lands or the Temporary Lands (or both);

but for the avoidance of doubt excludes:
(c) any changes to the Works or the requirements of the Works Brief that are required solely as a result of the exercise of an Option by the Principal's Representative under clause 6.3;
(d) any changes to the Works or the Temporary Works or the requirements of the Works Brief that are required to ensure the Contractor complies with its obligations under this Deed;
(e) any Provisional Sum Work; and
(f) any Reimbursable Work.

Variation Order means a written document titled "Variation Order" issued under clause 6.2.

Witness Point means a point identified in the TCA Standard Requirements where the Principal's Representative, or the relevant person nominated in the TCA Standard Requirements, may review, witness, inspect, or undertake tests on any component, method, or process of the Contractor's Activities.

Works means the whole of the works, including:
(a) 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;
(b) all Variations;
(c) all Remote Works; and
(d) Principal Supplied Items once made available to the Contractor by the Principal,

that the Contractor must design, construct, commission, integrate, bring to operational readiness and handover to the Principal (or its nominee) under this Deed.

Works Brief means Exhibit B.

Worksites means those parts of the Site identified in clause 22.3 of Schedule 22.
1.2 Interpretation

In this Deed 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 Deed 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 Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed 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 Deed;

(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 Deed; 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) a reference to this Deed includes all Schedules, and (subject to clause 3.6(a)) 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) where under this Deed:

(i) a direction is required to be given or must be complied with;

(ii) payment of money must be made;

(iii) an unconditional undertaking must be released; or

(iv) a default must be remedied, within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;

(m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:

(i) any extension of time to any Date for Completion stated in days; or

(ii) any reference to "day",

will include only those days indicated in Schedule 1, or otherwise approved by the Principal's Representative, as working days;

(n) for all purposes (other than as set out in clauses 1.2(l) and 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) a reference to "direction" in the definition of Claim in clause 1.1 or in any of clauses 7.1(a)(i)(B), 9.1, 9.14(k), 15 and 17 will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document (as defined in clause 9.14(a)) under clause 9.14;

(r) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed 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;
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 this Deed (including in any Exhibit), the Principal's Representative must, subject to clause 1.4, direct the interpretation of this Deed 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 Deed.

(c) Any direction which the Principal's Representative gives in accordance with clause 1.3(a):

(i) will not relieve the Contractor from or alter its liabilities or obligations under this Deed or otherwise at Law;

(ii) will not entitle the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;

(iii) will not limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to Law; and

(iv) must, in respect of a notice given by the Contractor under clause 1.3(a), be given within 28 days of receipt of that notice.
1.4 Order of Precedence

(a) In the event of any inconsistency, ambiguity or discrepancy between the requirements of the Principal's Design and the requirements of the remainder of this Deed, the higher, or more onerous, or more rigorous, requirement will apply.

(b) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Deed, the order of precedence in Schedule 1 applies.

(c) The Works Brief, the Principal's Design and the Planning Approval 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 Deed and are fit for their intended purposes.

(d) In the event of any inconsistency, ambiguity or discrepancy between the requirements of the mitigation measures and the statement of commitments referred to in the Planning Approval, the statement of commitments will apply.

1.5 Authorities

(a) This Deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RailCorp or the Principal to exercise any of their respective functions and powers pursuant to any legislation.

(b) Without limiting clause 1.5(a), anything RailCorp or the Principal do, or fail to do or purport to do, pursuant to their respective functions and powers under any legislation, will be deemed not to be an act or omission by the Principal under this Deed.

(c) The Contractor:

(i) waives any Claims that it may have against the Principal as a result of the exercise by RailCorp or the Principal of their respective functions and powers under any legislation; and

(ii) acknowledges and agrees that:

(A) there are many Authorities with jurisdiction over aspects of the Contractor's Activities, parts of the Site and areas affecting and affected by the Contractor's Activities;

(B) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
1.6 Associated Deeds

As a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.5 the Contractor must, on or before the date of this Deed, provide to the Principal's Representative an executed deed poll in favour of RailCorp in the form set out in Schedule 26.

1.7 Commencement Date

(a) This Deed will not commence until the Commencement Date, except for the provisions contained in:

(i) clause 1 (Definitions and Interpretation);
(ii) clause 2.2 (Subcontracts);
(iii) clause 2.8 (Unconditional Undertakings and Parent Company Guarantee);
(iv) clause 3.6 (Information Documents and Materials);
(v) clause 9.18 (Exchange of information between Government Agencies);
(vi) clause 13 (Insurance);
(vii) clause 14 (Default or Insolvency);
(viii) clause 15 (Disputes); and
(ix) clause 16 (General); and
(x) clause 17 (Notification of Claims),

which will all commence on the date of this Deed.

(b) The Commencement Date does not affect the date of this Deed.

(c) For the purposes of calculating time, the days between the date of this Deed and the Commencement Date shall not be counted.

2. Contractor's Obligations

2.1 General

The Contractor:

(a) must execute the Contractor's Activities, including design, construct and handover the Works, in accordance with this Deed;
(b) warrants that the Works will upon Completion be, and will at all relevant times remain, fit for their intended purposes;

(c) warrants that the Temporary Works will at all relevant times be fit for their intended purposes;

(d) agrees that, unless the context otherwise requires, the Contractor:

(i) must comply with and otherwise perform all obligations in, and do all things required by, the Works Brief; and

(ii) agrees that where specific manufacturer's product is specified in the Works Brief (or elsewhere), the:

(A) Contractor:

(1) will not be entitled to make, and the Principal will not be liable upon any Claim arising or in any way in connection with the specification of that manufacturer's product; and

(2) remains liable for complying with all its obligations under this Deed, including the obligations referred to at clauses 2.1(b) and 2.1(e); and

(B) Principal makes no representation as to:

(1) the quality of the specified product;

(2) the availability of the specified product; or

(3) the creditworthiness of the manufacturer of the specified product; and

(e) subject to the express provisions of this Deed, accepts responsibility for and the risk of all costs, damages, expenses, losses, liabilities or delays that it incurs or suffers arising out of or in any way in connection with, the performance of the Contractor's Activities and its obligations under this Deed.

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 Deed.

(b) The Contractor:

(i) must:

(A) not enter into any Subcontract with a Prohibited Subcontractor; and

(B) enter into a Subcontract with one or a combination of the Nominated Subcontractors specified in Schedule 1 in respect of the relevant Nominated Subcontract Work;
(ii) agrees that, in respect of Nominated Subcontractors, the:

(A) Contractor:

(1) will not be entitled to make, and the Principal will not be liable upon, any Claim arising or in any way in connection with any act or omission of a Nominated Subcontractor; and

(2) remains liable for complying with all its obligations under this Deed, including the obligations referred to at clauses 2.1(b) and 2.1(e); and

(B) Principal makes no representation as to any Nominated Subcontractor's:

(1) quality of work;

(2) timeliness of work;

(3) availability to perform the relevant Nominated Subcontract Work; or

(4) creditworthiness.

(iii) may only enter into a Subcontract with:

(A) a Designer; or

(B) any other Subcontractor where the Subcontract has an initial subcontract price equal to or over the amount specified in Schedule 1,

with the prior written approval of the Principal's Representative (which may be conditional but which will not be unreasonably withheld);

(iv) agrees that any request by the Contractor for approval to subcontract under clauses 2.2(b)(iii)(A) or 2.2(b)(iii)(B) must be in writing and include such details as may be required by the Principal's Representative, including details of the proposed Subcontract conditions, and the proposed Subcontractor's capacity to undertake the relevant work, past performance in undertaking similar work, safety (including occupational health, safety and rehabilitation), environmental compliance (including any environmental management system) and other performance, management systems and proposed safe working procedures; and

(v) acknowledges that, within 14 days after a request by the Contractor for approval, the Principal's Representative will advise the Contractor whether the request is approved or not and, where it is not approved, the reasons why approval is not given.
(c) The Contractor must ensure that each Subcontractor (including each Designer) referred to in 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 Schedule 1 per claim for loss (whether economic loss only or other loss) in a single claim;
(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 period referred to in Schedule 1 from completion of the relevant Subcontract works or professional services; and

(ii) is obliged under the relevant Subcontract to comply with clause 13.5(e)(i) and (ii) of this Deed in relation to the insurance referred to in sub-paragraph (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) Whenever requested by the Principal's Representative, the Contractor must give the Principal's Representative details of each of its Subcontracts, including the name and address of the Subcontractor (and its Subcontractors), and the goods or services being provided under the Subcontract.

(f) The Contractor must:

(i) without limiting clause 16.26(c), ensure that each of its Subcontracts that has an initial subcontract price of the amount specified in Schedule 1 or more includes provisions to the effect set out in Schedule 12 and a clause to the same effect as this clause 2.2(f)(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) where a Subcontractor is to carry out design work or other professional services, unless not required by the Principal's Representative, procure that Subcontractor to execute a deed in the form of Schedule 13 and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor;

(iii) ensure that each Subcontractor (and their subcontractors) executes a Confidentiality Undertaking and provides this to the Principal's Representative within 7 days of the engagement of that Subcontractor or subcontractor; and

(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 Schedule 1; or

(B) in respect of the categories of work set out in Schedule 1 (regardless of subcontract price),

executes a deed in the form of Schedule 23 and provides this to the Principal's Representative within 7 days of being engaged by the Contractor.

(g) The Contractor must, as a condition precedent to Completion of the Works or a Portion, procure and provide the Principal's Representative with those warranties described in Schedule 1 or elsewhere in this Deed from the 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 19 and must be in favour of the Principal, RailCorp and any other entity nominated by the Principal's Representative from time to time; 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.

(h) In addition to clause 2.2(g), the Contractor must use its best endeavours to obtain warranties more favourable than those in Schedule 1 from the relevant Subcontractors undertaking or supplying the work or items the subject of the warranty.
2.3 Compliance with Law

(a) Subject to clause 2.3(c)(i), the Contractor must, in carrying out the Contractor's Activities:

(i) ensure that the Works will comply with all applicable Law;
(ii) comply with all applicable Law;
(iii) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this Deed 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;
(v) at all times conform and comply with, and ensure that the Works conform and comply with (subject to clause 2.3(b)), 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 28 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 any Claim against the Principal arising out of or in connection with the change.
(c) The Contractor must:

(i) obtain all Authority Approvals required for the:
   (A) carrying out of the Contractor's Activities; and
   (B) occupation and use of the completed Works or a completed
        Portion,
   except for those Authority Approvals specified in Schedule 15 that
   either:
   (C) were obtained by the Principal prior to the date of this Deed; or
   (D) will be obtained by the Principal after the date of this Deed
        where required;

(ii) prepare and submit:
   (A) to the relevant Authorities all applications and associated
       documents for the purpose of obtaining all Authority Approvals
       as required by clause 2.3(c)(i); and
   (B) to the Principal copies of:
       (1) all key applications and associated documents
           submitted by the Contractor to any Authority;
       (2) all key documents provided to the Contractor by any
           Authority, including any Authority Approval;
       (3) (on a monthly basis) evidence of compliance with the
           terms of the DECCW Licence;
       (4) any other document the Principal's Representative
           reasonably directs the Contractor to provide;
       (5) all documents submitted to an Authority in respect of
           the release of a Hold Point under an Authority Approval
           or any Codes and Standards, which documents must be
           submitted within a reasonable period of time before the
           release of the Hold Point; and
       (6) all documents submitted to an Authority in respect of a
           Witness Point under an Authority Approval or any Codes
           and Standards, which documents must be submitted
           within a reasonable period of time before the review,
           witness, inspection, or the undertaking of any tests,
           methods or processes related to or in connection with
           the Witness Point;

(iii) unless otherwise expressly specified in Schedule 11, 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, to comply with, satisfy, carry out and fulfil;

(iv) in respect of any:

(A) Authority Approvals which are to be obtained by the Principal after the date of this Deed; or

(B) conditions and requirements of Authority Approvals which pursuant to Schedule 11 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.

(v) 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 Works or Temporary Works proposed by the Contractor;

(vi) as a condition precedent to Completion of the Works or a Portion (but subject to clause 2.3(d)), ensure that it has:

(A) obtained all Authority Approvals it is required to obtain under this Deed;

(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 Deed (including obtaining the approval of any person for anything); and

(C) obtained and supplied to the Principal's Representative certification that the Works, as designed and built, comply with the requirements of the Building Code of Australia 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 RailCorp to occupy and use the Works or Portion for its intended purpose.

(d) If:

(i) an Authority Approval must be obtained or satisfied by the Contractor as a condition precedent to Completion of the Works or a Portion;
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(ii) the obtaining or satisfying of the relevant Authority Approval cannot occur until certain Contemporaneous Work or Interface Work is performed; and

(iii) the Contractor has otherwise complied with its obligations in respect of Completion of the Works or the Portion,

then in response to any request from the Contractor, the:

(iv) Principal’s Representative may:

(A) defer the time for obtaining or satisfying the relevant Authority Approval and omit it as a requirement of Completion; and

(B) impose whatever conditions it considers reasonable in the circumstances; and

(v) Contractor:

(A) will be relieved of its obligation to obtain or satisfy the relevant Authority Approval as a condition precedent to Completion of the Works or the Portion; and

(B) must (at its own cost):

(1) obtain or satisfy the relevant Authority Approval;

(2) comply with any conditions imposed by the Principal’s Representative under clause 2.3(d)(iv)(B); and

(3) otherwise comply with its obligations under clause 2.3(c)(vi),

when notified by the Principal’s Representative that the Interface Work or Contemporaneous Work has been completed.

(e) The Contractor:

(i) acknowledges that:

(A) only the Principal can apply for an amendment to the Planning Approval;

(B) the Principal may, in its absolute discretion refuse to seek such an amendment or discontinue or withdraw or change an application for such an amendment at any time;

(C) the Principal need not apply for any amendment to the Planning Approval on behalf of the Contractor unless the Contractor first submits its proposal for amendment to the Principal’s Representative for its review under clause 9.14;

(ii) must not seek to or apply for any amendment to the Planning Approval other than via the Principal; and
(iii) must pay the Principal all fees, costs and expenses in connection with such amendment.

(f) In respect of any submissions, surveys, investigations, reports, studies or other documents:

(i) required to be submitted by a term of the Planning Approval; or

(ii) proposed to be submitted by the Contractor in support of any application to amend the Planning Approval,

the Contractor:

(iii) must carry out and provide to the Principal for its review under clause 9.14, any submissions, surveys, investigations, reports, studies or other documents:

(A) requested by the Principal's Representative;

(B) to the standard directed by the Principal's Representative; and

(C) within the time directed by the Principal's Representative;

(iv) must provide whatever other assistance and information the Principal's Representative reasonably requests; and

(v) agrees that any act or omission (including delay or refusal) by the Principal or the relevant Authority in respect of an application to amend the Planning Approval will not be an Act of Prevention.

(g) Where there is a Change in Law:

(i) if either party wishes this clause 2.3(g) to apply, then that party must, within 14 days of the Change in Law, give a written notice to the other and the Principal's Representative stating that clause 2.3(g)(i) applies and containing:

(A) details of the Change in Law; and

(B) that party's estimate of any increase or decrease (as the case may be) in the Contractor's cost of carrying out the Contractor's Activities arising out of or in connection with complying with the Change in Law, including sufficient information to support the estimates;

(ii) if the Contractor or the Principal's Representative gives notice under clause 2.3(g)(i), representatives of the Principal and the Contractor must meet within 28 days of a notice being given under clause 2.3(g)(i) and must negotiate and endeavour to agree to a reasonable increase or decrease (as the case may be) in the Contractor's cost of carrying out the Contractor's Activities arising from complying with the Change in Law, and where agreement is reached as to the amount of the increase
or decrease in cost, the Principal's Representative will issue a notice setting out how the Contract Sum will be increased or decreased;

(iii) if no agreement is reached within 28 days (or such other period that the Principal and the Contractor agree upon) of a notice being given under clause 2.3(g)(i) the Principal's Representative will determine:

(A) for a decrease in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Change in Law, a reasonable amount as the amount of the decrease; or

(B) for an increase in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Change in Law, the amount of the increased costs reasonably incurred by the Contractor 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

(iv) the Contractor must comply with the Change in Law.

(h) If:

(i) a requirement of an Authority Approval (other than a Third Party Agreement) obtained or issued or which otherwise takes effect after the date of this Deed; or

(ii) a change in an Authority Approval which is in existence as at the date of this Deed, (or in respect of a Third Party Agreement which is signed after the date of this Deed, a change to that Third Party Agreement after it is signed), occurs after the date of this Deed (other than a change arising from or in connection with an act or omission of the Contractor),

necessitates a Variation, the Contractor must:

(iii) if the Authority Approval was obtained by the Principal, within 14 days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the new Authority Approval or change taking effect; or

(iv) otherwise, within 14 days of the new Authority Approval or change taking effect,

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

Clauses 2.12(a) and 2.12(b) apply (and this clause 2.3(h) does not apply to any changes between a Draft Third Party Agreement and a signed version of the Draft Third Party Agreement.

(i) Other than as set out in clause 2.3(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:

   (i) an Authority Approval obtained or issued or which otherwise takes effect after the date of this Deed;
   (ii) a proposed amendment to the Planning Approval sought by the Contractor;
   (iii) a change in an Authority Approval after the date of this Deed; 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.

2.4 Legal Challenge to Approval

(a) If there is a legal challenge, proceedings or action brought by a person or Authority in relation to the assessment, determination or performance of 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 Deed unless, as a result of that legal challenge, proceedings or action, it is otherwise:

   (v) ordered by an Authority;
   (vi) ordered by a court; or
   (vii) directed by the Principal.

(b) Subject to clause 2.4(c), the Principal must pay the Contractor the costs reasonably incurred by the Contractor as a direct result of:

   (i) an Authority order referred to in clause 2.4(a)(v);
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(ii) a court order referred to in clause 2.4(a)(vi); or
(iii) a direction by the Principal referred to in clause 2.4(a)(vii),
to the extent that such Authority order, court order, or direction prevents the Contractor from achieving Completion of the Works or a Portion by the relevant Date for Completion.

(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 Deed or any Authority Approval.

2.5 Services

(a) The Contractor must:
(i) obtain and pay for any Service it needs to perform its obligations under this Deed;
(ii) relocate, remove, modify, support, protect, reinstate and provide all Services necessary for the Contractor to comply with its obligations under this Deed;
(iii) 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 Deed, including any such devices reasonably required by the Principal’s Representative;
(iv) despite any other provision in this Deed to the contrary, ensure that no Services are:
   (A) damaged or destroyed; or
   (B) disconnected, disrupted, interfered with or interrupted during normal operating hours, by reason of the performance of the Contractor’s Activities;
(v) cooperate and coordinate with the owners of all Services, and implement their requirements as part of the Contractor’s Activities; and
(vi) 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 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, an Other Contractor or an agent of the Principal may have contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.
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(b) Subject to clause 3.5 the Contractor assumes the risk of the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities.

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 109R of the Environmental Planning and Assessment Act 1979 (NSW).

(b) Any certification under clause 2.6(a) will not lessen or otherwise affect:

(i) the Contractor's other liabilities or responsibilities under this Deed or otherwise according to Law; or

(ii) the Principal's rights against the Contractor, whether under this Deed or otherwise according to Law.

2.7 Principal Contractor

(a) In this clause 2.7:

(i) **Control** has the same meaning as in Schedule 22;

(ii) **OH&S Regulation** means the Occupational Health and Safety Regulation 2001 (NSW); and

(iii) **owner, principal contractor and construction work** have the same meanings as in the OH&S Regulation.

(b) During any period:

(i) for which the Contractor is specified in Schedule 22 as being; or

(ii) that the Principal's Representative directs the Contractor to be, in Control of any part of the Site:

(iii) the Principal (who has been authorised by the owner of that part of the Site to do so) appoints the Contractor as the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that part of the Site, or, if the Principal is not able to validly appoint the Contractor as the principal contractor in respect of any construction work carried out by or on behalf of the Principal on that part of the Site, the Contractor must exercise and fulfil the functions and obligations of a principal contractor under the OH&S Regulation as if the Contractor had been validly appointed as the principal contractor in respect of such construction work so as to ensure that the responsibilities imposed on a principal contractor by the OH&S Regulation are discharged;
(iv) the Contractor is authorised to exercise such authority as is necessary to enable the Contractor to discharge the responsibilities imposed on a principal contractor by the OH&S Regulation; and

(v) the Contractor must exercise and fulfil all of the functions and obligations of a principal contractor under the OH&S Regulation so as to ensure that the responsibilities imposed on a principal contractor by the OH&S Regulation are discharged.

(c) 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 connection with the Contractor's failure to exercise or fulfil the functions and responsibilities of a principal contractor that the Contractor is required to exercise and fulfil in accordance with this clause 2.7.

(d) Where the:

(i) Contractor is not specified in Schedule 22 as being; or

(ii) the Principal's Representative has not directed that the Contractor is to be,

in Control of a part of the Site, the Contractor:

(iii) acknowledges that the person who is specified in Schedule 22 as being in Control of that part of the Site 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 period during which that person is in Control of that part of the Site;

(iv) must comply with any exercise by the person referred to in sub-paragraph (iii) of such authority as is necessary to enable that person to discharge the responsibilities imposed on a principal contractor by the OH&S Regulation; and

(v) without limiting clause 2.15, expressly acknowledges and agrees that a reference in clause 2.15 to an act or omission by a person includes an act or omission by a person in the exercise of its authority as principal contractor as referred to in sub-paragraph (iii).

(e) The Contractor must comply with any direction by the Principal for the purposes of compliance with a condition or restriction of the Principal's accreditation under the Rail Safety Act 2008 (NSW), except to the extent that compliance with the direction of the Principal is inconsistent with the Contractor's obligations under clause 2.7(b)(iii)-(v).

(f) The Contractor must, in respect of Remote Works and Remote Sites, exercise and fulfil the functions and obligations of a principal contractor under the
OH&S Regulation as if the Contractor had been validly appointed as the principal contractor in respect of such construction work so as to ensure that the responsibilities imposed on a principal contractor by the OH&S Regulation are discharged.

2.8 Unconditional Undertakings and Parent Company Guarantee

(a) Without limiting clause 2.8(d), the unconditional undertakings to be provided under this clause are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Deed.

(b) The Contractor must give the Principal on or before the date of this Deed, two unconditional undertakings:

(i) each for 2.5% of the Original Contract Price;
(ii) each in the form of Schedule 16;
(iii) each in favour of the Principal;
(iv) each issued by an Institution approved by the Principal that maintains the Required Rating; and
(v) where required by Law, duly stamped;

(c) If the issuer of the unconditional undertakings ceases to have the Required Rating, then the Contractor must:

(i) promptly notify the Principal of the circumstances; and
(ii) within 20 Business Days of being requested to do so, procure the issue to the Principal of replacement unconditional undertakings that satisfy the requirements of clause 2.8(b).

(d) Subject to its rights to have recourse to the unconditional undertakings, and subject to clauses 2.8(h), 14.10 and 14.12, the Principal must:

(i) within 28 days after the Date of Completion of the Works release so much of the unconditional undertakings provided by the Contractor under clause 2.8(b) as may be then held by the Principal, so that it then holds 2.5% of the Original Contract Price;
(ii) within 28 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 2.8(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
(iii) within 28 days after the Date of Final Completion, release the balance of the unconditional undertakings provided by the Contractor under clause 2.8(b) as may be then held by the Principal.

(e) The Principal:

(i) may have recourse to either or both of the unconditional undertakings provided under this clause 2.8 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 2.8(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 2.8 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 2.8 or receiving payment under any such unconditional undertaking; or

(iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.8.

(g) The Contractor must on or before the date of this Deed give the Principal a guarantee duly executed by the person referred to in Schedule 1 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 Deed to the contrary, where this Deed may otherwise require the Principal to release an unconditional undertaking, or this Deed is terminated by the Principal either pursuant to clauses 14 or 2.16(d) or by reason of the Contractor repudiating this Deed, the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this Deed to the extent of any claim which the Principal may have against the Contractor arising out of, or in connection with, this Deed or the Contractor's Activities whether for damages (including liquidated damages) or otherwise.
2.9 Collusive Arrangements

(a) The Contractor:

(i) warrants that, prior to the date of this Deed, the Contractor had no knowledge of the whole or any part of the Tender price of any other Tenderer and had not directly or indirectly communicated the Contractor's Tender price, or any part of such Tender price, to any other Tenderer;

(ii) warrants that, except as disclosed in the Tender and as agreed with the Principal in writing, the Contractor:

(A) has not entered into any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:

(1) the Contractor will pay money to or confer any benefit upon any other Tenderer; or

(2) the Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard membership fee), as a result of entering into this Deed or providing a Tender for the Contractor's Activities;

(B) has not made any allowance in the Original Contract Price on account of a contract, arrangement or understanding of a kind referred to in clause 2.9(a)(ii)(A); and

(C) has not and will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 2.9(a)(ii)(A); and

(iii) acknowledges that it is aware that the Principal entered this Deed in reliance upon the warranties in clauses 2.9(a)(i) and 2.9(a)(ii).

(b) The Principal and the Contractor agree that if any matter warranted in clauses 2.9(a)(i) or 2.9(a)(ii) is found not to be true or correct, in addition to any other rights that the Principal may have, the Contractor:

(i) will be in fundamental breach of this Deed (such breach going to the root of this Deed); and

(ii) without limiting the Principal's rights under clause 14.3, must pay to the Principal as liquidated damages the sum equivalent to that allowed or paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 2.9(a)(ii)(A) or 2.9(a)(ii)(C).
2.10 Long Service Leave Levy

Before commencing any construction work under this Deed, the Contractor must:

(a) pay to the Building and Construction Industry Long Service Payments Corporation or that body's agent all amounts payable for the long service 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 2.10(a).

2.11 Contemporaneous Work

The Contractor must:

(a) inspect all Contemporaneous Work within the periods set out in Schedule 1 after the Principal's Representative gives written notice to the Contractor to do so;

(b) if it discovers any defects, omissions or other matters in or connected with any Contemporaneous Work that in its opinion will render or are likely to render the Contemporaneous Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Works or carrying out of the Contractor's Activities, within 14 days of the Inspection notify the Principal's Representative in writing providing:

(i) full particulars of the defects, omissions or other matters identified; and

(ii) the reasons for the opinion formed by it in respect to the defects, omissions or matters identified;

(c) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Contemporaneous Work that is the subject of the notice referred to in clause 2.11(b), until the Principal's Representative issues a Variation Order under clause 2.11(e) or issues a direction under clause 2.11(f); and

(d) commence or continue with all other parts of the Contractor's Activities and mitigate any additional costs and delays resulting from the matters notified.

On receipt of the Contractor's notice under clause 2.11(b), the Principal's Representative will investigate the Contemporaneous Work that is the subject of the Contractor's notice, and within 14 days of the receipt of the notice:

(e) if the Principal's Representative agrees that the defect, omission or other matter in relation to the Contemporaneous Work necessitates a Variation in order for the proper execution of the Works and carrying out of the Contractor's Activities, issue a Variation Order to the Contractor pursuant to clause 6.2 directing it to carry out a Variation; or
(f) if the Principal's Representative disagrees with the Contractor, issue a direction to the Contractor to commence or continue with the Contractor's Activities, whereupon the Contractor must nevertheless take such steps as may be necessary to ensure that the part of the Works or Contractor's Activities dependent upon or appreciably affected by the Contemporaneous Work complies with the requirements of this Deed.

If the Contractor fails to:

(g) inspect any Contemporaneous Work as required by this clause 2.11; or

(h) notify the Principal's Representative of any defects, omissions or other matters that should have been detected at the time of such inspection by a competent and experienced contractor and that may render the Contemporaneous Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Works or for carrying out the Contractor's Activities,

and the Contemporaneous Work subsequently proves to be unsuitable, unsatisfactory or detrimental for the proper execution of the Works or the carrying out of the Contractor's Activities, then:

(i) any work that is required to be executed in order to render the Contemporaneous Work suitable, satisfactory and non-detrimental for the proper execution of the Works or the carrying out of the Contractor's Activities must be performed by the Contractor at its own cost and expense; and

(j) 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 work carried out or to be carried out by the Contractor under clause 2.11(i).

2.12 Third Party Agreements

(a) The Contractor:

(i) acknowledges that the Principal has entered or will enter into the Third Party Agreements;

(ii) must perform on behalf of the Principal those obligations identified for the Contractor to perform in Schedule 11;

(iii) must assist the Principal in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in Schedule 11;

(iv) must comply with any reasonable directions of the Principal's Representative (who will have regard to any reasonable submissions made by the Contractor to the Principal's Representative) in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
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(v) where a Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, the Contractor will provide such document, notice or information to the Principal (and not to the Third Party) within a reasonable time sufficient for the Principal to review and comment on the document, notice or information and provide it to Third Party within the time period required by a Third Party Agreement;

(vi) in carrying out the Contractor's Activities:
(A) ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement; and
(B) otherwise act consistently with the terms of the Third Party Agreement;

(vii) agrees that whenever, pursuant to the terms of a Third Party Agreement, the Principal makes an acknowledgment or gives a release or warranty, indemnity, or covenant to the Third Party under any clause of the Third Party Agreement then, subject to what is provided in Schedule 11 and the other terms of this Deed, the Contractor is deemed to make the same acknowledgment or give the same release or warranty, indemnity or covenant to the Principal on the same terms and conditions as the acknowledgement, release or warranty, indemnity or covenant made or given by the Principal under a Third Party Agreement in the same way as if the relevant terms of the acknowledgment, release or warranty, indemnity or covenant were set out in full in this Deed; and

(viii) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Contractor agrees that the Principal similarly makes no representation to the Contractor in respect of that state of affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this Deed.

(b) The parties acknowledge that:

(i) as at the date of this Deed, the terms and conditions of the Third Party Agreements identified in Schedule 1 as "Draft" have not been finalised between the Principal and the relevant Third Party (each a Draft Third Party Agreement);

(ii) the Contractor has reviewed the Third Party Agreements executed at the date of this Deed and the Draft Third Party Agreements and has
included in the Original Contract Price all of its costs (including the cost of all physical works) in complying with the Principal's obligations under the Third Party Agreements executed at the date of this Deed and the Draft Third Party Agreements other than those identified in Schedule 11 for the Principal to perform;

(iii) following execution of any Draft Third Party Agreement after the date of this Deed, the Principal must promptly give the Contractor a copy of the executed version of the Draft Third Party Agreement and amendments (if any) to Schedule 11 (Revised Allocation);

(iv) within 28 days of receipt of an executed copy of a Draft Third Party Agreement and the Revised Allocation, the Contractor must inform the Principal's Representative in writing whether the executed version of the Draft Third Party Agreement and the Revised Allocation are acceptable and, if they are not acceptable, of any terms and conditions of the executed version of the Draft Third Party Agreement or the Revised Allocation which the Contractor reasonably considers are substantially more onerous than those contained in the relevant Draft Third Party Agreement and Schedule 11 and provide details of:

(A) the additional administration and other costs to be incurred by the Contractor in complying with such terms and conditions and the Revised Allocation; and

(B) the cost of carrying out any additional physical works not forming part of the Contractor's Activities;

(v) if the Principal does not receive a notice from the Contractor under clause 2.12(b)(iv) within the 28 day period, it is deemed that:

(A) the executed version of the Draft Third Party Agreement and the Revised Allocation are acceptable to the Contractor;

(B) Schedule 11 is amended in accordance with the Revised Allocation; and

(C) the Contractor can carry out its obligations under the executed version of the Draft Third Party Agreement and the Revised Allocation without any adjustment to the Contract Sum;

(vi) if the Principal's Representative receives a notice from the Contractor under clause 2.12(b)(iv) that the executed version of the Draft Third Party Agreement or Revised Allocation is not acceptable within the 28 day period, then the Principal's Representative must:

(A) give the Contractor a notice setting out the Principal's Representative's determination of the reasonable, additional
administration and other costs incurred by the Contractor in complying with the executed version of the Draft Third Party Agreement or Revised Allocation; and

(B) if the terms of any executed version of a Draft Third Party Agreement or Revised Allocation require the Contractor to carry out any physical work which:

(1) does not form part of the Contractor's Activities; and

(2) is additional to any physical works contemplated by the Third Party Agreements executed at the date of this Deed and the Draft Third Party Agreements,

the Principal must direct a Variation under clause 6.2; and

and Schedule 11 is deemed amended in accordance with the Revised Allocation; and

(vii) notwithstanding the provisions of this clause 2.12(b), the amount of any additional costs incurred by the Contractor as a result of the circumstances referred to in clause 2.12(b) will not be added to the Contract Sum unless the Contractor has taken all proper and reasonable measures to avoid or minimise the extra costs resulting from such circumstances.

(c) The Contractor:

(i) must indemnify the Principal from and against:

(A) any claim by a Third Party against the Principal, or

(B) any liability of the Principal, to a Third Party,

arising out of or in connection with a Third Party Agreement (including a Draft Third Party Agreement executed after the date of this Deed) to the extent that the claim or liability arises out of or in connection with the Contractor's Activities, provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal may have contributed to the claim or liability; and

(ii) agrees that it:

(A) bears the full risk of:

(1) complying with the obligations under this clause 2.12; and

(2) any acts or omissions of Third Parties; and
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(8) will not be entitled to make, and the Principal will not be liable
upon, any Claim arising out of or in connection with the risks
referred to in clause 2.12(c)(ii)(A).

2.13 Co-operation with Interface Contractors

The Contractor:

(a) acknowledges that:

(i) the Interface Work forms part of the Auburn stabling yards;

(ii) the Contractor's Activities interface with the Interface Work;

(iii) Interface Contractors will be executing work on parts of the Site, or
adjacent to the Site, at the same time as the Contractor is performing
the Contractor's Activities;

(iv) the timing of the Interface Contractors' activities will be as discovered
by the Contractor;

(v) it will require certain design and work methodology input from Interface
Contractors to coordinate the design of the Works and Temporary
Works with the Interface Work;

(vi) Interface Contractors will require the Contractor to provide design and
work methodology information to them to coordinate the design of the
Interface Work with the Works and Temporary Works, and this must be
provided in a timely manner by the Contractor; and

(vii) 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 Auburn stabling
yards in a way which may lead to the Principal suffering or incurring
additional costs, losses and damages;

(b) must at all times:

(i) permit Interface Contractors to execute the Interface Work on the
applicable parts of the Site or on any adjacent property to the Site:

(A) at the same time as the Contractor is performing the
Contractor's Activities; and

(B) 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 they have safe, clean and clear access to
those parts of the Site, or property adjacent to the Site, required by
them for the purpose of carrying out their work;
(ii) protect the Works, Temporary Works and other improvements on the Site from accidental damage by Interface Contractors;

(iii) fully co-operate with Interface Contractors, and do everything necessary to:

(A) facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative; and

(B) ensure the effective coordination of the design of the Works and Temporary Works with the design and construction of the Interface Work (including the Design Documentation);

(iv) carefully coordinate and interface the Contractor's Activities with the work carried out or to be carried out by Interface Contractors, and for this purpose:

(A) make proper allowance in all programs for the work of Interface Contractors;

(B) 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;

(C) monitor the progress of the Interface Contractors' work;

(D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Completion of the Works or any Portion;

(E) provide the Interface Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate their work with the Contractor's Activities; and

(F) 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 DECCW Licences;

(v) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the work of Interface Contractors;

(vi) be responsible for coordinating the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative (in accordance with clause 2.13(b)(vii)) 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;

(vii) provide for the purposes of clause 2.13(b)(vi) (unless otherwise directed by the Principal's Representative), the number and form of copies of the work method statements specified in Schedule 1;

(viii) work directly with Interface Contractors to complete the design of the Works and Temporary Works and provide all necessary information to the Interface Contractor in respect of the Works and Temporary Works to permit the Interface Contractor to complete the design of the Interface Work so that they are acceptable to the Principal and otherwise comply with this Deed, including the Works Brief and the Principal's Design;

(ix) work in accordance with:

(A) the Contract Management Plan that has been submitted for review under clause 9.14, and, in respect of which:

(1) the Contractor has received the notice referred to in clause 9.14(d)(iii)(C); or

(2) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected the Contractor Management Plan or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e)); and

(B) the TCA Standard Requirements.

(x) attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others each 14 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;

(xi) when information is required from an Interface Contractor, give at least 10 days (except in special circumstances), and at all times reasonable, written notice 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;
(xii) ensure that any written notice given under sub-paragraph (x) provides the Interface Contractor with the longest possible time for the provision of the information;

(xiii) when any information is requested by Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Works:

(A) 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 is reasonable;

(B) ensure that such information is provided to Interface Contractors by the requested dates; and

(C) ensure and warrant that the information provided is accurate; and

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

(A) the provision of information;

(B) the obtaining of information;

(C) the adequacy of information provided to, or received from, Interface Contractors;

(D) the compatibility of the Works and Temporary Works with the Interface Work;

(E) coordination in accordance with this clause 2.13; and

(F) technical issues with the information provided to, or received from, Interface Contractors;

(c) must, in the event that despite using its best endeavours, and working closely and iteratively with the Interface Contractors, the Contractor and any Interface Contractor fail to resolve a problem between them:

(i) give written notice to the Principal's Representative with a copy to the Interface Contractor describing the problem; and

(ii) attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem;

(d) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or
construction work under this Deed or otherwise have an adverse effect upon the Contractor’s Activities; and

(e) acknowledges that conditions similar to those in this clause 2.13 applying to the Contractor will apply to all Interface Contractors engaged by the Principal, whether working on the Site or on any other site.

2.14 Interface Disputes

(a) Where the Contractor has complied with all its obligations in clause 2.13, the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor.

(b) Upon receipt of the Contractor's notice under clause 2.14(a) the Principal's Representative must:

(i) within 5 Business Days convene a meeting between the Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by Principal's Representative); and

(ii) work in good faith with the Contractor and the Interface Contractor to resolve the issues or dispute.

2.15 No Claims Arising out of Interface Work

The Contractor:

(a) acknowledges and agrees that:

(i) 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 of Prevention; and

(ii) except where the Principal's Representative directs a Variation in circumstances where the Contractor has fully complied with clause 2.13, the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:

(A) the Interface Contractors carrying out their work; or

(B) any act or omission of an Interface Contractor;

(b) warrants that the Original Contract Price and the Contractor Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under clause 2.13 and this clause 2.15, including the cost of all the design iterations required to accommodate Interface Work.

2.16 Incident Management

(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 TCA Standard Requirements.

(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 TCA Standard Requirements; and

(ii) relates to rail safety, the Contractor must notify the RailCorp rail management centre or the nearest network control officer.

(c) In relation to any environmental or safety Incident involving Contamination 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 Contamination 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 Deed, immediately terminate this Deed by written notice to the Contractor.

(e) Without prejudice to the Principal's other rights under this Deed, 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 Deed, the Principal reserves the right to issue an immediate stop work order in the event of any Incident, or the imminent risk of any Incident, involving:

(i) a significant spill of Contamination;

(ii) any actual damage to the Environment or a significant risk of harm to the Environment; or
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(iii) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority.

(g) The Principal will not be liable upon any Claim by the Contractor for any cost, expense or penalty resulting from any work stoppage due to a stop work order or for the failure to issue a stop work order.

(h) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any stop work order in relation to the Contractor's, its agents', or its Subcontractors' acts or omissions in performing the Contractor's Activities as a debt due from the Contractor to the Principal.

2.17 Working Days and Hours of Work

The Contractor must observe:

(a) all relevant Law; and

(b) any requirements of the Principal as specified in Schedule 1, which regulate working days and hours of work.

2.18 Commissioning, Systems Integration and Operational Readiness

The Contractor acknowledges that:

(a) Commissioning, Systems Integration and Operational Readiness are part of the Contractor's Activities;

(b) the Contractor must complete Signalling Commissioning during the Signalling Commissioning Period;

(c) if the Contractor fails to complete Signalling Commissioning during the Signalling Commissioning Period, the next available period during which Signalling Commissioning can be undertaken by the Contractor is April 2014;

(d) Commissioning, Systems Integration and Operational Readiness must be completed for Completion to occur;

(e) it has made allowances in the Contractor Program for the matters set out in this clause 2.18;

(f) The Signalling Commissioning Period dates:

(i) are fixed by RailCorp and unable to be changed;

(ii) will not change by reason of any extension of time granted under clause 10.10.

(g) it remains fully responsible and liable to the Principal for liquidated damages under clause 12.7 including for that period up to April 2014 where it has not...
achieved Completion because it did not complete Signalling Commissioning during the Signalling Commissioning Period; and

(h) the Principal's rights to liquidated damages under clause 12.7 will be unaffected by the matters set out in this clause 2.18.

3. The Site and Location of the Works

3.1 Access

(a) The Contractor acknowledges and agrees that:

(i) access to the Site will be provided progressively to the Contractor as set out in Schedule 22; and

(ii) Exhibit H contains drawings of the Site.

(b) Subject to clause 3.1(c) and any other provision of this Deed affecting access, the Principal must:

(i) give, or ensure the Contractor has, access to the Site in accordance with Schedule 22 and by the dates set out in Schedule 22 (and if a period is specified in relation 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.

(c) The Contractor acknowledges and agrees that:

(i) access to the Site or any part thereof will only confer on the Contractor a right to such control and use as is necessary to enable the Contractor to execute the Contractor's Activities;

(ii) the Principal is not obliged to give the Contractor access to any part of the Site until the Contractor has:

(A) complied with clause 2.8(b) of this Deed;

(B) submitted the Project Safety Management Plan, the Contractor's Environmental Management Plan and the Site Management Plan, as required by the TCA Standard Requirements, to the Principal's Representative under clause 9.14 and:

(1) the Principal's Representative has issued the notice referred to in clause 9.14(d)(iii)(C); or

(2) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not
rejected either of them or made comments on either of them (except in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e);

(C) effected the insurance policies required under clause 13.5;

(D) complied with clauses 13.7 to 13.9 with respect to each insurance policy; and

(E) complied with the matters set out in Schedule 1;

(iii) notwithstanding anything in Schedule 22, the Principal is not obliged to provide, and the Contractor may not be given, exclusive access to the Site (including where the Contractor is specified in Schedule 22 as being in Control of a part of the Site);

(iv) access to the Site or any part thereof may be subject to restrictions that:

(A) exist under any Third Party Agreement;

(B) exist under the terms of any easement or right of way in favour of any Authority or other person; or

(C) are specified in Schedule 22;

(v) 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; and

(vi) the Principal and others will engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor.

(d) The Principal's obligations under clause 3.1(b) in respect of each part of the Site will cease upon the issue of a Notice of Completion in respect of the last Portion occupying that part of the Site, except:

(i) to the extent set out in Schedule 22; and

(ii) to the extent required to allow the Contractor to comply with its obligations during the Defects Rectification Periods.

(e) Failure by the Principal to give access as required by clause 3.1(b) will not be a breach of this Deed but will entitle the Contractor to:

(i) an extension of time to any relevant Date for Completion under clause 10.10 if the requirements of that clause are satisfied; and

(ii) have the Contract Sum increased by the costs reasonably incurred by the Contractor as a direct result of the failure of the Principal to give
access as required by clause 3.1(b) as determined by the Principal's Representative who must, where they are applicable, use the rates and prices in Schedule 1.

(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), 3.1(b)(i) or 3.1(b)(ii).

3.2 Temporary Works

(a) The Contractor must carry out all Temporary Works required to execute the Contractor's Activities so that the Works are fit for their intended purposes.

(b) Where any Temporary Works are to be carried out on any property outside the Site, the Contractor must give written notice to the Principal's Representative identifying such property and describing the Temporary Works to be performed on such property and which must:

(i) be given no later than 20 Business Days (or such shorter period as is agreed between the Contractor and the Principal's Representative) prior to the date on which it intends to commence the Temporary Works; and

(ii) specify the intended commencement and completion dates.

(c) The Contractor must keep a register of all notices under clause 3.2(b), and make this register available to the Principal's Representative for Inspection and copying at all reasonable times.

(d) Upon being given access to any property for the purpose of carrying out any Temporary Works, the Contractor must promptly carry out those Temporary Works in a manner which:

(i) minimises inconvenience and disruption to the owners, occupiers and users of the property; and

(ii) complies with the requirements set out in the TCA Standard Requirements TSR-C1.

(e) The Contractor must:

(i) reinstate any property upon which any Temporary Works have been carried out to a state that is equivalent to the state it was in immediately prior to the Contractor obtaining access; and

(ii) otherwise repair any damage or degradation to any part of any property arising out of or in any way in connection with the performance of its obligations under this clause 3.2.

(f) The completion of all Temporary Works under this clause 3.2, including all work under clause 3.2(e), is a condition precedent to Completion of the Works or any Portion.
3.3 Management and Control of the Site

(a) At all times after being given access to the Site or a part of the Site under clause 3.1 and before the Date of Completion of the Works, the Contractor:

(i) without limiting any right of the Principal or the Principal's Representative under this Deed, and subject to clause 2.7 and to Schedule 22, will be responsible for the management and control of the Site;

(ii) must control access to, and the security and maintenance of, the Site or that part, except as required by Schedule 22 or where the Principal's Representative advises otherwise;

(iii) must ensure public safety on and adjacent to the Site or that part;

(iv) must provide for the continuous safe passage of the public, road and railway system users on existing roads, access ways and Rail Tracks affected by the Contractor's Activities in accordance with this Deed;

(v) must, subject to clauses 3.1(c) and 3.10 and the TCA Standard Requirements, 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;

(vi) must not impede access or Services to private property without the consent of the Principal's Representative and the relevant owner or occupier; and

(vii) 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.

(b) At all times after being given access to Remote Sites for the purposes of carrying out the Contractor's Activities related to Remote Works and before the relevant Date of Completion, the Contractor:

(i) will be responsible for the management of the Remote Sites;

(ii) must (subject to the requirements imposed on the Contractor by the owner or occupier of or persons providing access to the Remote Sites):

(A) control access to, and the security and maintenance of, the Remote Sites; and

(B) provide for the continuous safe passage of the public;

(iii) must ensure public safety on and adjacent to the Remote Sites; and
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3.4 Land in Addition to the Site

The Contractor:

(a) acknowledges and agrees that:

(i) the Remote Works form part of the Works;
(ii) the Principal is not responsible for providing (or assisting the Contractor to obtain) access to any Remote Site;
(iii) the location of the Remote Sites may not be fixed and, in such cases, must be determined by the Contractor in consultation with the Principal and any relevant entity who is to take the benefit of the Remote Works;
(iv) it accepts all risk and responsibility in respect of identifying the location of and gaining access to the Remote Sites necessary in respect of Remote Works and it must procure for itself and at its own cost the occupation or use of or relevant rights over the Remote Sites;
(v) it has made and will make adequate allowances in the Contractor Program for Remote Works;
(vi) it will comply with all directions of the owners, occupiers or persons providing access to the respective Remote Sites on which Remote Works will be constructed, including in respect of any Service connection points; and
(vii) it will not be entitled to make, and the Principal will not be liable upon, any Claim in respect of any Remote Works or Remote Sites; and

(b) must:

(i) 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 RailCorp, which is necessary or which it may require for the purposes of carrying out the Contractor's Activities;
(ii) at its own cost carry out all activities and procure all Services necessary to make the land or buildings suitable for use by the Contractor;
(iii) as a condition precedent to Completion of the Works or any Portion:

(A) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
(B) unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate in the form of Schedule 21 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 land; and

iv) 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, an
Other Contractor or an agent of the Principal may have contributed to
the damage, expense, loss, cost or liability.

3.5 Site Conditions
(a) Without limiting or otherwise affecting 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 Deed the Contractor:

i) examined, and relied solely upon its own assessment, skill, expertise
and inquiries in respect of, all information relevant to the risks,
contingencies and other circumstances having an effect on its Tender
and its obligations under this Deed and which was obtainable by the
making of reasonable enquiries;

ii) was given the opportunity prior to the date of this Deed to itself
undertake, and to request others to undertake, enquiries and
investigations:
(A) relating to the subject matter of Information Documents and
Materials; and
(B) for design purposes and otherwise;

iii) had a sufficient opportunity to obtain and obtained all necessary legal,
geotechnical and other technical advice in relation to the terms of this
Deed, the Deed of Disclaimer, the Information Documents and
Materials, 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 Deed; and

(iv) undertook sufficient 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 Deed and assume the obligations and potential
risks and liabilities which it imposes on the Contractor.
(b) Without limiting or otherwise affecting clauses 3.5(c) and 3.6, the Principal makes no representation and gives no warranty to the Contractor 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 or its surroundings; or

(B) any structure or other thing on, under, above or adjacent to the Site; or

(ii) the existence, location, condition or availability of any Service on, under, above, adjacent to or related to the Site; or

(iii) the feasibility or fitness for purpose of the Principal's Design including, in respect of the constructability of the Principal's Design, having regard to the physical conditions and characteristics of the Site.

(c) Subject to clause 2.15 and clauses 3.5(d) to 3.5(f) (if they apply), the Contractor accepts:

(i) the Site; and

(ii) any structures or other thing on, under or adjacent to the Site, and any Site Conditions,

in their existing condition subject to all sub-surface conditions and defects, and:

(iii) agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability or delay (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with; and

(iv) must investigate, design and construct the Works and Temporary Works in accordance with this Deed, and will not be relieved of its obligations under this Deed irrespective of,

any of the following:

(v) the Site Conditions encountered in performing the Contractor's Work;

(vi) 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, the Environment or their surroundings; and
(vii) any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in sub-paragraph (vi), including:

(viii) the existence of any Contamination or any decontamination or remediation required under clause 3.9;

(ix) the suitability or otherwise of any material or condition upon, under, over or in any way associated with the Site for use in the Contractor's Activities;

(x) water, atmospheric, sub-surface and other conditions or characteristics or aspects; and

(xi) all existing systems and Services, above or below ground level and the location of all facilities with which such systems and Services are connected.

(d) If during the execution of the Contractor's Activities, the Contractor becomes aware of a Latent Condition the Contractor must forthwith and 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:

(i) the conditions encountered and in what respects they differ materially from what the Contractor should reasonably have expected;

(ii) the additional work and additional resources which the Contractor estimates to be necessary to deal with the conditions;

(iii) the time the Contractor anticipates will be required to deal with the conditions and the expected delay in achieving Completion;

(iv) the Contractor's estimate of the cost of the measures necessary to deal with the conditions; and

(v) other details reasonably required by the Principal's Representative.

(e) If a Latent Condition causes the Contractor to:

(i) carry out additional work;

(ii) use additional Construction Plant; or

(iii) incur extra cost (excluding the costs of any delay or disruption arising out of or in connection with the Latent Condition or the additional work required to deal with the Latent Condition),
which a competent and experienced contractor having done those things it is
demed to have done by clause 3.5(a) could not have avoided or mitigated,
and could not reasonably have anticipated at the time of tendering:

(iv) the Contract Sum will be increased by the extra costs reasonably
incurred by the Contractor as a result of the Latent Condition together
with the percentage referred to in Schedule 1 in respect of
clause 6.4(b)(i)(C)(1) applied to those extra costs;

(v) the Contractor will be entitled to make a claim for an extension of time
under clause 10.7 where it is delayed as a result.

(f) In making a valuation pursuant to clause 6.4 regard will not be had to the value
of additional work carried out, additional Construction Plant used or extra cost
incurred more than 14 days before the date on which the Contractor gives the
written notice required by the first paragraph of clause 3.5(d).

3.6 Information Documents and Materials

(a) Prior to the date of this Deed, the Contractor executed the Deed of Disclaimer
and provided this to the Principal after which the Principal provided the
Contractor with, or gave the Contractor access to, the Information Documents
and Materials, including those listed in Schedule 17.

Whether or not any Information Documents or Materials or any part thereof
form an Exhibit to this Deed, the Contractor acknowledges that:

(i) the Information Documents or Materials or part thereof do not form
part of this Deed and that clause 3.6(c) applies to the Information
Documents or Materials or part thereof; and

(ii) where Information Documents or Materials or any part thereof form an
Exhibit to this Deed, they do so only for the purposes of identification of
that document or part thereof.

(b) Without limiting clause 3.6(c) or the warranties or acknowledgements in the
Deed of Disclaimer or the Tender Form:

(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 Deed;

(ii) 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 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 by, 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 Deed except to the extent that any such information, statement or document forms part of this Deed;

(ii) warrants that it enters into this Deed based on its own investigations, interpretations, deductions, information and determinations;

(iii) acknowledges that it is aware that the Principal has entered into this Deed relying upon the warranties, acknowledgements and agreements in clauses 3.6(c)(i) and 3.6(c)(ii) and in the Deed of Disclaimer and the Tender Form.

(d) The Contractor releases and indemnifies the Principal from and against:

(i) any claim against it by, or liability of it to, any person; or

(ii) (without being limited by clause 3.6(d)(i)) any costs, expenses, losses or damages suffered or incurred by it, 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), 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 Deed);

(iv) any breach by the Contractor of the warranties in clause 3.5 or this clause 3.6; or
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(v) the Information Documents and Materials being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" sections 18 and 29 of 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(d) to 3.5(f).

3.7 Not used

3.8 Valuable Finds

As between the Contractor and the Principal, all Valuable Finds will be and remain the property of the Principal.

The Contractor must:

(a) immediately notify the Principal's Representative if any such thing is found;
(b) ensure that it is protected and not lost, removed, disturbed or damaged; and
(c) comply with any directions of the Principal's Representative in relation to the thing.

Despite the acknowledgements, warranties, releases and indemnities referred to in clauses 3.6(a) to 3.6(d):

(d) the Contract Sum will be increased by the extra costs reasonably incurred by the Contractor (as determined by the Principal's Representative) in complying with the Principal's Representative's directions; and
(e) the Contractor will be entitled to make a claim for an extension of time under clause 10.7 in respect of any delays the Contractor suffers in complying with the Principal's Representative's directions,

but only to the extent that the Valuable Find could not have been reasonably anticipated following a careful examination of the Information Documents and Materials.

3.9 Contamination

(a) The parties acknowledge and agree that:

(i) the Contractor has been provided with the Contamination Report and the Remediation Action Plan;

(ii) the Contamination Report identifies Contamination on, in, under or migrating from the Site including in areas under Tracks, surface soils generally and locations which have been filled;
there may be Contamination (other than that identified in the Contamination Report) on, in, under or migrating from the Site including in areas under Tracks, surface soils generally and locations which have been filled;

the Principal does not make any representation or warranty (express or implied) as to the nature or extent of any Contamination;

part of the Contractor's Activities include taking the appropriate steps referred to in this clause 3.9:

(A) in respect of any Contamination identified in the Contamination Report;

(B) in respect of any Contamination the Contractor discovers on the Site; and

(C) regardless of whether:

(1) the Contractor provides the notice and report referred to in clause 3.9(d); and

(2) that Contamination was referred to in (or could be inferred from) the Contamination Report;

part of the Contractor's Activities include remediating the whole of the Site in accordance with the preferred remedial strategy set out in the Remediation Action Plan (the Preferred Remedial Strategy); and

the Contractor must ensure that its implementation of the Preferred Remedial Strategy will be consistent with the Contractor's design obligations in clause 5.2.

(b) The Contractor must provide for the management of any Contamination that may be present on, in, under or migrating from the Site in the Contractor's Environmental Management Plan and the Project Safety Management Plan and take all measures required to protect workers and others in accordance with Law, the OH&S Guidelines and the TCA Standard Requirements.

(c) Without limiting clauses 2.3(a)(i) and 3.9(a), the Contractor may undertake any other investigations it considers reasonable or necessary to delineate the nature and extent of any Contamination on, in, under or migrating from the Site prior to commencing any part of the Contractor's Activities on the Site in order to identify the steps necessary to deal with any Contamination as part of the Contractor's Activities.
(d) Without limiting any obligation of the Contractor to comply with all Authority Approvals, the Contractor must, in respect of Contamination that was not described in (and could not be inferred from) the Contamination Report (Additional Contamination):

(i) provide the Principal's Representative with the following for review under clause 9.14:

(A) a written notice within 5 Business Days after becoming aware of the existence of any Additional Contamination on, in, under or migrating from the Site that sets out in sufficient detail the nature and scope of the Additional Contamination; and

(B) within 10 Business Days after any subsequent request from the Principal's Representative:

(1) a report that details the steps the Contractor proposes to take (which steps must be consistent with the Preferred Remedial Strategy) to investigate, remediate, incorporate, dispose of, manage, monitor, contain, destroy, render inert or otherwise deal with the Additional Contamination so that the Site is remediated to a standard suitable for the proposed use of the Site and report to all relevant Authorities if required to do so; and

(2) such further written information as the Principal's Representative may require including (in accordance with clause 3.9(d)(ii)) any investigation report prepared pursuant to clause 3.9(c);

(ii) must provide for the purposes of clause 3.9(d)(i) (unless otherwise directed by the Principal's Representative), the number and form of copies of the report and any additional reports and information requested by the Principal's Representative specified in Schedule 1; and

(iii) must, only after:

(A) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C) in respect of the Contractor's report(s) and additional information under clause 3.9(d)(i); or

(B) the relevant period of time in clause 9.14(d)(ii) has expired and the Principal's Representative has not rejected the Contractor's report(s) and additional information provided under clause 3.9(d)(i) or made any comments on them (except, in the
case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e)),

implement the relevant remediation action in accordance with any relevant Laws, Authority Approvals, the Preferred Remedial Strategy and any direction of a relevant Authority where applicable.

(e) Without limiting any obligation of the Contractor to comply with all Authority Approvals the Contractor agrees that the following order of priority will be used for deciding what remediation action is to be taken in respect of all Contamination on, in, under or migrating from the Site:

(i) incorporation of the Contamination into the Works where this is technically feasible and permitted by Law; and

(ii) if it is not possible to incorporate the Contamination into the Works in accordance with clause 3.9(e)(i):

(A) notification to the Principal with reasonable supporting information; then

(B) disposal of the Contamination off-site to a licensed waste disposal facility in accordance with clause 3.13,
in each case in accordance with any relevant Laws, Authority Approvals, the Preferred Remedial Strategy and any written direction from a relevant Authority;

(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 3.9, 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, Other Contractors or an agent of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty which shall not, for the avoidance of doubt, include the selection of the Site for the Works or the provision of access to the Site.

(g) Subject to clause 3.9(h), the Contractor will not be entitled to receive payment or make any Claim:

(i) for complying with this clause 3.9;

(ii) in respect of carrying out investigations of the Site to determine the presence and extent of any Contamination present on, in under or migrating from the Site;

(iii) in respect of any costs incurred in the incorporation of Contamination into the Works;
(iv) in respect of the cost of disposing of Contamination off-site and replacing it with fill;

(v) for an extension of time in respect of any delay arising out of or in connection with the discovery of Contamination or its remediation regardless of whether the Contamination was referred to in (or could be inferred from) the Contamination Report or otherwise;

(vi) 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 the Site including arising out of or in connection with complying with its obligations under this clause 3.9 regardless of whether the Contamination was referred to in (or could be inferred from) the Contamination Report or otherwise;

(vii) for managing remediation works on the Site; or

(viii) in respect of any investigation or remediation of Extra Land.

Where:

(i) there is Additional Contamination;

(ii) it is not possible to incorporate that Additional Contamination into the Works in accordance with clause 3.9(e)(i); and

(iii) the Contractor is entitled under clause 3.9(e)(ii) to dispose of that Additional Contamination off-site to a licensed waste disposal facility in accordance with clause 3.13 and has given notice under clause 3.9(e)(ii)(A),

and such disposal causes the Contractor to incur extra cost (excluding the costs of delay or disruption) the Contract Sum will be increased by the extra costs reasonably incurred by the Contractor as a result of such disposal together with 15% applied to those extra costs.

The Contractor's entitlement under this clause 3.9(h) is unaffected by the provisions of clause 3.6(d).

3.10 Principal's Right to Access and Inspect

(a) Subject to clause 3.14, the Contractor must:

(i) minimise disruption or inconvenience to:

(A) the Principal, occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the Site or a part thereof in their occupation or use of, or attendance upon, any part of the Site, including any occupation or use of the Works, a Portion or a part thereof under clause 12.6; and
(B) others having a right of access to the Site; and

(ii) at all times:

(A) give the Principal’s Representative, the Principal and any person authorised by either the Principal’s Representative or the Principal access to:

(1) the Works;

(2) the Site; or

(3) any areas off-site where the Contractor’s Activities are being carried out,

including unobstructed vehicular access through the Site (including access to any hi-rail access point identified in Schedule 22); and

(B) provide the Principal and the Principal’s Representative with every reasonable facility necessary for the Inspection of the Contractor’s Activities, including the Contractor’s compliance with the Authority Approvals.

(b) The Contractor acknowledges and agrees that:

(i) the Principal owes no duty or other responsibility to the Contractor to:

(A) inspect the Contractor’s Activities; or

(B) review any design or construction for Defects (including errors and omissions) or compliance with the requirements of this Deed, if it does so inspect; and

(ii) no Inspection of the Contractor’s Activities or review of any design or construction by the Principal will:

(A) relieve the Contractor from or alter its liabilities or obligations under this Deed (including its warranties under clause 5.1 or clause 7.1) or otherwise according to Law; or

(B) limit or otherwise affect the Principal’s rights against the Contractor whether under this Deed or otherwise according to Law.

(c) Any person to whom the Contractor gives access to the Site under sub-paragraph (a)(ii) must comply with the reasonable requirements of the Contractor in relation to the safety of persons and property and protection of the Environment.
3.11 Works to be Constructed on the Asset Lands

The Contractor must ensure that:

(a) the Works (other than those Remote Works constructed on Remote Sites) are constructed within the boundaries of the Asset Lands;

(b) the Temporary Works (other than the Temporary Works for the Remote Works constructed on Remote Sites) are constructed within the boundaries of the Asset Lands and the Temporary Lands; and

(c) the Remote Works are constructed within the boundaries of the Remote Sites.

3.12 Condition Surveys

(a) The Principal has undertaken a condition survey of the properties listed in Schedule 24. The Contractor may undertake further condition surveys of these listed properties.

(b) Subject to clause 3.2(d), the Contractor must identify and prepare a condition survey (Condition Survey) of all property that could be affected or damaged by the Contractor's Activities and as required by the Planning Approval.

(c) The Condition Survey of any public roads identified under clause 3.12(b) must be prepared in accordance with Austroads Guide to Pavement Technology Part 5: Pavement Evaluation and Treatment Design 2008.

(d) The Condition Survey referred to in clause 3.12(b):

(i) must be performed in accordance with the property damage management plan (referred to in the TSR Prelude) which must be submitted under clause 9.14 for the Principal's Representative to review its scope;

(ii) may only be performed after:

(A) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C) in respect of the property damage management plan; or

(B) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected the property damage management plan or made any comments on the scope (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e));

(iii) must be performed by suitably skilled, qualified and experienced personnel or Subcontractors approved by the Principal's Representative;
must be repeated immediately prior to the Completion of the Works or a Portion by the same personnel or Subcontractors referred to in clause 3.12(d)(iii), or such others as the Principal's Representative may reasonably approve;

(v) may only be performed if the Principal's Representative is:
(A) given no less than 14 days notice that a Condition Survey will be performed; and
(B) permitted to attend the performance of the Condition Survey;

(vi) is subject to any conditions of access and use in clause 22.3 of Schedule 22.

The Contractor must prepare the Condition Survey referred to in clause 3.12(b) 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.

3.13 Waste Disposal

(a) The Contractor must remove from the Site and dispose of any Contamination or other waste pursuant to its obligations under this Deed 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 Contamination or other waste from the Site 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 upon request.

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

(d) 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, 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, Other Contractors or an agent of the Principal have 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 Deed 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 operational control over the Contractor's Activities or the Site; 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 Deed.

4. Compliance

4.1 Quality of Work

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

4.2 TCA Standard Requirements

The Contractor must comply with the requirements of the TCA Standard Requirements.

4.3 Environmental Management

The Contractor must:

(a) hold and maintain an environmental management system which complies with the requirements of TCA Standard Requirements for so long as any Contractor's Activities are carried out;

(b) as part of the Contract Management Plan, document, implement and maintain a contract specific Contractor's Environmental Management Plan for the management of environmental matters in accordance with the TCA Standard Requirements;

(c) carry out the Contractor's Activities in accordance with the Contractor's Environmental Management Plan;

(d) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and TCA Standard Requirements in relation to environmental management on the Site; and

(e) use, and be able to demonstrate the use of, ecologically sustainable development principles in the design and construction of the Works, Temporary Works and all other Contractor's Activities.
4.4 OH&S Management

The Contractor must:

(a) hold and maintain an OH&S management system for so long as any Contractor's Activities are carried out that complies with the OH&S Guidelines and the TCA Standard Requirements;

(b) as part of the Contract Management Plan, develop, document and implement a contract specific Project Safety Management Plan in accordance with the OH&S Guidelines and TCA Standard Requirements;

(c) carry out the Contractor's Activities in accordance with the Project Safety Management Plan;

(d) create a safe working environment for ensuring the safety of all authorised personnel on the Site 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 TCA Standard Requirements in relation to the OH&S management on the Site.

4.5 No Relief from Obligations

The Contractor will not be relieved from any of its liabilities or responsibilities under this Deed (including under clause 8 or otherwise according to Law) nor will the rights of the Principal whether under this Deed 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 Plan 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 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 TCA Standard Requirements or any related discussions between the Contractor's Representative and the Principal's Representative.
5. Design and Design Documentation

5.1 Principal's Design Obligations

(a) The Principal will use reasonable endeavours to provide the Contractor with each Signalling Design Package before the relevant Signalling Design Package Due Date.

(b) If a Signalling Design Package is not provided to the Contractor before the relevant Signalling Design Package Due Date and the Contractor suffers delay as a result, the Contractor will be entitled to make a claim for an extension of time under clause 10.7.

(c) The Contractor is relieved from its obligations under clauses 7.1(a)(ii), 7.1(a)(iii), 7.1(a)(iv) and 2.3(a)(i) to the extent that it is unable to satisfy those obligations as a result of the Signalling Design.

5.2 Contractor's Design Obligations

The Contractor:

(a) must as part of the Contractor's Activities:

(i) continue to develop the Principal's Design into the Design Documentation; and

(ii) prepare and complete the design of the Works and Temporary Works (including the Design Documentation but excluding the Signalling Design),

so that it is fit for its intended purpose and otherwise complies with the requirements of this Deed;

(b) warrants that:

(i) it has fully and carefully reviewed the Works Brief and the Principal's Design;

(ii) it remains responsible for ensuring that the Works and the Temporary Works will satisfy the requirements of this Deed despite the Principal's Design;

(iii) the completed design of the Works and the Temporary Works as represented in the Design Documentation will:

(A) satisfy the requirements of the Works Brief and the other requirements of this Deed;

(B) subject to clause 5.3, not depart from the Principal's Design; and
(C) be and remain at all relevant times fit for their intended purposes; and

(iv) construction in accordance with the completed design of the Works and the Temporary Works will satisfy the requirements of the Works Brief, Principal's Design and the other requirements of this Deed; and

(c) must integrate and coordinate the Design Documentation with the Signalling Design.

5.3 Departures from the Principal's Design

(a) The parties acknowledge that the process of developing the design from the Principal's Design to the Design Documentation may (subject to this clause 5.3) result in departures from the Principal's Design.

(b) The Contractor must not make a departure referred to in clause 5.3(a) unless:

(i) the departure is:

   (A) notified to the Principal's Representative; and

   (B) necessary to comply with the Works Brief where the Works Brief imposes a:

       (1) greater or higher requirement;

       (2) greater or higher standard;

       (3) greater or higher level of service; or

       (4) greater scope;

(ii) the Contractor demonstrates to the satisfaction of the Principal's Representative that:

   (A) the departure complies with the Works Brief or has been consented to by the Principal pursuant to clause 5.3(c); and

   (B) the departure is consistent with the design intent in the Principal's Design and (without limitation) does not result in a lessening of any standard, level of service, scope or requirement for any work set out in the Principal's Design, including any reduction in:

       (1) capacity;

       (2) durability;

       (3) aesthetics of visible features;

       (4) whole of life performance;

       (5) functional performance;

       (6) safety;
(7) security;
(8) community amenity;
(9) community benefits; or
(10) user benefits,
of any part of the Works, or has been consented to by the
Principal pursuant to clause 5.3(c); or

(iii) the departure is accepted in accordance with clause 6 of this Deed.

(c) The Contractor must submit any request for a departure referred to in
clause 5.3(a) for review by the Principal under clause 9.14.

(d) The Contractor must provide the Principal with such information as the
Principal requests for the purpose of considering a written request from the
Contractor of the nature referred to in clause 5.3(c) and within such time as the
Principal prescribes.

(e) Where a departure occurs in accordance with clause 5.3(c), the Contractor will
have no entitlement to make any Claim against the Principal.

5.4 Design Documentation

(a) The Contractor must submit all Design Documentation:

(i) progressively to the Principal's Representative in accordance with the
   Contract Management Plan and the requirements of clause 9.14; and

(ii) at the times set out in:

   (A) the Works Brief; and

   (B) the TCA Standard Requirements.

(b) The Contractor must upon each submission of the Design Documentation to
    the Principal's Representative for review (including at the completion of the
design of each design package) ensure that the Design Documentation is
accompanied by the following documents:

(i) the Contractor's Certificate of Design Compliance;

(ii) the Designers' Certificates of Design Compliance;

(iii) a register of records of design verification and reviews applicable to the
design package and other compliance records required by this Deed (all
records being satisfactorily completed and signed);

(iv) a register of any outstanding design non-conformities, non-compliances
     and unresolved issues;

(v) a register of deficiency notices and evidence of their close out; and
5.5 Review of Design Documentation, Meetings, and Presentations

(a) The Design Documentation must be submitted to the Principal’s Representative.

(b) Clause 9.14 applies to all Design Documentation.

(c) The Contractor must attend design coordination meetings when requested to do so by the Principal’s Representative, including for the purpose of identifying, reviewing, coordinating or resolving any matters of common interest between the Contractor and Other Contractors.

(d) Following completion of each stage of design development, the Contractor must arrange and conduct comprehensive design presentations (in accordance with TCA Standard Requirements TSR-T1) for the Principal (and any other persons the Principal reasonably requires) and the Principal’s Representative.

(e) The Contractor must give the Principal’s Representative reasonable notice of the date and time of each design presentation to be made by the Contractor in accordance with clause 5.5(d) so as to enable the Principal’s Representative (and any other persons the Principal’s Representative reasonably requires) to attend the design presentations.

(f) At each design presentation referred to in clause 5.5(d), the Contractor will make available sufficient members of the Designer’s Team (as determined appropriately by the Contractor) and any other person reasonably requested by the Principal (or the Principal’s Representative), at the cost of the Contractor, to demonstrate:

   (i) the approach adopted for design, standards to be adopted, and assumptions made;

   (ii) the approach to interfaces with:

      (A) existing structures and the surrounding environment; and

      (B) Other Contractors and Interface Contractors;

   (iii) the status of review of design information and documents by the relevant Authorities;

   (iv) how the current proposed design incorporates the Principal’s Design; and

   (v) the interrelationship with other design elements of the Works.

(g) The Contractor will include in each design presentation such materials as are reasonably required for the Principal (and any other persons the Principal...
reasonably requires) and the Principal's Representative to understand and comment on the concepts and details the subject of the design presentations.

(h) Within 10 Business Days after receiving a design package marked "NOTC" from the Contractor, the Principal must review the design package under clause 9.14. If the Principal:

(i) notifies the Contractor that it has no (or has no further) comments to make on the design package, it will use reasonable endeavours to obtain a Configuration Change Notice for the relevant design package from RailCorp; or

(ii) rejects the design package, then:

(A) the Principal must provide the Contractor with its written reasons why the design package has been rejected; and

(B) the Contractor must address those comments and resubmit the design package under this clause 5.5(h) within 10 Business Days after the date on which it received the Principal's comments.

(i) Where:

(i) the Contractor's design package complies with the requirements of this Deed;

(ii) the Configuration Change Notice for that design package is not issued within 10 Business Days after the date on which the Principal gives notice to the Contractor in accordance with clause 5.5(h)(i) for that design package; and

(iii) as a result, the Contractor is actually or will be delayed, the Contractor will be entitled to make a claim for an extension of time under clause 10.7.

(l) The Principal's obligations under clause 5.5(h) do not:

(i) create any liability for the Principal in respect of the content of the Design Documentation; or

(ii) relieve the Contractor of its obligations in this Deed in respect of the Design Documentation.

5.6 Copies of Design Documentation

(a) The Contractor must, in accordance with clause 5.4, progressively submit to the Principal's Representative the number of copies specified in Schedule 1 of all Design Documentation, whether complete or work in progress, which it intends to use for design or construction purposes.
Auburn Stabling Project (Stage 1)

(b) The Contractor must give the Principal's Representative the number of copies specified in Schedule 1 of:

(i) all survey information used in the design of the Works and the Temporary Works; and

(ii) all final Design Documentation.

5.7 Availability of Design Documentation

The Contractor must keep available for the use of the Principal's Representative and any person authorised by the Principal's Representative:

(a) on the Site, at least one complete set of all Design Documentation that the Contractor is entitled to use for construction purposes pursuant to clauses 5.4 and 9.14, and any construction related documents provided by the Principal; and

(b) at any area on or off the Site where the Contractor's Activities are being carried out, one copy of each of those items specified in paragraph (a) insofar as they are relevant to the Contractor's Activities being carried out in that area.

5.8 Prior Design Work

The Contractor:

(a) acknowledges and agrees that, prior to the date of this Deed, the Principal's Design was created by the Principal and the Principal's agents and consultants;

(b) warrants that, prior to the date of this Deed, it checked and carefully considered the Principal's Design;

(c) acknowledges and agrees that its obligations to carry out the Contractor's Activities and complete the Works in accordance with this Deed remain unaffected by, and it will bear and continue to bear full liability and responsibility for the carrying out of the Contractor's Activities and the completion of the Works in accordance with this Deed notwithstanding the Principal's Design.

5.9 Ownership of Contract Documentation and Methods of Working

(a) Subject to clause 5.9(c)(vii):

(i) title to and Intellectual Property in or in relation to the Contract Documentation will vest upon its creation for the purposes of this Deed in the Principal;

(ii) to the fullest extent permitted by Law, the Contractor hereby assigns to the Principal all of its rights, titles, and interests in, and to, all Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor, whenever created; and
(iii) upon request by the Principal, the Contractor must do all things necessary to vest that title or that Intellectual Property in the Principal.

(b) The Principal grants to the Contractor a licence to use and reproduce the Contract Documentation for the Contractor’s Activities.

(c) The Contractor:

(i) warrants and must ensure that the Contract Documentation and any methods of working do not and will not infringe any Intellectual Property;

(ii) must 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, any actual or alleged infringement of any Intellectual Property in connection with the Works, the Contractor’s Activities or the Contract Documentation, except to the extent that such actual or alleged infringement arises as a direct result of:

(A) the Principal having provided the Contractor with material which this Deed permits the Contractor to use for the purpose of the Works, the Contractor’s Activities or the Contract Documentation; and

(B) the provision of that material to the Contractor being an infringement of a third party’s Intellectual Property rights;

(iii) must ensure that all Subcontracts between the Contractor and all Subcontractors for design and documentation contain provisions to the same effect as clause 5.9(a);

(iv) must obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such Subcontractors for design and documentation;

(v) must, where requested by the Principal’s Representative, obtain such an acknowledgement from other Subcontractors;

(vi) must obtain an assignment to the Principal from any third party who owns any Intellectual Property right in the Contract Documentation;

(vii) must, if it is unable to obtain the assignment referred to in clause 5.9(c)(vi), grant or have granted to the Principal an irrevocable licence:

(A) to use the Contract Documentation for the completion of the Works;

(B) which arises immediately upon the creation of the Contract Documentation;
5.10 Delivery Up of Contract Documentation

If this Deed is frustrated or terminated the Contractor must:

(a) immediately deliver the original and all but one 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.

5.11 Source Code

If requested by the Principal, the Contractor will, or will procure that the applicable third party supplier will, enter into an escrow agreement with the Principal and an escrow agent:

(a) on terms reasonably satisfactory to the Principal (and terms generally consistent with and no more onerous on the supplier than the terms set out in the sample escrow deed set out in Schedule 32);

(b) to enable the Principal and its Subcontractors to use, maintain, support, operate and otherwise deal with the Intellectual Property in the Contract Documentation for the purposes of the Auburn stabling yards or in connection with the Auburn stabling yards; and

(c) in respect of any and all Source Code relating to any material forming part of the Works.

The Principal will bear all fees and charges under any escrow deed.

5.12 Moral Rights

(a) The Contractor:

(i) warrants that the Principal's use of the Contract Documentation, or any other work provided by the Contractor under this Deed, will not infringe
any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction; and

(ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction in connection with the Works, the Contractor's Activities or the Contract Documentation.

(b) For the purposes of clause 5.12(a), the Principal's use of the Contract Documentation includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or part of the Works to which the Contract Documentation or any other work provided by the Contractor under this Deed relates:

(i) with or without attribution of authorship; and

(ii) in any medium; and

(iii) in any context and in any way it sees fit.

6. Variations

6.1 Proposed Variations

At any time prior to the Date of Completion of the Works (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.

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:

(a) the adjustment to the Contract Sum (and change to the Payment Schedule in Schedule 2) that the Contractor would claim in respect of the proposed Variation (other than those costs referred to in clause 6.1(b)) with details of how the amount has been calculated;

(b) the expected effect that the proposed Variation would have on the Contractor Program, and the Contractor achieving Completion of the Works or a Portion by the relevant Date for Completion with details of how the effect has been assessed and if the proposed Variation would entitle the Contractor to an extension of time, the amount of its entitlement under clause 10.13 arising from that extension of time;
(c) a statement that the proposed Variation:

(i) does not conflict with or change the requirements of the Works Brief or Principal's Design or involve changes other than those described in the notice; or

(ii) changes the requirements of the Works Brief or Principal's Design or involves changes other than those described in the notice, in which case the Contractor must explain all the changes and effects, including providing information on the:

(A) scope and limits of the work changes;
(B) design criteria and how they are to be addressed;
(C) effect on relevant reports, drawings and studies;
(D) assumptions;
(E) Authority Approvals affected; and
(F) environmental and community impacts;

(d) sufficient details to allow the Principal to review the reasons, and, if desired, reconsider the need, for the Variation;

(e) where required by the Principal's Representative, the additional costs that the Contractor anticipates would be incurred by it if a direction was given under clause 10.15 to compress the performance of the Contractor's Activities to overcome part or all of any of the delay in achieving Completion of the Works or a Portion by the relevant Date for Completion expected to be caused by the Variation outlined in the "Variation Proposal Request"; and

(f) any other information concerning the proposed Variation that the Principal's Representative requires.

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 the Date of Completion of the Works (but without limiting clauses 8 and 13.3) direct the Contractor to carry out a Variation by issuing a 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 Schedule set out in the Contractor's notice under clause 6.1(a) are agreed and the Contract Sum and Payment Schedule will be adjusted accordingly; or
(ii) any adjustment to the Contract Sum will be determined under clause 6.4(b); or

(iii) the Variation is to be carried out as daywork and any adjustment to the Contract Sum will be determined under clause 6.7.

(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 Deed.

(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 a Date for Completion) of the work involved in the Variation;

(iii) whether or not it agrees with any or all of the terms of the Variation Order; or

(iv) any Dispute related to the Variation.

(d) The Contractor's entitlement (if any) to an extension of time and delay costs will be dealt with under clause 10 and not this clause 6. The valuation of variations under clause 6.4 and daywork under clause 6.7 will exclude any amount for costs incurred by the Contractor as a result of any delay.

6.3 Options

The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 25, 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 Deed on the basis that the Contract Sum and the provisions of this Deed will be adjusted as set out in Schedule 25 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 Deed);

(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 Deed); or

(e) entitle the Contractor to an extension of time, whether under this Deed or otherwise according to any Law.

6.4 Valuation

Subject to clauses 6.10, 8.4, 15 and 17, the Contract Sum and the Payment 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;

(b) to the extent that clause 6.2(a)(ii) applies:

(i) subject to sub-paragraphs (iii) and (iv), an amount in respect of the Variation to be determined by the Principal's Representative where applicable or where it is reasonable to use them for valuing the Variation, on the basis of:

(A) the prices and rates set out in Schedule 18;

(B) where relevant, on the basis of any other applicable data in this Deed; and

(C) which will be increased, to the extent that the amounts referred to in sub-paragraphs (A) and (B) are not already expressed to be inclusive of the Contractor's Overhead Costs and profit, by the following percentage or percentages of the total amount determined relevantly under sub-paragraphs (A) and (B):

(1) where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in Schedule 1 of the total amount determined relevantly under sub-paragraphs (A) and (B), which will be in total satisfaction of all the Contractor's Overhead Costs and profit; or

(2) where the adjustment to the Contract Sum is to be a decrease, the percentage set out in Schedule 1 of the total amount determined relevantly under sub-paragraphs (A) and (B) for off-site overheads described in clause 33.2 of Schedule 33 and profit;
(ii) subject to sub-paragraphs (iii) and (iv) to the extent sub-paragraph (i) does not apply, an amount determined by the Principal's Representative on the basis of reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit) to be agreed between the parties, or failing agreement, determined by the Principal's Representative, which will be increased by:

(A) the following percentage or percentages of the total amount determined under sub-paragraph (ii):

(1) where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in Schedule 1 of the total amount determined under sub-paragraph (ii), which will be in total satisfaction of all the Contractor's Overhead Costs and profit; or

(2) where the adjustment to the Contract Sum is to be a decrease, the percentage set out in Schedule 1 of the total amount determined under sub-paragraph (ii) for off-site overheads described in clause 33.2 of Schedule 33 and profit;

(iii) subject to sub-paragraph (iv), where the Variation is in respect of the provision of spare parts, an amount determined in accordance with Schedule 1;

(iv) provided however that in either case, 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(a); or

(c) to the extent that clause 6.2(a)(iii) applies, the amount determined by the Principal's Representative under clause 6.7.

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.
work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work;

(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; and

(d) the adjustment (if any) to the Date for Completion of the Works or a Portion will be assessed in accordance with clause 10.11.

6.6 Daywork

(a) If the Contractor is given a direction under clause 6.2(a)(iii) to carry out work as daywork, the Contractor must:

(i) carry out the daywork in an efficient manner; and

(ii) after the direction, each day provide the Principal's Representative with a written report signed by the Contractor that:

(A) records particulars of all resources used by the Contractor for the execution of the daywork; and

(B) includes those particulars reasonably required by the Principal's Representative that evidence the cost of the daywork.

(b) The Principal's Representative may direct the manner in which these matters are to be recorded.

6.7 Valuation of Daywork

In valuing the adjustment to the Contract Sum arising from any work that the Principal's Representative directs to be carried out as daywork, the Principal's Representative will have regard to:

(a) the amount of wages and allowances paid or payable by the Contractor for the hours reasonably worked in respect of the daywork at the rates:

(i) set out in Schedule 18 (which rates will apply to all labour whether employed by the Contractor, a Subcontractor or otherwise);

(ii) where the rates in Schedule 18 do not apply, as established by the Contractor to the satisfaction of the Principal's Representative; or

(iii) determined by the Principal's Representative;

(b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the amount determined under clause 6.7(a);

(c) the reasonable amount of hire charges and associated fuel and other operating costs in respect of Construction Plant approved by the Principal's Representative for use on the work in accordance with such hiring rates and conditions as may be:
(i) agreed between the Principal's Representative and the Contractor; and
(ii) failing agreement, determined by the Principal's Representative;
(d) the reasonable amounts paid by the Contractor for Subcontract work, including
    professional fees; and
(e) the reasonable actual cost to the Contractor at the Site of all materials
    supplied and required for the daywork,
to which will be added to the extent that the rates set out in Schedule 18 are not
already expressed to be inclusive of the Contractor's Overhead Costs and profit, the
relevant percentage specified in Schedule 1 of the amounts determined under sub-
paragraphs (a) to (e), which will be in total satisfaction of all the Contractor's Overhead
Costs and profit.

6.8 Variations Requested by Contractor

The Contractor may, for its convenience, request the Principal's Representative to
direct a Variation. Any such request must be in writing and must contain the following
details of the Variation proposed:
(a) a full description of the proposed Variation;
(b) the additional or reduced cost or time involved in the Variation and any
    proposal for sharing any cost savings or increases with the Principal, including
    the amount;
(c) any benefits that would flow to the Principal;
(d) the expected effect upon the future cost of operating and maintaining the
    Works;
(e) the expected effect on the various Contractor's programs, including the
    Contractor Program and any Date of Completion; and
(f) a statement as required by clause 6.1(c).

6.9 Determination by Principal's Representative

After the Contractor makes a request in accordance with clause 6.8, the Principal's
Representative will, in its absolute discretion, give a written notice to the Contractor:
(a) rejecting the request; or
(b) approving the request either conditionally or unconditionally.

The Principal's Representative will not be obliged to exercise its discretion for the
benefit of the Contractor.

6.10 Variation Approved by the Principal's Representative

If the Principal's Representative issues a written notice under clause 6.9 approving the
Contractor's request under clause 6.8:
(a) unless otherwise agreed as set out in the notice given under clause 6.9, 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 Variation;

(b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Sum will be reduced by the amount offered by the Contractor in its request, or such other amount as may have been agreed between the Principal's Representative and the Contractor prior to any approval under clause 6.9(b); and

(c) the Contractor will be responsible for ensuring that all parts of the Works that are in any way affected by the Variation comply with the requirements of this Deed.

Unless and until the Principal's Representative issues a written notice under clause 6.9 approving the Contractor's request under clause 6.8, no Variation will arise out of that request, and the Contractor must at all times:

(d) continue to carry out the Contractor's Activities; and

(e) otherwise comply with its obligations under this Deed.

6.11 Contractor's Entitlements

This clause 6 is an exhaustive code of the Contractor's rights in connection with any Variation. The Contractor waives all rights at Law to make any Claim against the Principal in connection with any of the matters set out in this clause 6 otherwise than in accordance with the terms of this Deed.

6.12 No Variation or Claim

(a) Where the Contractor considers that any direction:

(i) constitutes or involves a Variation; or

(ii) entitles it to make a Claim (other than an Excluded Claim),

it must, prior to complying with the direction, issue in respect of a:

(iii) Variation, the notice referred to in clause 17.1; or

(iv) Claim, the notice referred to in clause 17.2.

(b) If the Contractor issues a notice under clauses 6.12(a)(iii) or 6.12(a)(iv), the Principal may:

(i) confirm that the direction constitutes or involves a Variation, or entitles the Contractor to make a Claim (other than an Excluded Claim), by the giving of a notice under this clause 6.12(b)(i), in which case the Contractor must comply with the direction;

(ii) deny that the direction constitutes or involves a Variation, or entitles the Contractor to make a Claim (including an Excluded Claim), by the
giving of a notice under this clause 6.12(b)(ii), in which case the Contractor:

(A) must comply with the direction irrespective of any Claim or Dispute in relation to the direction or any part of it; and

(B) may issue a notice of dispute under clause 15.1;

(iii) deny that the direction constitutes or involves a Variation or entitles the Contractor to make a Claim (including an Excluded Claim) by giving a notice under this clause 6.12(b)(iii), in which case the Contractor must:

(A) issue a notice of dispute under clause 15.1; and

(B) not comply with the direction unless and until:

(1) the Dispute is settled or determined under clause 15;

and

(2) the Principal’s Representative subsequently directs the Contractor to comply with the direction or any part of it; or

(iv) withdraw the direction by giving a notice under this clause 6.12(b)(iv).

6.13 Authority Approvals for Variations

(a) Subject to clause 6.13(b), the Contractor must apply for and obtain all:

(i) necessary amendments or modifications to any existing Authority Approval; and

(ii) new Authority Approvals that may be, required for the execution of a Variation.

(b) Where the amendment or modification to any Authority Approval required for the execution of the Variation relates to any Authority Approval specified in Schedule 15, the Contractor must:

(i) carry out and provide to the Principal all surveys, investigations, reports, studies:

(A) requested by the Principal’s Representative;

(B) to the standard directed by the Principal’s Representative; and

(C) within the time directed by the Principal’s Representative; and

(ii) provide whatever other assistance and information the Principal’s Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Authority Approval.
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(c) The Contractor must implement the Variation once the Authority Approvals referred to in this clause 6.13 have been amended, modified, or granted to permit the Variation to be implemented.

7. Construction

7.1 Construction

(a) The Contractor must construct and handover to the Principal the Works and construct the Temporary Works:

(i) in accordance with:

(A) subject to clause 7.1(b), the Works Brief the Signalling Design, the Principal's Design and any Design Documentation that has been prepared by the Contractor in accordance with the requirements of this Deed and, in respect of which:

(1) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

(2) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e)).

(B) any direction of the Principal's Representative given or purported to be given under a provision of this Deed; and

(C) the other requirements of this Deed; and

(ii) so that they are and will remain at all relevant times fit for their intended purposes.

The Contractor warrants that the Works will:

(iii) upon Completion, be fit for their intended purposes; and

(iv) remain at all relevant times fit for their intended purposes.

(b) If there is any ambiguity, discrepancy or inconsistency between this Deed (including the Works Brief and Principal's Design) and:

(i) any Design Documentation which has been prepared by the Contractor and not rejected by the Principal's Representative under clause 9.14; or

(ii) the Signalling Design,
then, unless otherwise directed by the Principal's Representative, the
requirements of this Deed will prevail.

(c) At monthly intervals during the construction work and at the Completion of
each Portion, the Contractor must submit to the Principal's Representative:
(i) the Contractor's Certificate of Construction Compliance; and
(ii) Designers' Certificates of Construction Compliance,
identifying the work covered, with:
(iii) a register of management plans, method statements, and inspection
and test plans;
(iv) a register of records of all compliance and other associated test records
showing achievement of the acceptance criteria identified in the above
inspection and test plans;
(v) a register of deficiency notices; and
(vi) a register of concessions granted for non-conforming work.

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 Deed, 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 Deed 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) For each item of Provisional Sum Work, the Principal's Representative:
(i) may at any time:
(A) direct the Contractor to provide:
(1) a reasonable estimate of the Contractor's costs of
carrying out the Provisional Sum Work, including
sufficient information to support the estimate; and
(2) details of the amount by which the Contractor proposes
the Contract Sum be adjusted; and
(B) agree (or negotiate an agreement) with the Contractor in respect of its proposed adjustment to the Contract Sum under clause 7.3(a)(i)(A) for the item of Provisional Sum Work, but nothing in this clause 7.3(a)(i)(B) obliges the Principal's Representative to agree on an adjustment to the Contract Sum with the Contractor prior to the Principal's Representative exercising its rights under clause 7.3(a)(ii); and

(ii) will give the Contractor a direction either:

(A) requiring the Contractor to proceed with the item of Provisional Sum Work; or

(B) deleting the item of Provisional Sum Work.

(b) 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 Schedule 1; and

(ii) either:

(A) an amount agreed between the Contractor and the Principal's Representative under clause 7.3(a)(i) or otherwise; or

(B) if they fail to agree, an amount determined by the Principal's Representative:

(1) on the basis set out in clause 6.4(b); or

(2) if the Principal's Representative directs that the item of Provisional Sum Work is to be carried out as daywork, under clause 6.7,

as if the item of Provisional Sum Work were a Variation, provided that the amount determined under this clause 7.3(b)(ii)(B) will not include the percentages referred to in clauses 6.4(b)(i)(C) or 6.4(b)(ii) or the last paragraph of clause 6.7 but will include the relevant percentage in Schedule 1 for the off-site overheads described in clause 33.2 of Schedule 33 and profit of the Contractor.

(c) 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 Schedule 1;
(ii) the Principal may engage an Other Contractor 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.

(d) The parties agree that Reimbursable Work:

(i) is an item of Provisional Sum Work;

(ii) is not required to be the subject of a direction by the Principal's
Representative under clause 7.3(a)(ii) as it forms part of the
Contractor's Activities and must be performed by it; and

(iii) will be valued in accordance with Schedule 9 and not in accordance
with clauses 7.3(b) and 7.3(c).

7.4 Co-operation with Other Contractors

Without limiting or being limited by clause 2.13, 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.

7.5 Setting Out

The Contractor must:

(a) set out the Works in accordance with the requirements of this Deed, based on
information and survey marks (including any survey peg, bench mark,
reference mark, signal, alignment, level mark or any other mark for the purpose
of setting out, checking or measuring work) identified by 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 Completion of the Works or any Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:

(a) for its review under clause 9.14 a Survey Plan for the Works that:
   (i) has regard to the setback requirements in the Building Code of Australia;
   (ii) has regard to any stratum lots whether above or below ground;
   (iii) has regard to RailCorp's survey control requirements;
   (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 Works and all 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 boundaries of the Asset Lands;
   (ii) the elements of the Works or the Portion are in the positions and within the tolerances required by Law;
   (iii) the survey information included in the Asset Management Information provided pursuant to the TCA Standard Requirements complies with the requirements of this Deed; and
   (iv) any other matter identified by the Principal's Representative, complies with the requirements of this Deed.

7.7 Cleaning Up

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

(a) keep the Site and the Works clean and tidy and free of refuse;
(b) regularly remove rubbish, litter, graffiti and surplus material from the Site; and
(c) as a condition precedent to Completion of the Works or a Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site or the part of the Site relevant to the Portion.
7.8 Action by Principal's Representative

Without limiting clause 16.14 the Principal may take any action necessary to protect the Works, the Environment, other property or people.

If the action taken by the Principal is action which the Contractor was required to take under this Deed but did not take, the amount of any penalty, fine, damage, expense, cost, loss or liability that the Principal suffers or incurs arising out of or in connection with:

(a) taking the action contemplated in this clause 7.8; or
(b) 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.

7.9 Construction Plant and Materials Removal

Except for the purpose of achieving Completion 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 Track Possessions and Power Isolations

(a) The table in Schedule 14 identifies the available Track Possessions.

(b) The Principal will liaise with RailCorp to procure for the benefit of the Contractor the Track Possessions set out in Schedule 14 for the performance of that part of the Contractor's Activities.

(c) The Contractor acknowledges that it will not have exclusive access to any track the subject of a Track Possession and must:

(i) coordinate its activities with whoever else is sharing the relevant Track Possession; and

(ii) allow RailCorp and Other Contractors to pass through any track the subject of the relevant Track Possession.

(d) If the Contractor requires a Track Possession or power isolation in addition to the Track Possessions identified in subparagraph (a) (Additional Track Possession or Power Isolation) and requires the Principal to liaise with RailCorp in this regard, it must provide no less than:
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(i) 26 weeks prior written notice in respect of each Additional Track Possession that falls on a weekend; or

(ii) 20 weeks prior written notice in respect of each Additional Track Possession that falls on a weeknight or which requires a power isolation only,

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

(e) Following receipt of a request for an Additional Track Possession or Power Isolation under subclause (d), 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 RailCorp.

(f) If an Additional Track Possession or Power Isolation is granted by RailCorp, the Contractor must:

(i) make the necessary arrangements for the Additional Track Possession or Power Isolation in accordance with clause 5.4 of the TSR Prelude; and

(ii) pay the Principal within 20 Business Days after the relevant Additional Track Possession or Power Isolation the relevant amount (in respect of each Additional Track Possession or Power Isolation) set out in the table in Schedule 14.

(g) The Contractor must effectively and efficiently utilise each Track Possession.

(h) The Contractor acknowledges and agrees that:

(i) the Principal may alter or cancel any Track Possession, power isolation or Additional Track Possession or Power Isolation at any time; and

(ii) its only remedy for:

(A) any failure by the Principal to procure a Track Possession or power isolation referred to in clause 7.10(a); or

(B) cancellation of Additional Track Possession or Power Isolation once it has been obtained

is as set out in clauses 10.7 and 10.13.

7.11 Principal Supplied Items

(a) The Principal must:

(i) make available the Principal Supplied Items:

(A) at its own cost;

(B) at the respective places referred to in Schedule 34; and
(C) by the respective date referred to in Schedule 34; and

(ii) use its best endeavours to procure that the Contractor has the benefit of any warranty in respect of any Principal Supplied Item.

(b) The Contractor:

(i) agrees that, in respect of Principal Supplied Items, the:

(A) Contractor:

(1) warrants that it has reviewed the Works Brief and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Deed;

(2) will not be entitled to make, and the Principal will not be liable upon, any Claim arising or in any way in connection with any Principal Supplied Item except under clause 10 if a Principal Supplied Item is not made available by the relevant date set out in Schedule 34; and

(3) is not relieved from and remains liable for complying with, all of its obligations under this Deed, despite the Principal making available the Principal Supplied Items; and

(B) Sale of Goods Act 1923 (NSW) does not apply to the Principal's obligations under clause 7.11(b) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items; and

(ii) must:

(A) at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 34 to the Site; and

(B) as part of the Contractor's Activities, incorporate each Principal Supplied Item into the Works.

8. Defects

8.1 Defects Liability

Subject to clause 8.2, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.
Without limiting the previous paragraph, the Contractor must rectify any Defects in a Portion existing at Completion of that Portion as soon as possible after Completion of that Portion.

When rectifying Defects which existed at Completion, the Contractor must do so at times and in a manner which cause as little inconvenience to the occupants or users of the Works or Other Contractors as is reasonably possible.

8.2 Defect Notification

If at any time prior to the expiration of any Defects Rectification Period (including for the avoidance of doubt prior to Completion of the Works or any Portion), the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor a direction identifying the Defect and doing one or more of the following:

(a) requiring the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur; or
(b) requiring the Contractor to investigate and report on any Defect (or any part of it) with the Contractor's proposed methods and methodologies for rectification and specifying the form of the report and the time within which this must be carried out; or
(c) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
(d) advising the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or
(e) in respect of any Defect:
   (i) to which clause 8.3(d) applies; or
   (ii) discovered during a Defect Rectification Period, whether or not a direction has first been given under clause 8.2(a) or 8.2(c),

advising the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out a Variation to overcome the Defect, or any part of it.

8.3 Rectification of Defect

(a) If:
   (i) a direction is given under clauses 8.2(a), 8.2(b) or 8.2(c) (subject to clause 8.3(f)); and
   (ii) the Contractor considers that the Defect referred to in the direction given under clauses 8.2(a), 8.2(b) or 8.2(c) is not a Defect,
then the Contractor must issue the notice referred to in clause 17.2 prior to complying with the direction.

(b) If the Contractor issues the notice referred to in clause 8.3(a), the Principal's Representative may:

(i) confirm that the direction entitles the Contractor to make a Claim (other than an excluded Claim) by the giving of a notice under this clause 8.3(b)(i), which notice will also confirm that clause 8.3(c) applies;

(ii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(ii), which notice will also confirm that clause 8.3(c) applies, and the Contractor may issue a notice of dispute under clause 15.1;

(iii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(iii), in which case the Contractor must:

(A) issue a notice of dispute under clause 15.1; and

(B) not comply with the direction unless and until:

(1) the Dispute is settled or determined under clause 15; and

(2) the Principal's Representative subsequently gives notice to the Contractor that clause 8.3(c) applies; or

(iv) withdraw the direction by giving a notice under this clause 8.3(b)(iv).

(c) If the Principal's Representative gives a notice under clause 8.2(a), 8.2(b) or 8.2(c) (where clause 8.3(a)(ii) is not applicable) or clause 8.3(b)(i), 8.3(b)(ii) or 8.3(b)(iii)(B)(2), the Contractor must rectify the Defect (or the part of it notified), investigate and report or carry out the Variation work (as the case may be):

(i) within the time specified in the Principal's Representative's direction which will generally be limited to the periods during which the operational needs from time to time of RailCorp will allow for access to the Works; and

(ii) if after Completion of the Works or relevant Portion:

(A) at other times otherwise agreed with the Principal's Representative;

(B) in accordance with the requirements of RailCorp and any other relevant Authority;

(C) so as to minimise the impact on the use of the Works or the Portion; and
(D) in a manner which causes as little inconvenience as possible to users of the Works or the Portion or the public, any Service or any access to the Works or the Portion; and

(iii) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is in fact a Defect.

(d) If the Contractor does not comply with clause 8.3(c), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect, give the Contractor a direction under clause 8.2(e) and have the rectification or Variation work carried out at the Contractor's expense, and the cost of the rectification or Variation work incurred by the Principal will be a debt due from the Contractor to the Principal.

(e) The Contractor acknowledges and agrees that:

(i) it is responsible for liaising with, and obtaining from, RailCorp any Track Possession that is necessary for the Contractor to:

(A) rectify Defects; or
(B) investigate any Defects;

(ii) due to RailCorp's operational needs:

(A) the Contractor, in performing the activities set out in clause 8.3(e)(i), may be obliged to work in an electrified environment;
(B) access may be limited, delayed and rescheduled from time to time;
(C) the period of access may be compressed or limited to periods of line shutdown at night, on weekends or on public holidays;
(D) the Principal's Representative may direct the Contractor as to:

(1) the times and dates for; and
(2) the work method that must be employed in, carrying out Defect rectification works;

(iii) its obligation to rectify Defects survives the expiry of the Defects Rectification Period where it has received a direction under clause 8.2 prior to the expiration of any Defects Rectification Period; and

(iv) it will not be relieved of its liabilities or responsibilities whether under this Deed or otherwise according to Law by reason of the matters set out in this clause 8.3(e).
(f) 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 unless:

(i) the Principal's Representative has issued a notice under clause 8.3(b)(i); or

(ii) the Principal's Representative has issued a notice under clause 8.3(b)(ii), in which case any entitlement which the Contractor has is not affected by proceeding as directed under clause 8.3(c) before the determination of any Dispute.

8.4 Claim for Variation

Where a Variation has been directed under clause 8.2(c):

(a) the Principal's Representative will determine:

(i) the value of the Variation work in accordance with clause 6.4; and

(ii) the cost of rectifying the Defect (or the part notified), valued as if the work involved in the rectification of the Defect (or the part notified) were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applies;

(b) the Contract Sum will be adjusted by the difference between the valuations under sub-paragraphs (a)(i) and (a)(ii) as follows:

(i) if the value under sub-paragraph (a)(i) is greater than the cost under sub-paragraph (a)(ii), the Contract Sum will be increased by the difference; or

(ii) if the cost under sub-paragraph (a)(ii) is greater than the value under sub-paragraph (a)(i), the Contract Sum will be decreased by the difference; and

(c) the Contractor will not be entitled to an extension of time to any Date for Completion.

8.5 Acceptance of Work

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

(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

(a) The Principal's Representative may give the Contractor a notice under clauses 8.2(a) or 8.2(c) during any Defects Rectification Period.

(b) If the Contractor:

(i) rectifies the Defect (or the part notified) following receipt of a notice under clause 8.2(a);

(ii) completes the Variation work following receipt of a notice under clause 8.2(c); or

(iii) rectifies a Defect or completes a Variation to overcome a Defect in the absence of any notice,

then the relevant Defects Rectification Period for the work required will be extended by the period set out in Schedule 1, commencing upon completion of the rectification of the Defect (or the part) or completion of the Variation work (as the case may be).

8.7 Defect Rectification by Other Contractor

Where the Principal's Representative advises the Contractor (under clause 8.2(e)) that an Other Contractor has or will be rectifying a Defect:

(a) without limiting or otherwise affecting clauses 2.13, 2.15 or 7.4, the Contractor must not impede the Other Contractor from having sufficient access to the Site to rectify the Defect or carrying out the Variation to overcome the Defect;

(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 Variation, will be a debt due from the Contractor to the Principal; and

(c) the Contractor acknowledges and agrees that:
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8.8 Rights Not Affected

Neither the Principal's rights, nor the Contractor's liability, whether under this Deed 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 Deed;

(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

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 Deed as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

A discretion (including an absolute or sole discretion), or power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Deed if exercised or made (or if it is not exercised or made) by the Principal's Representative:

(a) independently;

(b) after consultation with the Principal and its advisers; or

(c) as directed by the Principal.
Any control or influence exercised by the Principal over the Principal's Representative does not:

(d) 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; and

(e) 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.

The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Deed.

Except where this Deed otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.

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 Deed;

(ii) not appoint more than one person to exercise the same function in the same location under this Deed; 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 Deed despite appointing another person to exercise the function under clause 9.3(a)(i).

(c) All references in this Deed to the Principal's Representative include a reference to an appointee appointed under clause 9.3(a)(i).
9.4 Environmental Management Representative

The Contractor acknowledges and agrees that:

(a) the Principal has appointed the Environmental Management Representative as required by an Authority Approval;

(b) the Environmental Management 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 Management Representative or the Principal's Representative as contemplated by clause 9.4(b)(iv); and

(d) it bears the full risk of complying with any directions given by the Environmental Management Representative or the Principal's Representative as contemplated by clause 9.4(b)(iv) and none of the Principal, the Principal's Representative or the Environmental Management Representative will be liable upon any Claim arising out or in any way in connection with such directions.

9.5 Contractor's Personnel

(a) The Contractor must:

(i) notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Deed is the relevant person listed in Schedule 1) and of any subsequent changes;

(ii) ensure that the Contractor's Representative is appointed and available on a full-time basis and provides due and proper supervision of the performance of the Contractor's Activities at all places (whether on the Site or otherwise) at which the Contractor's Activities are taking place;
(iii) provide personnel suitably qualified, knowledgeable, experienced and skilled in their roles in performing its obligations under this Deed; and

(iv) ensure that its personnel (including those referred to in clause 9.5(b)) as a team carry out the Contractor's Activities in a manner that is professional and co-operative, and recognises the interests and needs of the public and other stakeholders in the delivery of the Works.

(b) The Contractor must:

(i) either:

(A) employ the individuals nominated by the Contractor and listed in Schedule 1 in the positions specified in Schedule 1 or equivalent positions; or

(B) where no individuals are specified in Schedule 1 for a position specified in Schedule 1, submit to the Principal's Representative the names of the persons which the Contractor proposes to employ for the roles specified in Schedule 1 for the Principal's Representative's approval, such approval not to be withheld unreasonably. The Contractor must ensure that the persons nominated are suitably qualified and experienced for the relevant position;

(ii) only replace the individuals referred to in clause 9.5(b)(i):

(A) if the individual:

(1) dies;

(2) becomes unable to continue in the positions due to illness;

(3) resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor as that term is defined in section 9 of the Corporations Act 2001 (Cth)); or

(4) becomes the subject of a direction under clause 9.5(c);

(B) with personnel who are of at least equivalent experience, ability, knowledge and expertise; and

(C) with the Principal's Representative's prior written approval, which will not be unreasonably withheld; and

(iii) without limiting clauses 9.5(b)(i) and 9.5(b)(ii), ensure that the:

(A) positions specified in Schedule 1 as full-time, dedicated positions are full-time, dedicated positions; and
(B) individuals who occupy the positions specified in Schedule 1 apply themselves fully to the position to the exclusion of all other work, until Completion of the final Portion to achieve Completion or such earlier time as may be approved by the Principal's Representative.

(c) The Principal's Representative may, in 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 9.5(a) or clause 9.5(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 9.5(c) is not again employed in the Contractor's Activities or on the Site.

(e) Any direction under clause 9.1 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.

9.6 Site Meetings

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

(i) prior to the Date of Completion of the Works (including during the design of the Works):

(A) weekly or such longer intervals; and

(B) at such other times,

as may be directed in writing by the Principal's Representative; and

(ii) at monthly intervals after the Date of Completion of the Works until all Defects Rectification Periods (including any extension under clause 8.6), have expired or at such other intervals as may otherwise be agreed.

(b) The Contractor must ensure that the Site meetings are attended by:

(i) the Contractor's Representative (or his or her delegate); and

(ii) any other person (including any Subcontractor) required by the Principal's Representative.

The Principal's Representative (or its delegate) will attend all Site meetings. The Principal's Representative must appoint the chairperson for the Site meetings.
The chairperson of the Site meetings must prepare and give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting. The minutes of the meeting shall not be relied on by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this Deed.

(d) The purpose of the Site meetings will include:

(i) the receipt of reports on, and the review and consideration of, the matters set out in clause 9.8;

(ii) the receipt of reports on, and the review of the status and implementation of, the Contract Management Plan, Design Documentation, the Signalling Design and other plans and documents prepared by the Contractor under this Deed;

(iii) the consideration of corrective actions to prevent and rectify defective work;

(iv) the consideration of any other matter that the Principal's Representative requires; and

(v) review of the design of the Works, review of the Design Documentation and the Signalling Design.

9.7 Contract Control Group

The Contract Control Group will comprise:

(a) the Principal's Representative;

(b) the Contractor's Representative, a senior representative of the Contractor not involved in the day to day Contractor's Activities, and any of the Contractor's key personnel nominated by the Principal's Representative;

(c) representatives of any of the Contractor's Subcontractors that the Principal's Representative reasonably requires; and

(d) any other person the Principal's Representative reasonably requires from time to time.

9.8 Contract Control Group Functions

Contract Control Group functions will include the oversight and review of, and response to, reports on:

(a) the progress of the Contractor's Activities relative to the Contractor Program and Contractor's other programs, and the performance of the Contractor under this Deed;

(b) issues arising out of community liaison and community concerns;
9.9 Contract Control Group Meetings

(a) The persons nominated in clauses 9.7(b), 9.7(c) and 9.7(d) must attend all Contract Control Group meetings.

(b) Contract Control Group meetings will be held on:
   (i) monthly basis prior to the Date of Completion of the Works; and
   (ii) quarterly basis thereafter until Final Completion, or at such other intervals as the Principal and the Contractor agree in writing;

(c) The Principal's Representative (or his or her nominee) will attend and chair the Contract Control Group meetings.

9.10 Contractor's Reporting Obligations

The Contractor:

(a) must with each claim for payment under clause 11.2 or, where no claim for payment is made, at least 4 Business Days prior to the next monthly or quarterly (as the case may be) meeting of the Contract Control Group, give the Principal's Representative (in accordance with clause 9.10(b)) a written report containing the detailed information specified in the TCA Standard Requirements Prelude;

(b) must provide for the purposes of clause 9.10(a) (unless otherwise directed by the Principal's Representative), the number and form of copies of the written report specified in Schedule 1;

(c) acknowledges that it is not entitled to make, and the Principal will not be liable upon, any Claim in the written report referred to in clause 9.10(a);
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(d) must provide and maintain a daily record of the status of the work and the conditions on the Site and other sites involved in the Contractor's Activities, including the resources employed on the Site and at other sites and the issues affecting the progress of the Contractor's Activities, and provide a copy of that record to the Principal's Representative for each week's Contractor's Activities;

(e) must provide a current projected cash flow, each three months or as required by the Principal's Representative, including a planned versus actual cash flow comparison (including the estimated versus actual value of work completed for each calendar month); and

(f) must promptly give the Principal's Representative, when requested to do so, any information that the Principal's Representative reasonably requires (including design calculations and other design details) in respect of the matters referred to in clause 9.10(a).

9.11 Complaints and Notification

(a) The Contractor must immediately notify the Principal in writing if any:
   (i) complaint is made or any proceedings are instituted or threatened;
   (ii) letter of demand is issued; or
   (iii) order or direction is made,
   by anyone (including any Authority or any landowner, lessee or licensee near the Site) against the Contractor or any of its Subcontractors or their respective employees in respect of any aspect of the carrying out of the Contractor's Activities, including:
   (iv) Contamination arising out of, or in any way in connection with, the Contractor's Activities;
   (v) the Contractor's non-compliance with any Authority Approval (or any condition or requirement thereunder), the Contract Management Plan or any Law regarding the Environment;
   (vi) the implementation of the Contract Management Plan, including the Contractor's community liaison plan;
   (vii) the Contractor's use or occupation of the Site; or
   (viii) loss or damage of the kind referred to in clause 13.10.

(b) The Contractor must (at its own cost) respond to complaints and enquiries received regarding the Contractor's Activities and that of its Subcontractors in accordance with the TCA Standard Requirements.

9.12 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 and Other Contractors' activities;

(e) without limiting clause 2.3(b), comply with all the requirements of the NSW Government Code of Practice for Procurement (January 2005), and the NSW Government Industrial Relations Management Guidelines (December 1999);

(f) conduct its industrial relations affairs in accordance with the Industrial Relations Management Plan developed and submitted by the Contractor as part of the Contract Management Plan, in accordance with the TCA Standard Requirements and clause 9.14;

(g) not commence any work on the Site until the Industrial Relations Management Plan has been submitted to the Principal's Representative and:

(i) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

(ii) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e));

(h) submit to the Principal's Representative, before beginning work on the Site, 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;
(i) not do, or omit to do, anything that is, or is likely to be, prejudicial to the delivery of the Works;

(j) before beginning work on the Site, 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) obligations to register workers under the Building and Construction Industry Long Service Payments Act 1986 (NSW);

(iv) workers' compensation insurance, including self-insurance arrangements;

(v) superannuation fund membership and contributions; and

(vi) over-award payments such as redundancy fund contributions; and

(k) 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 service 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 paragraph (k).

The industrial relations requirements contained in this Deed and the NSW Government Industrial Relations Management Guidelines (December 1999):

(l) are in addition to, but are not in substitution for, any requirements of Law; and

(m) 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 Deed relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

9.13 Document Management and Transmission

(a) The Contractor must manage and transmit documents, including using an electronic medium where required by the Principal's Representative, in accordance with the processes, procedures and systems in the Contract Management Plan.
(b) Documents supplied to the Contractor will remain the property of the Principal and must be returned by the Contractor 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 Contractor's Activities.

(c) The Contractor must keep all the Contractor's records relating to the Contractor's Activities in a secure and fire proof storage.

(d) 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 complying with its obligations under this clause 9.13.

(e) The Contractor must ensure that any Contract Documentation that it provides to the Principal 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.

9.14 Submission for Review by the Principal

(a) The Contractor must submit the Contract Management Plan, the Design Documentation, the Contractor Program and any other document (each of which in this clause 9.14, will be referred to as a Document) which is required to be submitted for the review of the Principal or the Principal's Representative under a provision of this Deed:

   (i) progressively and in timely manner to ensure that the Contractor's Activities are completed by the times required under this Deed, and by the times or within the periods:
      (A) identified in the Contractor Program which is not rejected by the Principal's Representative; or
      (B) in the absence of a time or period in the Contractor 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 Deed under which the Document is submitted.

(b) Where the Document being submitted under clause 9.14(a) is Design Documentation, it must:
(i) be accompanied by the Contractor's Certificate of Design Compliance and the Designers' Certificates of Design Compliance; and

(ii) where the design the subject of the Design Documentation must have Authority Approval prior to being implemented, then the Contractor must with the Document submit evidence (to the reasonable satisfaction of the Principal's Representative) of the relevant Authority Approval.

(c) 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 9.14, in addition to any other requirement of this Deed relating to the submission of that Document.

(d) The Principal's Representative may:

(i) direct that any document the Contractor:

(A) previously submitted is a Document that is to be reviewed under the provisions of this clause 9.14; and

(B) is obliged to submit will be reviewed under the provisions of this clause 9.14;

(ii) after the submission of a Document that satisfies the requirements of clause 9.14(c), review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and

(iii) where a Document is submitted or resubmitted in accordance with a program that has not been rejected by the Principal's Representative:

(A) reject the Document (and state its reasons) if in its opinion the Document (or any part) does not comply with the requirements of this Deed;

(B) make comments on the Document, or request clarification or additional information; or

(C) notify the Contractor that it has no (or has no further) comments to make,

within relevantly, the later of:

(D) where a time is stated in the TCA Standard Requirements for a specific Document, that time;
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(E) 40 Business Days from submission for all Design Documentation (except in respect of the Design Documentation and process referred to in clause 5.5 of TCA Standard Requirements T1 in which case the time stated there applies); and

(F) 15 Business Days from submission for all other Documents.

(e) If any Document is:

(i) rejected or deemed to be rejected, the Contractor must submit an amended Document to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this clause 9.14 will re-apply; or

(ii) not rejected and the Principal's Representative responds to the submission with comments, or requests clarification or additional information, the Contractor must respond to the comments or request within 10 Business Days or such other period as may be directed by the Principal's Representative.

If the Contractor:

(iii) responds to the Principal's Representative's comments or request within this period in a manner satisfactory to the Principal's Representative, the Principal's Representative will notify the Contractor that it has no (or no further) comments to make within 5 Business Days of that response; or

(iv) fails to respond to the Principal's Representative's comments or request within this period in a manner satisfactory to the Principal's Representative, or the Principal's Representative does not give a notice under clause 9.14(e)(iii):

(A) the Document will be deemed to be rejected;

(B) the Principal's Representative shall, by notice in writing, confirm that the Document has been rejected; and

(C) clause 9.14(e)(i) will re-apply.

(f) The Contractor must not commence construction of any part or element of the Works unless the AFC Design Documentation or the Signalling Design exists for that part or element of the Works.

(g) The Contractor must, for each design package:

(i) sequentially submit documents capable of permitting the following reviews in the following order:

(A) System Definition Review;
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(B) Preliminary Design Review;
(C) Critical Design Review; and
(D) Approved for Construction Review; and

(ii) not submit any documents for review under clauses 9.14(g)(i)(B) to 9.14(g)(i)(D) until:

(A) the Contractor has received the notice referred to in clause 9.14(d)(iii)(C) in respect of the documents submitted for the immediately preceding review; or

(B) the relevant period of time in clause 9.14(d)(iii) has expired in respect of the documents submitted for the immediately preceding review and the Principal's Representative has not rejected the documents or made any comments on them (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e)).

(h) The Contractor must not amend for construction purposes any Document that has been submitted to the Principal's Representative and, in respect of which:

(i) the Principal’s Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

(ii) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e)),

unless the Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 9.14 will re-apply.

(i) 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 Deed. References in this Deed to "Approved for Construction" or "AFC" or their use by the Principal or the Principal's Representative or the processes referred to in this Deed involving those concepts occurring during development of the Design Documentation do not relieve the Contractor from its liability under this Deed in connection with the Design Documentation.

(j) 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 Deed in any Document submitted.

(k) No review of, approval of, comment upon or rejection of, or failure to review, approve, or comment upon or reject, a Document prepared by the Contractor, or any other direction (including any direction given under clause 9.14(l)(iii)) 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 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 Deed or otherwise according to any Law; or

(iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to any Law.

(l) In considering, reviewing, commenting upon, or rejecting any Document, the Principal's Representative may:

(i) consult with;

(ii) take into account any views or requirements of; and

(iii) direct the Contractor to comply with the lawful requirements of, any relevant Authority.

(m) The Contractor acknowledges and agrees that:

(i) it has made allowances in the Contractor Program for the time required for:

(A) all relevant Authorities to review its design; and

(B) the submission, review, comment, rejection and all other design development processes contemplated by the Third Party Agreements;

(C) the issue of Configuration Change Notices during development of the design; and

(ii) other than as set out in clause 5.5(i), the Principal will not be liable upon any Claim by the Contractor arising out of or in any way connected with any delay in the design development process as contemplated by this clause 9.14(m).

(n) The restrictions on the commencement of any part of the Works in this clause 9.14 are in addition to any restrictions that exist elsewhere in this Deed, including under any Third Party Agreement.
9.15 Work Method

Whether or not this Deed prescribes a particular work method or a work method is otherwise a part of this Deed or reviewed or approved (expressly or impliedly) by the Principal'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 this Deed to be frustrated.

9.16 Local Industry Participation

The Contractor must:

(a) maximise the opportunities for Australia and New Zealand industries to bid competitively for items to be supplied for the Contractor's Activities in accordance with NSW Government policies and guidelines;

(b) as part of the Contract Management Plan, develop, document and implement a Local Industry Participation Plan, in accordance with the TCA Standard Requirements;

(c) submit the proposed Local Industry Participation Plan for review under clause 9.14; and

(d) implement the Local Industry Participation Plan before any decisions are taken in design or construction work that influences the source of products and services.

9.17 Training Management

(a) Subject to the express provisions of this Deed, the Contractor must comply with the NSW Government Training Management Guidelines (February 2009).

(b) Training management requirements specified in this Deed and the NSW Government Training Management Guidelines (February 2009) may be in addition to, but are not in substitution for, any training obligations of the Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under any Law.
(c) Where applicable, as indicated in Schedule 1, at least 14 days before starting work on the Site the Contractor must document and submit a Project Training Management Plan which complies with the NSW Government Training Management Guidelines (February 2009).

(d) The Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in this Deed.

(e) The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 9.17.

(f) Unless otherwise directed by the Principal's Representative, the Contractor must provide the number and form of copies specified in Schedule 1 of the Project Training Management Plan referred to in clause 9.17(c).

9.18 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor 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 Deed.

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 Deed and that it will participate in the Principal's "Contractor Performance Reporting" process.

9.19 Employment of Aboriginal and Torres Strait Islander People

The Contractor must:

(a) use its best endeavours to provide employment opportunities to Aboriginal and Torres Strait Islander people in accordance with the NSW Government Aboriginal Participation in Construction Implementation Guidelines (January 2007); and

(b) as part of the human resources input to and the documentation and implementation of, the Contractor's Contract Management Plan, address the employment of Aboriginal and Torres Strait Islander people and compliance with the NSW Government Aboriginal Participation in Construction Implementation Guidelines (January 2007).
10. Time and Progress

10.1 Rate of Progress

The Contractor must:

(a) regularly and diligently progress the Contractor's Activities;

(b) proceed with the Contractor's Activities with due expedition and without delay;

and

(c) achieve Completion of the Works and each Portion by the relevant Date for Completion.

Without limiting clause 10.14(b) or the Contractor's rights under the Building and Construction Industry Security of Payment Act 1999 (NSW), the Contractor must not suspend the progress of the whole or any part of Contractor's Activities except where permitted or required under this Deed.

Without limiting the next paragraphs of this clause 10.1 or clause 10.3, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor.

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 Deed.

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. 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.

If compliance with a written direction expressly stated to be pursuant to this clause 10.1 causes the Contractor to 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, a failure by the Contractor to comply with its obligations under this Deed.
10.2 The Contractor's Programming Obligations

The Contractor:

(a) acknowledges and agrees that:

(i) the Contractor Program will, subject to clause 10.2(b), generally incorporate the scope of the First Hundred Day Program as a sub-program;

(ii) it has made and will make adequate allowances in the Contractor Program for:

(A) the delays referred to in clause 10.6;

(B) all Hold Points and Witness Points;

(C) those parts of the Contractor's Activities that may only performed during a Track Possession; and

(D) the high degree of interface, interaction, and integration of the Contractor's Activities with work being (or to be) performed by RailCorp during Systems Integration and Operational Readiness;

(iii) provision of the First Hundred Day Program does not affect the Contractor's other programming obligations under this clause 10.2;

(b) must prepare and provide a Contractor Program that complies with and includes the details required by this Deed, including the TCA Standard Requirements, and any requirements of the Principal's Representative;

(c) must submit the Contractor Program to the Principal's Representative for its review in accordance with clause 9.14 within the earlier of:

(i) 45 Business Days of the date of this Deed; or

(ii) any time required by the TCA Standard Requirements;

(d) must 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;
must update, revise and submit to the Principal's Representative an updated Contractor Program and First Hundred Day Program to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Completion, 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 Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative:

(i) on a monthly basis (which is limited, in the case of the First Hundred Day Program to the periods covered by those programs); or

(ii) whenever directed to do so by the Principal's Representative;

must prepare and provide for the Principal's Representative's information only versions of all Contractor Programs prepared in accordance with clause 10.2(d) that also allow for those claims for an extension of time to any Date for Completion 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;

must comply with the requirements of the Principal's Representative and its other obligations under this Deed in preparing and using programs, including the requirements in clause 9.14; and

must comply with the current version of the First Hundred Day Program and the Contractor Program that have been submitted to the Principal's Representative for review under clause 9.14 and, in respect of which:

(i) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

(ii) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e)).

Unless otherwise directed by the Principal's Representative, for all programs and schedules provided in accordance with this clause, the Contractor must provide:

(iii) 1 colour printed A3 sized original;

(iv) 3 colour printed A3 copies; and

(v) an electronic version on CD in both pdf and unlocked native format (with all logic links intact and nothing hidden or protected)
accompanied by all associated files so that they can be reproduced by the Principal's Representative using Primavera P6.

10.3 Contractor Not Relieved

Without limiting clause 9.14, 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 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 Deed, including the obligations under clause 10.1;
(b) evidence or constitute the notification of a delay or claiming of or the granting of an extension of time to any 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 Deed.

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 Completion before any Date for Completion;
(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 Completion on Time

The Contractor acknowledges:

(a) the importance of complying with its obligations under clause 10.1; and
(b) that a Date for Completion 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 Deed both before and after the Date for Completion.
(b) The Contractor must within 5 days of the commencement of an occurrence causing any delay give the Principal's Representative written notice of any delay to the carrying out of the Contractor's Activities, details of the cause and how any 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 prior to the Date for Completion of the Works or a Portion by reason of:

(i) an Act of Prevention;
(ii) a cause so described in Schedule 1; or
(iii) a direction to suspend that satisfies clause 10.14(a)(ii),

in a manner that will prevent it from achieving Completion of the Works or the Portion by the relevant Date for Completion, the Contractor may claim an extension of time to the relevant Date for Completion.

(b) If the Contractor is, or will be, delayed after the Date for Completion of the Works or a Portion by reason of an Act of Prevention in a manner which will delay it in achieving Completion of the Works or a Portion, the Contractor may claim an extension of time to the relevant Date for Completion.

10.8 Claim for Extension of Time

To claim an extension of time the Contractor must:

(a) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Principal's Representative for an extension of time to the relevant 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; and

(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 will delay it in achieving Completion in the manner described in clause 10.7; and

(b) if the effects of the delay continue beyond the period of 14 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 28 days after the first written claim, or such other period as may be approved by the Principal’s Representative in writing, until after the end of the effects of the delay; and

(ii) containing the information required by paragraph (a).

The Principal's Representative may, within 14 days of receiving the Contractor's claim or further claim for an extension of time for Completion, by written notice to the Contractor, request additional information in relation to the claim or further claim. The Contractor must, within 14 days of receiving such request, provide the Principal's Representative with the information requested.

10.9 Conditions Precedent to Extension of Time

Subject to clauses 10.16 and 10.17, it is a condition precedent to the Contractor's entitlement to an extension of time to any relevant 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;

(d) the Contractor is actually, or will be, delayed:

(i) prior to the Date for Completion of the Works or the Portion, 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 Completion of the Works or the Portion, by reason of an Act of Prevention in the manner described in clause 10.7(b); and

(e) the Contractor is not given a direction to compress under clause 10.15.

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

(f) the Principal will not be liable upon any Claim by the Contractor; and

(g) 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 clauses 10.10(c), 10.16 and 10.17, if the conditions precedent in clause 10.9 have been satisfied, the relevant Date for Completion will be
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extended by a reasonable period determined by the Principal's Representative, and notified to the Principal and the Contractor within 28 days after:

(i) the latest of the:

(A) Contractor's written claim under clause 10.8; and
(B) provision by the Contractor of any additional information regarding the claim required under clause 10.8; or

(ii) where the Principal's Representative has given the Contractor a direction to compress under clause 10.15 and subsequently issued a notice under clause 10.16 withdrawing the direction to compress given under clause 10.15, the date of issue of the notice under clause 10.16.

(b) A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Completion, or to grant an extension of time to any Date for Completion within the relevant 28 day period will not cause an affected Date for Completion to be set at large, but nothing in this paragraph will prejudice any right of the Contractor to damages.

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

(i) contributed to the delay; or

(ii) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.11 Reduction in Time

If the Principal's Representative directs a Variation that omits or deletes any part of the Works:

(a) the Contractor:

(i) may (no later than 10 Business Days after the direction) provide whatever information it considers may assist the Principal's Representative to determine; and

(ii) must provide whatever programming or other information the Principal's Representative directs (and within the time directed) so that the Principal's Representative can determine, what (if any) adjustment should be made to the Date for Completion of the Works or a Portion; and

(b) the relevant Dates for Completion of the Works or a Portion or Portions may be reduced by a reasonable period determined by the Principal's Representative.
having regard to the impact of the Variation and notified to the Principal and the Contractor within 20 Business Days of the date of the Variation.

10.12 Unilateral Extensions

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Completion under clause 10.10, 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 Completion by any period specified in a notice to the Contractor and the Principal.

The Principal's Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the Contractor.

The discretion to grant an extension of time under this clause 10.12 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 by the Dispute Resolution Board or in any expert, arbitration or litigation proceedings).

10.13 Delay Damages

(a) For each day by which the Date for Completion of the Works or a Portion is extended due to:

(i) a breach of this Deed by the Principal;

(ii) the cancellation, less than 12 weeks prior to the time at which it was planned to commence, of a Track Possession provided by the Principal under clause 7.10, and without the provision of an alternative Track Possession at a time the Contractor is reasonably able to utilise; or

(iii) a Variation that satisfies the requirements of paragraph (c) of the definition of Act of Prevention,

the Contractor will be entitled to be paid the costs reasonably 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 who must, where they are applicable, use the rates and prices in Schedule 1.

(b) 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 Deed 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

(a) 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.

If the suspension under this clause 10.14(a) arises as a result of:

(i) the Contractor's failure to carry out its obligations in accordance with this Deed (including where any process, procedure, test method, calculation, analysis or report required by this Deed 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

(ii) a cause other than the Contractor's failure to perform its obligations in accordance with this Deed:

(A) a direction to suspend under this clause 10.14(a) will entitle the Contractor to:

(1) be paid by the Principal the extra costs reasonably incurred by it as a direct result of the suspension as determined by the Principal's Representative; and

(2) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.10;

(B) the Contractor must take all reasonably practicable steps possible to mitigate the extra costs incurred by it as a result of the suspension; and

(C) 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(a)(ii).

(b) The Contractor may suspend the carrying out of all or a part of the Contractor's Activities to avoid an Incident.

(c) 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 a suspension by the Contractor under clause 10.14(b).
10.15 Direction to Compress

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 to overcome or minimise the extent and effects of some or all of the delay, which may include the measures necessary in order to achieve Completion of the Works or a Portion by the relevant Date for Completion.

Prior to commencing any such compression the Contractor must give the Principal's Representative an estimate of the costs of taking all such necessary measures.

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 Completion.

10.16 Withdrawal of Compression Direction

The Principal's Representative may at any time by notice in writing withdraw any direction given by it under 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. Any such extension 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.

10.17 Partial Compression

If the Principal's Representative gives the Contractor a direction to compress under clause 10.15 and it only applies to part of a delay, the Contractor's entitlement to any extension of time to any relevant Date for Completion, which it otherwise would have had, will only be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome the delay.

10.18 Compression

If the Principal's Representative gives a direction to the Contractor under clause 10.15:

(a) whether or not the Contractor provides a cost estimate under clause 10.15, the Contractor must comply with the direction;

(b) if the Contractor would, but for the direction, have been entitled to an extension of time to the relevant Date for Completion for the cause of delay in respect of which the Contractor made a claim under clause 10.8, the Contractor will, to the extent it would have been entitled to an extension of time, be entitled to be paid the lesser of:

(i) the sum of:
(A) the extra costs reasonably incurred by the Contractor (which, if the Principal's Representative gives a notice to withdraw the direction under clause 10.16 will be those extra costs incurred prior to the giving of such notice) and directly attributable to compressing the Contractor's Activities, as determined by the Principal's Representative; and

(B) that percentage of the amount under sub-paragraph (A) stipulated in Schedule 1; and

(ii) the cost estimate (if any) provided by the Contractor pursuant to clause 10.15; and

(c) 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 cause of delay and the direction, other than for the amount it is entitled to under this clause 10.18.

10.19 Principal's Right to Liquidated Damages not Affected

The Principal's rights to liquidated damages under clause 12.7 for a failure by the Contractor to achieve Completion of the Works or a Portion by any relevant Date for Completion will not be affected by the Principal's Representative giving the Contractor a direction to compress under clause 10.15.

10.20 Contractor's Entitlements

This clause 10 is an exhaustive code of the Contractor's rights in connection with any delay or Act of Prevention and the Contractor waives all rights at Law to claim any relief from its obligations under this Deed otherwise than in accordance with this clause 10.

11. Payment

11.1 Contractor's Payment Entitlements

(a) Subject to clause 16.12 and to 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 Deed, in accordance with the procedure in this clause 11.

(b) The Contract Sum is not subject to rise and fall.

(c) The Reimbursable Work Price is payable for the Reimbursable Work because of its inherently uncertain scope and sequencing.

(d) The Contractor:

(i) warrants that it has made full allowance for the risks that may arise during the performance of the Reimbursable Work or in connection with
the performance of Reimbursable Work in setting the elements of the Contract Sum; and

(ii) acknowledges that:

(A) the risk allocation prescribed by this Deed does not change during the performance of the Reimbursable Work or in connection with the performance of Reimbursable Work; and

(B) it must not seek to recover, and is not entitled to recover:

(1) for Defect rectification as part of the Reimbursable Work Price; or

(2) any cost or expense as part of the Reimbursable Work Price that is the result of a risk which the Contractor bears under this Deed.

(e) The parties acknowledge and agree that:

(i) Reimbursable Work:

(A) will occur in parallel with the remainder of the Contractor's Activities; and

(B) is not confined to a discrete Portion;

(ii) it is critical to clearly delineate and separate the:

(A) cost of the work; and

(B) personnel and equipment involved,

in respect of Reimbursable Work from that used for the remainder of the Contractor's Activities; and

(iii) the Contractor will comply with any directions of the Principal's Representative in respect of documentation created (or which the Principal's Representative directs the Contractor to create) to support the delineation and separation between:

(A) Reimbursable Work; and

(B) the remainder of the Contractor's Activities.

11.2 Payment Claims

Subject to clause 11.7, the Contractor must give the Principal's Representative a claim for payment on account of the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed:

(a) upon the 6th Business Day of each month;

(b) for the Completion Payment Claim within the time required by clause 11.10; and
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(c) for the Final Payment Claim within the time required by clause 11.12.

Each claim for payment must:

(d) generally follow the form of the Payment Schedule and be as the Principal's Representative reasonably requires;

(e) include all the evidence reasonably required by the Principal's Representative of the amount of work completed in accordance with this Deed and the amount payable;

(f) delineate between:

(i) that part of the amount claimed that relates to Reimbursable Work; and

(ii) the balance of the Contractor's Activities; and

(g) in respect of Reimbursable Work, provide full detail of the Reimbursable Work which correlates with the Reimbursable Work Breakdown Plan;

(h) for each monthly claim pursuant to clause 11.2(a) (a Progress Claim), set out the amount claimed for work completed to the end of the previous month and details of how the amount has been calculated, using the following methodology:

(i) for each part of the Contractor's Activities described in the Payment Schedule which has been completed (subject to any minor Defects) the sum of the amounts in the Payment Schedule (adjusted to allow for any additions and deductions to the Contract Sum) for all such completed parts of the Contractor's Activities;

(ii) to which is added, for each part of the Contractor's Activities described in the Payment Schedule which has not been completed (with the exception of activities associated with items in the Payment Schedule titled “As-built data and asset management documentation” for which payment claims must be made only once complete under clause 11.2(h)(i)) the completed proportion of that part of the Contractor's Activities multiplied by the amount set out for that part in the Payment Schedule;

(iii) to which is added the value of unfixed plant and materials (in accordance with clause 11.8) multiplied by a factor of 85%;

(iv) to which is added any other amounts that may be payable by the Principal to the Contractor pursuant to a provision of this Deed;

(v) which is reduced, where work is defective or omitted, by the estimated cost of rectifying the Defect or carrying out the omitted work; and
(i) 

be accompanied by:

(i) 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 20, made out not earlier than the date of the payment claim;

(ii) the Contractor's Certificate of Design Compliance and the Designers' Certificates of Design Compliance;

(iii) the Contractor's Certificate of Construction Compliance and Designers' Certificates of Construction Compliance;

(iv) certification by the Contractor that all of the Contractor's Activities and parts of the Works for which payment has been claimed are in accordance with:

(A) the requirements of the Planning Approval; and

(B) all other Authority Approvals;

(v) in relation to the unfixed plant and materials claimed in the Progress Claim:

(A) evidence of:

(1) ownership of the plant or materials;

(2) identification and labelling of the plant and materials as the property of the Principal;

(3) adequate and secure storage and protection; and

(4) insurance for the full replacement value of the plant and materials; and

(B) security acceptable to the Principal in the form of the unconditional undertaking in Schedule 16 issued by an Institution approved by the Principal in an amount equal to the payment claimed for the plant and materials;

(vi) the programs and other information required to be prepared and submitted by the Contractor under clause 10.2;

(vii) evidence of the Contractor's expenditure in respect of the Reimbursable Work referred to in clause 11.2(g); and

(viii) 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 for a Claim which is barred by clause 17.6 or any other provision of this Deed.
11.3 Payment Statements

(a) 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 11.10 or a Final Payment Claim under clause 11.12, 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:

(i) its determination of the value of the Contractor's Activities carried out in accordance with this Deed, using the methodology in clause 11.2(h) where the payment statement relates to a Progress Claim;

(ii) the amount already paid to the Contractor;

(iii) the amount (if any) the Principal directs the Principal's Representative that the Principal is entitled to retain, deduct, withhold or set-off under this Deed;

(iv) 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; and

(v) if the amount in clause 11.3(a)(iv) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim:

(A) the reason why the amount in clause 11.3(a)(iv) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim; and

(B) 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.

(b) 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 Deed.

(c) 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 Deed.
(d) The Contractor agrees that the amount referred to in the payment statement in respect of clause 11.3(a)(iv), for the purposes of sections 9 and 10 of the Building and Construction Industry Security of Payment Act 1999 (NSW) (in this clause 11 the Act), is the amount of the "progress payment" (as defined in that Act) calculated in accordance with the terms of this Deed to which the Contractor is entitled in respect of this Deed.

(e) The Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative under clause 11.3(a) give the Principal’s Representative a tax invoice (which complies with the GST Legislation) for the amount of the payment statement.

11.4 Performance and Compliance Incentive Payment Scheme

(a) The Principal aims to achieve a high standard of performance and full compliance by the Contractor for the duration of the project in respect of:

(i) safety;
(ii) rail safety and reliability;
(iii) environmental management;
(iv) communications;
(v) compliance audits; and
(vi) quality.

(b) Without in any way affecting the obligations of the Contractor under any Law, under any Authority Approval or under this Deed, the Principal agrees to pay the Contractor with each payment under clause 11.5 an amount (if any) determined under this clause 11.4 as an incentive to the Contractor's continuing level of performance and full compliance.

(c) The amount payable under clause 11.4(b) will be determined by the Principal's Representative in its absolute discretion on a monthly basis in accordance with the Performance and Compliance Incentive Payment Table.

(d) The maximum amount payable under clause 11.4(b) is set out in Schedule 1. This amount has been calculated taking into account that not all Performance Categories are payable for the same number of months and the maximum amount payable for each Performance Category varies. When payment for the Performance Category commences and the number of months the maximum amount is payable is set out in the Performance and Compliance Incentive Payment Table.

(e) The Principal's Representative must, at the same time as it issues the payment statement under clause 11.3, issue a supplementary payment statement setting out the amount which it has determined as payable under...
clause 11.4(b). The determination by the Principal's Representative of the amount payable under clause 11.4(b) will be final and binding and not capable of review in any forum.

11.5 Payment

Subject to clauses 11.1, 11.2, 11.7, 11.10, 11.12, 14.3, 14.7(a)(i) and 16.12, the Principal must, within 15 Business Days of the last to occur of:

(a) the Principal's Representative issuing the payment statement under clause 11.3;
(b) the Contractor complying with clause 11.7; or
(c) the Principal's Representative receiving the tax invoice referred to in clause 11.3(e),

pay the Contractor the amount set out in the payment statement referred to in clause 11.3(a).

11.6 Payment on Account

A payment of moneys under clause 11.5 is not:

(a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Deed;
(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 Deed,

but is only to be taken as payment on account.

11.7 Conditions Precedent

The Contractor is not entitled to make a payment claim under clause 11.2, and the Principal is not obliged to make a payment under clause 11.5, unless the Contractor has:

(a) complied with clauses 1.6, 2.2(f)(i), 2.2(f)(ii) and 10.2(e);
(b) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.8;
(c) submitted the initial and updated parts of the Contract Management Plan as required by clauses 4 and 9.14 of this Deed and the TCA Standard Requirements;
(d) provided any report and programs required under clause 9.10;
(e) provided the documents required by clause 11.2(i);
(f) effected or procured to be effected the insurances required by clauses 2.2(c) and 13.5 and (if requested) provided evidence of this to the Principal's Representative;

(g) provided such evidence as the Principal's Representative may require that this Deed has been properly executed by or on behalf of the Contractor and that the Contractor is bound under this Deed; and

(h) done everything else that it is required to do under this Deed before being entitled to make a payment claim or receive payment.

The Principal is not obliged to make a payment under clause 11.5, unless the Contractor has submitted a claim for payment in accordance with clause 11.2 and provided any accompanying document or other information required by that clause.

11.8 Unfixed Plant and Materials

If the Contractor claims payment for plant or materials intended for incorporation in the Works but not yet incorporated, the Principal is not obliged to make payment for such plant or materials unless:

(a) the Contractor provides the evidence required in clause 11.2(i)(v);

(b) the plant and materials are on the Site or are available for immediate delivery to the Site;

(c) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative; and

(d) the condition of the unfixed plant and materials has (if required by the Principal's Representative) been confirmed in an Inspection by the Principal's Representative.

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 progressively in the Principal.

The security provided in accordance with clause 11.2(i)(v)(B) will be released once the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose.

11.9 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 11.2(i)(i).

(b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.2(i)(i), 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 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 11.9 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 Pay-Roll Tax Act 2007 (NSW) or section 127(5) of the Industrial Relations Act 1996 (NSW).

11.10 Completion Payment Claim

(a) No later than 28 days after the issue of the Notice of Completion for the last Portion to reach Completion, the Contractor must lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating:

(i) the Contract Sum;
(ii) all payments received on account of the Contract Sum;
(iii) the balance (if any) due to the Contractor, being the Contract Sum less the payments referred to in clause 11.10(a)(ii).

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

(b) 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 Deed which occurred prior to the date of the Completion Payment Claim.

(c) 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 Deed 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.

(d) Without limiting clause 11.11 any Claim by the Contractor 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 Deed which occurred prior to
the date of the Completion Payment Claim which:

(i) has been made;

(ii) could have been made; or

(iii) should have been made,

that is not included in the Completion Payment Claim or First Statement of
Outstanding Claims will be deemed to have been abandoned by the Contractor
and is barred.

(e) The First Statement of Outstanding Claims is not a Claim. All Claims must be
made separately and at the times provided in the respective clauses dealing
with Claims. After lodging the First Statement of Outstanding Claims the
Contractor is not entitled to make any further Claim (not identified in the First
Statement of Outstanding Claims or the Completion Payment Claim)
whatsoever against the Principal, and the Principal will not be liable upon any
further Claim by the Contractor except as provided in clause 11.12.

(f) Despite clause 11.10(e), if subsequent to the lodgement by the Contractor of
the Completion Payment Claim, a final determination is made under clause 15
increasing the Contract Sum or otherwise entitling the Contractor to the
payment of money (including damages), the Contractor can lodge an amended
Completion Payment Claim to take account of the amount of the increase or
the payment to which it is entitled. The amended claim must be lodged with the
Principal’s Representative within 28 days after the final determination is made.
If it is not lodged within that time, it is barred.

(g) The claims and notices required under this clause 11.10 are in addition to the
other notices which the Contractor must give to the Principal’s Representative
under this Deed in order to preserve its entitlements to make any such Claims.

(h) Without limiting clause 11.10(g), the Contractor cannot include in any claim or
notice under this clause 11.10 any Claims that are barred under this Deed
including by clause 17.6.

11.11 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 Deed that occurred prior to the date of submission of the Completion Payment Claim for the last Portion to reach Completion, 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 11.10; and

(b) has not been barred under another provision of this Deed.

11.12 Final Payment Claim

(a) No later than 28 days after the expiration of the last Defects Rectification Period, the Contractor must lodge with the Principal's Representative a payment claim marked "Final Payment Claim" stating the Contract Sum, all payments received on account of the Contract Sum and 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.

(b) 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 or this Deed which occurred prior to the date of the Final Payment Claim.

(c) 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 Deed 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.

(d) Without limiting clause 11.13, any Claim by the Contractor 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 Deed which occurred prior to the date of the Final Payment Claim which:

(i) has been made;

(ii) could have been made; or

(iii) should have been made under the paragraph above,

that is not included in the Final Payment Claim or Second Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred.

(e) The Second Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the Second Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the
Second Statement of Outstanding Claims or the Final Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor.

(f) Despite the preceding paragraph, if subsequent to the lodgement by the Contractor of the Final Payment Claim, a final determination is made under clause 15 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Final Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Principal's Representative within 28 days after the final determination is made. If it is not lodged within that time, it is barred.

(g) The claims and notices required under this clause 11.12 are in addition to the other notices that the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.

(h) Without limiting the previous paragraph, the Contractor cannot include in any claim or notice under this clause 11.12 any Claims that are barred under this Deed including by clause 17.6.

11.13 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 Deed 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 11.12; and

(b) has not been barred under another provision of this Deed.

11.14 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.
11.15 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.

11.16 Costs Allowed by Contractor

Unless otherwise provided in this Deed, 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.

11.17 Security of Payment Act

(a) When an adjudication occurs under the 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 this Deed that the Contractor was not entitled under this Deed 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.
Title in all items forming part of the Works will pass progressively to the Principal (or, in respect of Remote Works constructed on Remote Sites, to the Principal's nominee being the relevant entity who is to take the benefit of the Remote Works) on the earlier of payment for or delivery of such items to the Site. Risk in all such items remains with the Contractor until Completion.
12. Completion

12.1 Progressive Inspection and Testing

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 Deed.

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.

The tests prescribed in this Deed must be conducted by the Contractor as and when provided for in this Deed, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.

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.

Unless otherwise stated in this Deed, before conducting a test under this Deed 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.

Without prejudice to any other rights or remedies under this Deed, 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.

Each party must promptly make the results of tests available to the other and to the Principal's Representative.

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:

(a) this Deed 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;

(b) the test shows that the material or work is not in accordance with this Deed;

(c) 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
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(d) the test is consequent upon a failure of the Contractor to comply with a requirement of this Deed.

Where the extra costs 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

(a) The Contractor must give the Principal's Representative written notice 21 days before it anticipates achieving Completion of the Works or a Portion.

(b) Following the issue by the Contractor of a notice under clause 12.2(a), the Contractor must:

(i) prepare a detailed procedure for the progressive Inspection by the Principal's Representative of the Works or that Portion; and

(ii) provide a draft defects management plan (without identifying any Defects) in respect of the Works or that Portion.

(c) The procedure and draft defects management plan referred to in clause 12.2(b) must be submitted to the Principal's Representative and, prior to the Inspection under clause 12.3(a) must, if required by the Principal's Representative, be amended to ensure that the:

(i) procedure provides the Principal's Representative with sufficient time to properly carry out the progressive Inspection and the final Inspection which the Principal's Representative is required to undertake under clause 12.3 to determine whether Completion of the Works or a Portion (as the case may be) has occurred; and

(ii) draft defects management plan fully addresses the matters the Principal's Representative directs.

12.3 Inspection before Completion of the Works

(a) The Principal's Representative and the Contractor's Representative must, within 7 days of receipt by the Principal's Representative of the notice referred to in clause 12.2, jointly inspect the Works or the Portion at a mutually convenient time.

(b) Following the joint Inspection under clause 12.3(a), the Principal's Representative must issue a notice to the Principal and the Contractor either:

(i) containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or
(ii) stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated in clause 12.3(b)(i).

(c) When the Principal's Representative issues a notice under either clause 12.3(b)(i) or clause 12.3(b)(ii), the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when the Contractor considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative in writing by means of copies of all Contractor's Certificates of Works Completion and the Designers' Certificates of Works Completion.

Each Contractor's Certificate of Works Completion must attach:

(i) a register of all records of verification of design, construction, commissioning and handover (including procurement, testing, and Hold Points and Witness Points). All records are to be satisfactorily completed and signed;

(ii) the final form of the defects management plan referred to in clause 12.2, which incorporates a register of any outstanding minor Defects and proposals for their rectification;

(iii) a register of Asset Management Information provided in accordance with the TCA Standard Requirements;

(iv) a register of deficiency notices issued, all of which are required to have been satisfactorily completed and closed out;

(v) a register of concessions granted for non-conforming work; and

(vi) all Authority Approvals including any required for the Principal to occupy and use the Works or Portion (as the case may be) for its intended purposes, in accordance with clause 2.3(c)(vi).

Thereafter the Principal's Representative and the Contractor's Representative must jointly inspect the Contractor's Activities at a mutually convenient time.

(d) Following the joint Inspection under clause 12.3(c), the Principal's Representative must within 21 days of receipt of a notice under clause 12.3(c), or of receipt of a notice under clause 12.3(e), issue a notice to the Principal and the Contractor:

(i) if satisfied that Completion of the Works or the Portion has been achieved:

(A) stating the date on which the Principal's Representative determines Completion of the Works or the Portion was achieved; and
(B) where relevant to the test for Completion of that Portion, containing a list of any minor Defects, of the type described in paragraph (a) of the definition of Completion in clause 1.1, that are apparent; or

(ii) if not satisfied that Completion of the Works or the Portion has been achieved:

(A) containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or

(B) stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated by clause 12.3(d)(ii)(A).

(e) If the Principal's Representative issues a notice under either clause 12.3(d)(ii)(A) or clause 12.3(d)(ii)(B), the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when it considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative by notice in writing by means of:

(i) in respect of a Portion, a Contractor's Certificate of Portion Completion and the Designer's Certificate of Portion Completion; and

(ii) in respect of the Works, copies of all Contractor's Certificates of Portion Completion and the Designer's Certificates of Portion Completion for all Portions,

to which are attached the documents referred to in the second paragraph of clause 12.3(c), and after which the third paragraph of clause 12.3(c), clause 12.3(d) and this clause 12.3(e) will reapply.

(f) For the purposes of this Deed and without affecting the Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion:

(i) no separate Date for Completion of the Works is specified in this Deed;

(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 Completion

If at any time a notice required to be given by the Contractor to the Principal's Representative under either of clauses 12.3(c) or 12.3(e) is not given by the Contractor yet the Principal's Representative is of the opinion that Completion of the Works or a Portion has been achieved, the Principal's Representative may issue a Notice of Completion under clause 12.3(d)(i) for the Works or the Portion.

12.5 Handover upon Completion

The Contractor acknowledges that the Principal will require (in part) a progressive handover of the Works and that this handover will take place by the Contractor handing over each Portion once that Portion has reached Completion. Subject to clause 3.1(d)(ii), the Principal's obligations under clause 3.1(b) in respect of the Site will then cease in respect of so much of the Site, access to which was provided for that Portion which is handed over to the Principal.

12.6 Part of the Works or a Portion

If a part of the Works has reached Completion but another part of the Works has not reached Completion and the parties cannot agree upon the creation of new Portions, the Principal's Representative may determine that the respective parts will be Portions. The Principal may, after the Contractor is given written notice by the Principal's Representative, occupy or use any part of the Works or a Portion although the whole of the Works or the Portion has not reached Completion.

If the Principal's Representative gives any such notice:

(a) the Principal must allow the Contractor reasonable access to the part of the Works or the Portion referred to in the notice and being occupied or used by the Principal, to enable the Contractor to bring the Works or the relevant Portion of which the area being occupied or used forms part to Completion; and

(b) this will not otherwise limit or affect the obligations of the parties under this Deed, including the obligation of the Contractor to achieve Completion of the Works or the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Completion.

The interpretations of the terms Date for Completion, Date of Completion and Completion, and clauses 8, 10, 12 and 13, will apply separately to each Portion and references therein to the Works and to the Contractor's Activities will mean so much of the Works and the Contractor's Activities as is comprised in the relevant Portion.

12.7 Liquidated Damages for Delay in Reaching Completion

(a) Subject to clause 12.7(f), if Completion of the Works or a Portion has not occurred by the Date for Completion for the Works or the Portion, the
Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1 for every day after the Date for Completion up to and including:

(i) the Date of Completion; or
(ii) the date that this Deed is terminated under clause 14, whichever is first.

(b) The Contractor acknowledges and agrees that:

(i) the liquidated damages payable under clause 12.7(a) in respect of any Portion are cumulative and payable regardless of the Date for Completion, and the Date of Completion, of any other Portion; and
(ii) where, on any single day, liquidated damages are payable in respect of the failure to achieve Completion of more than one Portion, then the liquidated damages for each Portion will be aggregated and the total payable for that day.

(c) The parties:

(i) agree that the amount of liquidated damages provided for in Schedule 1 constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Principal as a result of Completion of the Works or a Portion not occurring on or before the relevant Date for Completion;
(ii) desire to avoid the difficulties of proving damages in connection with such failure and agree that the liquidated damages payable by the Contractor in accordance with clause 12.7(a) are reasonable and do not constitute nor are they intended to be a penalty; and
(iii) agree that the amount of liquidated damages payable by the Contractor under clause 12.7(a) will be recoverable from the Contractor as a debt immediately due and payable to the Principal.

(d) The Contractor:

(i) acknowledges that the liquidated damages referred to in clause 12.7(a) do not include any allowances for any liability of the Principal to Other Contractors; and
(ii) must indemnify the Principal against any Claim that the Principal must pay to any Other Contractor as a result of a breach of clause 10.1 by the Contractor.

(e) 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 as a result of the Contractor failing to achieve Completion by the Date for 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.

(f) The Contractor's aggregate liability under clauses 12.7(a), 12.7(d)(ii), 12.7(e) and under clause 3 of Schedule 26 is limited to the amount set out in Schedule 1.

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) The Principal's Representative and the Contractor's Representative must, within 28 days before the date the Principal's Representative expects Final Completion to occur, but no earlier than 28 days before the end of the latest Defect 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 by means of a Contractor's Certificate of Final Completion in accordance with Schedule 8. Thereafter, 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 21 days of receipt of a notice under clause 12.8(d), or of receipt of a notice under clause 12.8(f), issue a notice to the Principal and the Contractor:

(i) if satisfied that Final Completion has been achieved, stating the date on which the Principal's Representative determines Final Completion was achieved; or

(ii) if not satisfied that Final Completion has been achieved:

(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 12.3(e) and this clause 12.8(f) will reapply.

12.9 Effect of Notice of Completion or Final Completion

A notice issued under clauses 12.3(d)(i) or 12.8(e)(i) will not:

(a) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this Deed;

(b) be taken as an admission or evidence that the Works or the Portion complies with the requirements of this Deed; or

(c) prejudice any rights or powers of the Principal or the Principal's Representative.

12.10 Deferral of Completion Requirement

The Principal's Representative may, in its sole discretion, defer the need for the Contractor to satisfy any specified elements of the requirements of Completion and issue a notice of Completion of the Works or a Portion. In that event, the Principal's Representative will expressly endorse the notice of Completion with details of the specific elements deferred and the Contractor must satisfy or achieve those elements within the time directed by the Principal's Representative.

13. Care of the Work, Risks and Insurance
14. Default or Insolvency

14.1 Default

(a) If the Contractor commits a breach of contract referred to below, the Principal may give the Contractor a written notice.

The breaches by the Contractor to which this clause applies are:

(i) not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this Deed, in breach of clause 10.1;

(ii) suspension of work, or failing to proceed with the Contractor's Activities with due expedition and without delay, in breach of clause 10.1;

(iii) failing to provide the security, in breach of clause 2.8;

(iv) failing to provide evidence of insurance, in breach of clause 13;

(v) failing to use the materials or standards of workmanship required by this Deed, in breach of clause 4.1;

(vi) not complying with any direction of the Principal's Representative made in accordance with this Deed, in breach of clause 9.1;

(vii) not complying with the requirements of this Deed regarding the Contract Management Plan in a material respect;

(viii) not complying with its obligations under clause A7 of Annexure A to the TCA Standard Requirements Prelude or the TCA Standard Requirements TSR-S1;

(ix) not complying with its environmental obligations under this Deed or the TCA Standard Requirements;

(x) any other failure to comply with a material obligation under this Deed; or
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(xi) 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.

(b) If the Principal fails to make a payment to the Contractor in breach of clause 11.5 of an amount greater than $10,000,000 (excluding any amount the Principal may set off under clause 16.12), the Contractor may give the Principal a written notice.

14.2 Contents of Notice

A written notice under clause 14.1 or clause 14.3(c) must:

(a) state that it is a notice under clause 14.1 or clause 14.3(c) (as the case may be);

(b) specify the alleged breach;

(c) require the party in breach 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 party in breach must remedy the breach or make other arrangements satisfactory to the non-breaching party (which time must not be less than 21 clear days after the notice is given).

14.3 Rights following Notice

(a) Upon giving a notice under clause 14.1(a), the Principal may suspend payments to the Contractor until the date upon which the Contractor remedies the breach or makes arrangements satisfactory to the Principal.

(b) If, by the time specified in a notice under clause 14.1(a), the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor:

(i) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or

(ii) terminate this Deed.

(c) If, by the time specified in a notice under clause 14.1(b), the Principal fails to remedy the breach or make arrangements satisfactory to the Contractor, the Contractor may give the Principal a second written notice.

(d) If, by the time specified in the notice under clause 14.3(c), the Principal fails to remedy the breach or make arrangements satisfactory to the Contractor, the Contractor may, by notice in writing to the Principal, terminate this Deed.
14.4 Immediate Termination or Immediate Take Out

If:

(a) an Insolvency Event occurs:
   (i) to the Contractor;
   (ii) where the Contractor comprises more than one person, any one of those persons; or
   (iii) to a person specified in Schedule 1;
(b) the Contractor is in fundamental breach of this Deed as set out in clause 2.9(b);
(c) 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 2.16(d);
(d) the Contractor's liability under clauses 12.7(a), 12.7(d)(ii), or 12.7(e) reaches or exceeds the amount to which its aggregate liability is limited under clause 12.7(f),

then, whether or not the Contractor is then in breach of this Deed, the Principal may, without giving a notice under clause 14.2, exercise the right under clauses 14.3(b)(i) or 14.3(b)(ii).

14.5 Principal's Common Rights After Take-Out or Termination

If:

(a) the Principal:
   (i) exercises its rights under clause 14.3(b)(i); or
   (ii) terminates this Deed under clauses 14.3(b)(ii), 14.4 or 14.9;
(b) the Contractor repudiates this Deed and the Principal otherwise terminates this Deed; or
(c) this Deed 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; and
   (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
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(B) undertake actions in the name of the Contractor,
for the purposes referred to in clause 14.5(d)(i);

(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 the Principal exercises its rights under clauses 14.3(b)(i) or 14.3(b)(ii) (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 Deed; 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;

(iii) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site 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.

14.6 Principal's Entitlements after Take-Out

(a) If the Principal exercises the right under clause 14.3(b)(i), 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(b)(i) 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) 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 Parties' Rights after Termination

Subject to clause 14.11, if the Principal terminates this Deed under clauses 14.3, 14.4 or 14.9, or if the Contractor repudiates this Deed and the Principal otherwise terminates this Deed:

(a) the Principal will:

(i) subject to clause 14.7(b), not be obliged to make any further payments to the Contractor, including any money that is the subject of a payment claim under clause 11.2 or a payment statement under clause 11.3;

(ii) be absolutely entitled to call, convert and have recourse to any unconditional undertaking held under clause 2.8; and

(iii) 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; and

(b) the Contractor will:

(i) for work carried out prior to the date of termination, be entitled to an amount (determined by the Principal's Representative when the Principal has completed the work) that would have been payable if:

(A) this Deed had not been terminated; and
14.8 Contractor’s Rights after Repudiation or Wrongful Termination

(a) If the Principal:

(i) repudiates this Deed and the Contractor terminates this Deed; 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 Deed 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 Deed.

14.9 Termination for Convenience

Without prejudice to any of the Principal’s other rights or entitlements or powers under this Deed, the Principal may:

(a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Deed 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 Works either itself or by engaging Other Contractors.

14.10 Payment with Termination under Clause 14.9

If the Principal terminates this Deed 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 Deed 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 sub-paragraph (a)(i); and

(B) title in the plant and materials vests in the Principal upon payment;

(iii) the reasonable cost of removing from the Site 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 Schedule 1, for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs (a)(ii), (a)(iii) and (a)(iv);

(b) must take all steps possible to mitigate the costs referred to in sub-paragraphs (a)(ii) and (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 2.8 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 Deed 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 Deed other than for the amount payable under this clause 14.10.

This clause 14.10 will survive the termination of this Deed 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 Deed.

**14.12 Termination by Frustration**

If under the Law this Deed 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 clause 2.8 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 Deed 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 Deed other than for the amount payable under this clause 14.12.

Without limiting any other provision of this Deed, this clause 14.12 will survive the frustration of this Deed.

**14.13 Codification of Contractor's Entitlements**

This clause 14 is an exhaustive code of the Contractor's rights in connection with any termination and the Contractor:

(a) cannot otherwise terminate, rescind or treat this Deed as repudiated;

(b) waives all rights at Law to terminate, rescind or treat this Deed as repudiated, otherwise than in accordance with this clause 14.

**15. Disputes**

**15.1 Notice of Dispute**

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative 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 Deed, or either party's conduct before the date of this Deed (Dispute), the Dispute must be determined in accordance with the procedure set out in this clause 15.

Where such a Dispute arises, either party must give a notice in writing to the Principal's Representative and the other party specifying:

(a) the Dispute;
(b) particulars of the party's reasons for being dissatisfied; and
(c) the position which the party believes is correct,

(Dispute Notice).

Where a Dispute Notice is given by the Contractor, if the Contractor fails to provide sufficient particulars of the Dispute to enable the Principal's Representative to properly consider the matter, then within 21 days after receipt of the Dispute Notice the Principal's Representative may request the Contractor to provide further particulars of the Dispute.

If within 14 days after the request the Contractor has not furnished the particulars requested by the Principal's Representative, and where the Dispute relates to a direction of the Principal's Representative under one of the clauses referred to in Schedule 1, then, whether the direction is by the Principal's Representative or by a person appointed pursuant to clause 9.3(a)(i):

(d) the Contractor will be deemed to have accepted the Principal's Representative's direction as final and binding and the direction will not be capable of being challenged, opened up or reviewed in any forum; and
(e) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.

15.2 Time for Submitting Dispute Notice Concerning Principal's Representative's Direction

The parties acknowledge that any direction by the Principal's Representative under one of the clauses referred to in Schedule 1 is an interim position only and that, without limiting the rights of the Principal's Representative under clauses 11.3 or 11.15, either party may seek to have any such direction opened up, reviewed, decided and substituted pursuant to this clause 15 by giving a Dispute Notice in accordance with clause 15.1.

The Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any such 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 Dispute Notice in accordance with clause 15.1.
If the Contractor wishes to have a direction by the Principal's Representative under one of the clauses referred to in Schedule 1 opened up, reviewed, decided and substituted, then, whether the direction is by the Principal's Representative or by a person appointed pursuant to clause 9.3(a)(i), the Contractor must give a Dispute Notice in accordance with clause 15.1 within 14 days after the date of the direction.

If the Contractor fails to give such a Dispute Notice within 14 days after the date of the direction:

(a) the direction will be final and binding and will not be capable of being challenged, opened up or reviewed in any forum; and

(b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.

15.3 Determination of the Principal's Representative

Subject to the final paragraph of this clause 15.3, the determination of the Principal's Representative in respect of a Dispute Notice in respect of a direction by the Principal's Representative under one of the clauses referred to in Schedule 1:

(a) must be in writing;

(b) must be given within 21 days after a Dispute Notice is given in accordance with clause 15.1 or, where further particulars have been requested under clause 15.1, within 21 days after the further particulars have been provided to the Principal's Representative;

(c) will be substituted for the relevant direction the subject of the Dispute Notice, unless a party gives to the Principal's Representative and the other party a DRB Referral Notice in accordance with clause 15.4; and

(d) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

If the Principal's Representative fails to make a determination as required by this clause 15.3 the direction the subject of the Dispute Notice will be deemed to be confirmed by the Principal's Representative.

15.4 Referral to Dispute Resolution Board

(a) A Dispute is automatically referred to the Dispute Resolution Board on the date which is determined as follows (unless before that date the party whose Dispute Notice identified the Dispute confirms in writing to the other party that the Dispute has been resolved):

(i) where the relevant Dispute relates to a direction of the Principal's Representative under one of the clauses referred to in Schedule 1:
(A) the date which is 14 days after the date of receipt of the Principal's Representative's determination under clause 15.3; or

(B) where the Principal's Representative does not make a determination under clause 15.3, the date which is 35 days after a Dispute Notice is given in accordance with clause 15.1, or where further particulars have been requested under clause 15.1, the date which is 35 days after the further particulars have been provided to the Principal's Representative; or

(ii) where the Dispute Notice does not relate to a direction of the Principal's Representative under one of the clauses referred to in Schedule 1, the date which is 14 days after the Dispute Notice is given in accordance with clause 15.1,

(b) Independently of the automatic referral mechanism in clause 15.4(a) the Principal may refer a Dispute to the Dispute Resolution Board within 60 days after the date of a Dispute Notice given by either party.

(c) The Principal will notify the Contractor, the Principal's Representative and the Dispute Resolution Board of any referral under subclauses (a) or (b) (DRB Referral Notice).

15.5 Obtaining Dispute Resolution Board's Decision

(a) On or before the date which is three weeks after the Commencement Date:

(i) the Principal and the Contractor authorise their nominated members to select the 3rd member of the Dispute Resolution Board and insert all information into the DRB Agreement to make it ready for signing;

(ii) the Dispute Resolution Board, must be constituted and each member of the Dispute Resolution Board, the Principal and the Contractor must sign the DRB Agreement;

(iii) the Principal and the Contractor must do anything necessary or desirable to ready the DRB Agreement for signing and have it signed by them and each member of the Dispute Resolution Board;

(iv) if the Contractor fails to take a step contemplated by clauses 15.5(a)(i) to 15.5(a)(iii), the Contractor 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 this clause 15.5(a).

In performing its functions the Dispute Resolution Board must comply with this Deed and the DRB Agreement.

(b) If a Dispute is referred to the Dispute Resolution Board under clause 15.4, the Dispute Resolution Board will be deemed to have received such reference on the date when the chairperson of the Dispute Resolution Board receives the relevant DRB Referral Notice.

(c) Both parties must promptly make available to the Dispute Resolution Board all such additional information, access to the Site, and appropriate facilities, as the Dispute Resolution Board may require for the purposes of making a decision on the Dispute.

(d) The Dispute Resolution Board will be deemed to be not acting as arbitrators.

(e) Notwithstanding anything else, to the extent permitted by Law, the Dispute Resolution Board will have no power to apply or have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

(f) Within 35 days after receiving the relevant DRB Referral Notice, or within such other period as may be proposed by the Dispute Resolution Board and approved by both parties, the Dispute Resolution Board must give its decision in writing, which will be reasoned and must state that it is given under this clause 15.5(f). The decision will be binding on both parties, who must give effect to it unless and until it is revised in an amicable settlement or an arbitral award as described below.

(g) If either party is dissatisfied with the Dispute Resolution Board's decision then either party may, within 14 days after receiving the decision, give notice to the other party of its dissatisfaction.

If the Dispute Resolution Board fails to give its decision within the period of 35 days (or as otherwise approved) after receiving a DRB Referral Notice under clause 15.4, then either party may, within 14 days after this period has expired, give notice to the other party of its dissatisfaction (Notice of Dissatisfaction).

In either event, the Notice of Dissatisfaction must state that it is given under this clause 15.5(g), and must set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in clause 15.7 and clause 15.8, neither party will be entitled to commence arbitration of a Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 15.5(g).

(h) If the Dispute Resolution Board has given its decision as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 15.5(g) within 14 days after it received the Dispute Resolution Board's decision, then the decision will become final and binding upon both parties.
(i) Once a decision of the Dispute Resolution Board has become final and binding under clause 15.5(h), neither party will be entitled to challenge the decision on the basis that a member of the Dispute Resolution Board did not, at the time of making the decision, meet the criteria referred to in clause 15.9(c).

15.6 Amicable Settlement

Where a Notice of Dissatisfaction has been given under clause 15.5(g), the parties may attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise, if no amicable settlement has been reached by the 14th day after the day on which the Notice of Dissatisfaction was given, the Dispute will be taken to have been referred to arbitration under clause 15.11.

15.7 Failure to Comply with Dispute Resolution Board's Decision

If in respect of a decision of the Dispute Resolution Board a party fails to comply with the decision, then the other party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under clause 15.11. In these circumstances clauses 15.1-15.5 will not apply to this reference.

15.8 Expiry of Dispute Resolution Board's Appointment

If a Dispute arises and there is no Dispute Resolution Board in place, whether by reason of the expiry of the Dispute Resolution Board's appointment or otherwise:

(a) clause 15.4 will still apply, but if the Dispute is not resolved within the relevant period referred to in clause 15.4(a), the Dispute will not be referred to the Dispute Resolution Board;

(b) clauses 15.5, 15.6 and 15.7 will not apply; and

(c) the Dispute may be referred directly to arbitration under clause 15.11.

15.9 Replacement of Dispute Resolution Board Member

(a) If a member of the Dispute Resolution Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:

(i) if that member is the chairperson, the remaining two members will appoint a replacement member; and

(ii) if that member is not the chairperson:

(A) if the parties have previously agreed upon one or more reserve members for the Dispute Resolution Board, and one or more such members are willing and able to act on the Dispute Resolution Board, the party that nominated the member to be replaced will appoint one of the reserve members to the Dispute Resolution Board; or
if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Resolution Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.

If, within 42 days of a member declining to act or being unable to act on the Dispute Resolution Board, the member has not been replaced by a person appointed in accordance with clause 15.9(a), either party may request the President of The Institute of Arbitrators and Mediators Australia to appoint a replacement member. This appointment will be final and conclusive.

Any appointment or nomination made under clause 15.9(a) or 15.9(b) must be made in accordance with the criteria set out in Schedule 29.

15.10 Termination of Dispute Resolution Board

The appointment of any member of the Dispute Resolution Board may be terminated by mutual agreement of both parties, but not by the Principal or the Contractor acting alone. Unless otherwise agreed by both parties, the Dispute Resolution Board will terminate upon the later of:

(a) the Dispute Resolution Board having made a decision in accordance with clause 15.5 in respect of all Disputes that were referred to it; or

(b) the expiration of the last Defects Rectification Period.

15.11 Arbitration

Any Dispute which is referred to arbitration will be conducted before a person to be:

(a) agreed between the parties; or

(b) failing agreement within 21 days after the Dispute has been referred to arbitration, appointed by the President for the time being of The Institute of Arbitrators and Mediators Australia.

To the extent that they are not inconsistent with this Deed, the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators and Mediators Australia will apply to the arbitration.

The seat of the arbitration will be Sydney, Australia.

The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of the Dispute Resolution Board under clause 15.5 that is not final and binding on the parties pursuant to clause 15.5(h).

Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).
15.12 Survive Termination

This clause 15 will survive the termination of this Deed.

15.13 Continuation of Work

Despite the existence of a Dispute between the parties this Deed, the Contractor must:

(a) continue to carry out the Contractor's Activities; and

(b) otherwise comply with its obligations under this Deed.

15.14 Urgent Relief

Nothing in this clause 15 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

15.15 Disputes under Third Party Agreements

(a) A Dispute under this Deed may be concerned with matters that also arise in respect of the respective rights and obligations of the Principal and a Third Party (a Common Dispute) including where the:

(i) Principal is in breach of a provision of this Deed to the extent such a breach is caused by a Third Party under its respective Third Party Agreement;

(ii) Principal is entitled to obtain remedies or benefits under a Third Party Agreement referenced to a Claim by the Contractor under this Deed;

(iii) Contractor has rights against the Principal under a warranty or indemnity or specific right of reimbursement or recovery in this Deed, and there is a corresponding warranty or indemnity or specific right of reimbursement or recovery in a Third Party Agreement;

(iv) Contractor has a Claim against the Principal and the Principal has a Claim against a Third Party based on the same or similar events or circumstances.

(b) In the event that there is a Common Dispute then:

(i) clauses 15.1 to 15.11 will not apply to the resolution of that Common Dispute;

(ii) the Contractor acknowledges and agrees that the purpose of this clause 15.15 is:

(A) to provide the Contractor with comparable remedies and entitlements in respect of Common Disputes, and to limit the Contractor's rights against the Principal in respect of Common Disputes by reference to the Principal's rights and entitlements under or in connection with Third Party Agreements; and
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(B) not to reduce or disentitle or otherwise affect the validity of any Claim by the Principal against a Third Party under, arising out of, or in connection with the respective Third Party Agreement.

(c) In respect of all Common Disputes:

(i) the Contractor's entitlement to receive compensation from the Principal, and the Principal's liability to pay compensation to the Contractor, will only arise at the time the relevant Common Dispute is resolved or determined;

(ii) if any compensation is payable by the Principal to the Contractor under this Deed in respect of a Common Dispute, the Contractor will have the same entitlement to recover compensation under this Deed as the Principal has to recover that compensation from a Third Party under the respective Third Party Agreement;

(iii) any rights the Contractor has against the Principal will not exceed the equivalent relief, benefit or payment to which the Principal is entitled under the relevant Third Party Agreement; and

(iv) the Principal will pass through to the Contractor the proportion of the damages or other form or relief to which the Principal is entitled:

(A) to the extent referable to the Contractor, including any liability, Claim or loss of the Contractor; and

(B) determined by reference to what is actually compensated or allowed by a Third Party under the respective Third Party Agreement.

(d) The Principal agrees to:

(i) request of the relevant Third Party that the Contractor be permitted to directly make representations in respect of the Common Dispute;

(ii) if it is unable to obtain the Third Party's consent as contemplated under clause 15.15(d)(i), make on behalf of the Contractor whatever representations in respect of the Common Dispute that the Contractor reasonably requests; and

(iii) provide:

(A) regular updates to the Contractor; and

(B) whatever information and documents the Contractor reasonably requests,

as to the progress of the Common Dispute.

(e) The Principal's liability to pay the Contractor:
(i) is satisfied by payment to the Contractor in accordance with this clause 15.15; or

(ii) if the Third Party is not liable to the Principal, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the respective Third Party Agreement or otherwise), provided that:

(A) the Principal has complied with its obligations under this clause 15.15 with respect to recovery of the Principal’s and the Contractor’s entitlements from the Third Party; and

(B) all appeals from such determination have been exhausted.

(f) The Contractor agrees:

(i) to provide all documents, assistance, and cooperation reasonably requested by the Principal (and in the time requested by the Principal) in connection with the Common Dispute;

(ii) that where a Third Party Agreement contemplates:

(A) alternative dispute resolution (including arbitration and expert determination):

(1) a like process will apply to the Common Dispute between the parties; and

(2) the Contractor consents to the Common Dispute being heard together with (or consolidated with) that alternative dispute resolution process; and

(B) litigation, the Contractor consents to the Common Dispute being consolidated with (or heard together with) that litigation; and

(iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects the Contractor’s rights and obligations under this Deed.

(g) The Contractor’s entitlement to a remedy will not be reduced to the extent to which the Principal’s entitlements under a Third Party Agreement are reduced or extinguished due to the Principal’s breach or failure to comply with the Third Party Agreement or other act or omission (to the extent no caused by the Contractor).

(h) To the extent the Contractor has recovered compensation in respect of a Common Dispute under another provision of this Deed, then the Contractor is not entitled to the same compensation under this clause 15.15.

(i) Any payment to which the Contractor is entitled under this clause 15.15 shall be paid by the Principal to the Contractor within 20 Business Days from the
date of the settlement or determination of such entitlement under or in connection with the Third Party Agreement.

16. General

16.1 Notices

(a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number that a party notifies to the others).

(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 facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

16.2 Law and Jurisdiction

(a) This Deed is governed by and will be construed according to the Laws of New South Wales.

(b) Where clause 15.14 applies:

(i) the parties irrevocably submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State of New South Wales with respect to any proceedings that are permitted to be brought at any time under clause 15.14; and

(ii) the parties irrevocably waive any objection they may now or in the future have to the venue of any action or proceeding, and any claim they may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

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 Deed 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 Deed.

(b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
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(c) No waiver by the Principal of:
   (i) a breach of any term of this Deed; or
   (ii) any other failure by the Contractor to comply with a requirement of this Deed, 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 Deed or failure to comply with any other requirement of this Deed.

16.4 Assignment

The Contractor cannot assign its rights or liabilities under this Deed without the prior written consent of the Principal and except on such terms and conditions as are determined in writing by the Principal.

16.5 Entire Agreement

This Deed and the Deed of Disclaimer constitute 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 Deed and the Deed of Disclaimer; and

(b) any correspondence or other documents relating to the subject matter of this Deed and the Deed of Disclaimer that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed and the Deed of Disclaimer.

16.6 Joint and Several Liability

The obligations of the Contractor, if more than one person, under this Deed, 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 Deed) 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 Deed 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 Deed; or
16.8 Indemnities to Survive

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.

Nothing in this clause 16.8 prevents any other provision of this Deed, as a matter of interpretation also surviving the termination of this Deed.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed.

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 Deed and the performance of its obligations in respect of this Deed.

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 Deed and any information relating to the Contractor's Activities and any discussions concerning this Deed;

(ii) not use the information referred to in sub-paragraph (a)(i) except as necessary for the performance of the Contractor's Activities; and

(iii) ensure that each of its officers, employees and Subcontractors complies with the terms of sub-paragraphs (a)(i) and (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 or to an expert or other person appointed under this Deed or an agreed arbitrator.
(c) The Contractor must:
   (i) execute and submit to the Principal within 14 days of this Deed a Confidentiality Undertaking;
   (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); and
   (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability.

(e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under clause 16.11(d).

16.12 Right of Set-Off

The Principal may deduct from moneys otherwise due to the Contractor:
(a) any debt or other moneys due from the Contractor to the Principal; or
(b) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise, whether under this Deed or otherwise at Law.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 2.8.

16.13 Entire Contract

Despite any progress payments that may be made to the Contractor under clause 11.5, this Deed is an entire contract.

16.14 Principal May Act

(a) The Principal may, either itself or by a third party, perform an obligation under this Deed 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 Deed 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 Unlimited Discretion

(a) Except as expressly provided in this Deed (including in clause 16.15(c)) no procedural or substantive limitation (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this Deed.

(b) Without limiting clause 16.15(a):
   (i) except as expressly provided in this Deed (including in clause 16.15(c)) neither the Principal nor the Principal's Representative will be:
      (A) constrained in the manner in which it exercises, or
      (B) under any obligation to exercise,
      any discretion, power or entitlement conferred by this Deed because of the operation of any legal doctrine which in any way limits or otherwise affects the express words used in the provision of this Deed conferring the discretion, power or entitlement; and
   (ii) any approval or consent referred to in, or required under, this Deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) think fit, unless this Deed expressly provides otherwise.

(c) Nothing in this clause 16.15 will prevent the implication of a term into this Deed where the implication of the term is required to ensure that this Deed (or a part of this Deed) is not void or voidable due to uncertainty or any other legal principle.
16.16 No Partnership, Joint Venture or Other Fiduciary Relationship

Nothing in this Deed will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

16.17 Process Agent

If the Contractor is a foreign company (as defined in the Corporations Act 2001 (Cth)), 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 Deed. 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.

16.18 Indemnity

The Contractor must indemnify the Principal against:

(a) any liability to or claim by any other person (including any Third Party); and

(b) all costs, expenses, losses, damages, fines and penalties suffered or incurred by the Principal,

arising out of, or in any way connected with:

(c) the Contractor's breach of a term of this Deed;

(d) any obligation under any Third Party Agreement (including Draft Third Party Agreements and executed Third Party Agreements) which the Contractor is obliged to perform under clause 2.12(a)(ii);

(e) the Contractor's Activities during a Track Possession or Power Isolation; or

(f) any Defect or the consequences of a Defect,

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, an Other Contractor or an agent of the Principal may have contributed to the liability claim, costs losses or damages.

16.19 Variations

Subject to clause 2.12(b), this Deed may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

16.20 Provisions Limiting or Excluding Liability

Any provision of this Deed which seeks to limit or exclude a liability of the Principal or the Contractor is to be construed as doing so only to the extent permitted by Law.
16.27 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 Deed will be deemed to be governed by the provisions of this Deed 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 Deed 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 Deed.
16.28 Design Life

(a) The Contractor waives any and all rights it may have under section 14 of the Limitation Act 1969 (NSW) and section 109ZK of the Environmental Planning and Assessment Act 1979 (NSW) in respect of the design lives of the asset elements referred to in clause 2.8 of the Works Brief where those design lives are for periods longer than those provided for in those Acts.

(b) If the waiver referred to in clause 16.28(a) is held to be without effect or otherwise unenforceable, or if it is severed from this Deed, the Contractor shall indemnify and keep the Principal indemnified at all times from and against all costs that the Principal may suffer or incur out of the Principal's loss of the benefit of the waiver.

(c) The indemnity in clause 16.28(b) is to continue and remain in full force and effect until the expiration of the last of the design lives referred to in clause 2.8 of the Works Brief.

(d) The parties agree that any action by the Principal on the indemnity in clause 16.28(b) is not a "building action" for the purposes of section 109ZI of the Environmental Planning and Assessment Act 1979 (NSW).

16.29 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

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 Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Variation;

(b) within the time specified in Schedule 1 of giving the notice under paragraph (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 Deed 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 Deed by the Principal) under, arising out of, or in any way in connection with, this Deed, the Contractor's Activities or the Works, including anything in respect of which:

(a) it is otherwise given an express entitlement under this Deed; or
(b) this Deed 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 the notice required by clause 17.3(a) and a Claim in accordance with clause 17.3(c).

17.3 Prescribed Notices

(a) Any written notice referred to in clauses 17.1 and 17.2 must:
   (i) be provided not later than the time specified in Schedule 1 after the first occurrence of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
   (ii) expressly specify:
      (A) that it 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 Deed 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 must:
   (i) be provided not later than the time specified in Schedule 1 of giving the written notice under clause 17.3(a):
   (ii) include:
17.4 Submission of Claims

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.

If within 28 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 28th day.

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 28 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(g), 15.1, 15.2, 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 Deed 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 Deed 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 Deed, including the Contractor's Activities or the Works, the party providing consideration for the supply 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) Subject to clause 18(e), 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 Deed 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 Deed, 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) 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 Deed.

(g) If the GST payable in relation to a supply made by the Supplier under this Deed 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).

(h) In this clause 18:
(i) terms defined in GST Legislation have the meaning given to them in GST Legislation; and

(ii) 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.