

## Schedules

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## Auburn Stabling Project (Stage 1)

Design and Construction Contract  
(ASP-01-D&C)

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## 1. Contract Particulars

<b>Commencement Date:</b> (Clauses 1.1 and 1.7)	The date of execution by the last party to execute the Contract
<b>Conditions Precedent to Completion:</b> (Clause 1.1)	Where relevant, all things required under any Third Party Agreement.
<b>Contractor:</b> (Clause 1.1)	Laing O'Rourke Australia Construction Pty Ltd (ACN 112 099 000) Level 4, Innovation Place 100 Arthur Street North Sydney, NSW 2060
<b>Date for Completion:</b> (Clause 1.1)	Portion 1 – 31 August 2012 Portion 2 – 31 August 2012 Portion 3 – 15 December 2013
<b>Defects Rectification Period:</b> (Clause 1.1)	The period commencing from the Date of Completion and expiring 12 months after the Date of Completion.
<b>Environmental Management Representative:</b> (Clause 1.1)	Gillian Lehn, Quality, Environment, Health & Safety Consultant AQUAS Level 7, 116 Miller Street, North Sydney NSW 2060
<b>Other Excepted Risk:</b> (Clause 1.1)	A negligent act or omission of the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor (other than an Interface Contractor).
<b>Is a First Hundred Day Program required?</b> (Clause 1.1)	Yes

**Interface Contractors:**  
(Clause 1.1)

- (a) RailCorp
- (b) RailCorp Program Alliance (Novo Rail)
- (c) Contractors performing Interface Work as identified in the Works Brief including in Appendix C
- (d) Parsons Brinckerhoff Signalling Engineering Team (SET)

Nominated  
Subcontractor  
and  
Nominated  
Subcontract  
Work:  
(Clauses 1.1  
and  
2.2(b)(i)(B))

Nominated Subcontractors			
Equipment Group	Equipment Item	RailCorp Specific Requirements (additional to Australian Standards + RailCorp Standards)	Nominated Subcontractors
Turnout Steel Components	Standard Crossing	ESC 250 Turnouts and Special Trackwork	VAE or PRE or Flowserve (TKL) or Congifer
	CV or Manganese Crossings	ESC 250 Turnouts and Special Trackwork	
	Monobloc In Bearer	ESC 250 Turnouts and Special Trackwork	
	Turnouts	ESC 250 Turnouts and Special Trackwork	
	Catchpoints	ESC 250 Turnouts and Special Trackwork	
Sleepers	HD Concrete Sleepers (FASTCLIP)		Rocla
	HD Concrete Sleepers (Pandrol'e')		
	MD Concrete Sleepers (FASTCLIP)		
	MD Concrete Sleepers (Pandrol'e')		
	Concrete Bearers		
	Timber		Taree Boradze
Overhead Wiring	Catenary		Olex
	Contact		Metal Manufactures
	Droppers (sets) and Inspan Feeders		RailCorp (Mfg by RailCorp REC)
Signalling Equipment	SSI / GEC		Westinghouse or Alstom (United Group)
	Track Circuits		Jeumont Schneider or ML or CSEE
	Signal Cupboards	Jeumont Schneider Track Circuits - SC07420000EQ (June 1999)	Marciano Industries or Kevin Webber Sheetmetal or KG Sheetmetal
	Relays		Westinghouse
	Microlock		Union Switch (Ansaldo)
Track Jewellery	Rail Welding Kits - Plain line		Railtech or Thermit
	Rail Welding Kits - T/O & C/P		
	E Clips		Pandrol

	FishBolts		Greg Sewell Forgings
	Fishplates		Westray Engineering
	Screw Spikes		Delkor Rail
	Lock Spikes		Pandrol
Cables	Low Smoke Halogen Free Cables		Olex
	33kv	Testing of HV Cables - EP20 00 00 20SP	Olex or Pirelli
	11kv		
Transformers/ Switchgear/ Electrical	1500Volt DC Circuit Breakers		Mitsubishi Australia
	Outdoor DC Reactor		Transformer Manufacturing Company
	11kv Indoor Switchgear		schneider sm6
	11kv/415v Padmount Substations	Correspondance DI-CP-00595 (24/1/07); Electrical Engineering Standards - EP 97 00 00 01 SP; EP 16 00 00 02 SP; EP 01 00 00 03 SP.	Schneider
	1500V DC Isolator		Australian Rail Technology
	Common Equipment Panel		United Group
	Harmonic Filter - Truck Mounted		UGL
	Trackside Isolator		Australian Rail Technology
	SCADA RTU		Foxboro (invensys) or Logica CMG or Kingfisher by CSE Semaphore Inc
	Battery Charger		Cordex by Complete power solutions
	Batteries		Hoppecke or Battery Energy or Sonnenschein
	DC Switchboard		Red Spot
	Rail-Earth Contactor		United
Rail	60kg Head Hardened Rail (meters)		Onesteel
	60kg Plain Carbon		
	Glued Insulated Joints		Bathurst Rail Fab. Centre
Ballast	Truck Quantities (m3)		Boral
	Train Quantities		RailCorp Quarries

**Original Contract Price:**  
(Clause 1.1)

**Portions:**  
(Clause 1.1)

Portion 1 – AFC Design Documentation for Track Design.

Portion 2 – AFC Design Documentation for Earthing and  
Bonding Design.

Portion 3 – The balance of the Works.

**Principal's Representative:**  
(Clause 1.1)

Anand Thomas, Deputy Executive Program Director,  
Clearways

**Provisional Sum Work:**  
(Clauses 1.1, and 7.3 )

No

**Third Party Agreements:**  
(Clauses 1.1 and 2.12(b))

Draft:

(a) Interface Agreement

**Working days:**  
(Clause 1.2(m))

Monday to Saturday excluding public holidays in Sydney  
and rostered days off, plus any day included in a Track  
Possession.

**Order of Precedence:**  
(Clause 1.4(b))

- (a) General Conditions and the Schedules; then
- (b) the TCA Standard Requirements; then
- (c) the Works Brief; then
- (d) the Exhibits not specifically stated in (b) or (c).

**Amount for approval of Subcontracts:**  
(Clause 2.2(b)(iii)(B))

**Subcontractors required to effect  
professional indemnity insurance:**  
(Clause 2.2(c))

Aurecon

Arup

All other Subcontractors carrying out design work

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Minimum amount of professional indemnity insurance required:  
(Clause 2.2(c)(i)(B))

<i>Aurecon</i>	\$20 million
<i>Arup</i>	\$20 million
<i>All other Subcontractors carrying out design work</i>	\$5 million

Minimum period prior to expiry of professional indemnity insurance  
(Clause 2.2(c)(i)(D))

12 years

Subcontract prices for which security of payment provisions are required:  
(Clause 2.2(f)(i))

Subcontracts with an initial price of \$25,000 or greater.

Subcontractors required to execute deed in form of Schedule 23:  
(Clause 2.2(f)(iv)(A))

Subcontracts with an initial price of \$500,000 or greater.

(Clause 2.2(f)(iv)(B))

All Subcontracts and consultant engagements which include any element of design



Warranties required from  
Subcontractors:  
(Clause 2.2(g))

Item	Scope of Warranty	Warranty Period
<b>BUILDING WORKS</b>		
Profiled metal roof sheeting and flashings	against corrosion / perforation and delamination of finish	12 years
Colorbond Custom ORB roof sheeting	integrity and non-yellowing	12 years
Train Driver Access Platforms	against corrosion / perforation or degradation of the finish	10 years
Paint finishes and coatings to metals	Adhesion, film integrity and colour retention	15 years
Clear coatings and graffiti resistant coatings on timber, concrete and paving	against corrosion / perforation and delamination of finish	10 years
Metal ceilings / soffit systems	against corrosion / perforation and delamination of finish	10 years
Villaboard wall cladding panels	panel integrity, adhesion of finish to substrate, colour and finish retention	10 years
Laminate finishes	against delamination and colour retention	7 years
Metal louvres	against corrosion / perforation of the sheeting and delamination of the finish from	15 years

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	substrate	
Concrete pavers		20 years
Carpet finishes	bonding and colour fastness	5 years
Sheet flooring finishes	integrity and colour fastness	12 years
<b>CIVIL WORKS</b>		
Sealants, expansion joints		12 years
Waterproof membranes		10 years
<b>SIGNALLING</b>		
Cables		10 years
Signals, Main Line Signals, LED type		2 years
Subsidiary Signals - Dwarf Colour Light, LED Type		2 years
Warning Lights		2 years
Train Stops (2 years from supply, 1 year from service)		2 years
Points (2 years from supply, 1 year from service)		2 years
Interlockings		2 years
Impedance Bonds		2 years
Relays		2 years
Ethernet Switches		2 years
Signalling Power		2 years

supplies, Transformers, UPS		
Other signalling components and compressed air components		2 years
<b>ELECTRICAL</b>		
Photovoltaic cells		15 years
Uninterruptable power supply including batteries		10 years
<b>HYDRAULIC</b>		
Sanitary fixtures		5 years
<b>FIRE PROTECTION</b>		
Smoke and thermal detectors		5 years
<b>OHW Structures</b>		
Hot dip galvanisation of OHW structures		20 years

**Parent Company Guarantor:**  
(Clause 2.8(g))

Laing O'Rourke Australia Pty Limited (ACN 111 023 431)  
Level 4, Innovation Place  
100 Arthur Street  
North Sydney, NSW 2060

**Period after notice for inspection of  
Contemporaneous Work:**  
(Clause 2.11(a))

14 days

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**Working hours and working days:**  
(Clause 2.17)

The Contractor shall only undertake construction activities associated with the Works and the Temporary Works during the following hours:

- (a) 7.00am to 6.00pm, Mondays to Fridays, inclusive;
- (b) 8.00am to 1.00pm, Saturdays; and
- (c) at no time on Sundays or public holidays.

**Site access preconditions:**  
(Clause 3.1(c)(ii)(E))

Nil

**Rates for determining increase in Contract Sum for failure to give access:**  
(Clause 3.1(e)(ii))

Not used

**Number of copies of documentation and Design Documentation:**  
(Clauses 2.13(b)(vii), 3.7(d)(iii), 3.9(d)(ii), 3.10(b), 5.6, 9.14(p) and 9.17(f))

1 printed original, 3 printed copies and an electronic version on CD (in both pdf and native formats).

**Percentages to be applied to Variation and daywork costs:**  
(Clause 6.4 and 6.7)

Clause No	Description	Percentage
6.4(b)(i)(C)(1), 6.4(b)(ii)(A)(1)	for Overhead Costs and profit where there is an increase in the Contract Sum due to a Variation	
6.4(b)(i)(C)(2), 6.4(b)(ii)(A)(2)	for off-site overheads described in Schedule 33.2 and profit where there is a decrease in the Contract Sum due to a Variation	
6.7	for Overhead Costs and profit where works are to be carried out as dayworks	

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Valuation of Variation in respect of the  
provision of spare parts:

(Clause 6.4(b)(iii))

Percentage for off-site overheads  
described in clause 33.2 of Schedule  
33 and profit for Provisional Sum  
Work:

(Clause 7.3(b)(ii)(B))

New Defects Rectification Period:  
(Clause 8.6)

24 months, unless completion of the rectification of the  
Defect occurs more than 24 months before the scheduled  
expiry of the relevant Defects Rectification Period, in which  
case there will be no extension of the relevant Defects  
Rectification Period.

Contractor's Personnel:  
(Clauses 9.5(a)(i) and 9.5(b)(i))

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**Full-time dedicated positions:**

(Clause 9.5(b)(iii))

**Is the Contractor required to submit a** Yes

**Project Training Management Plan:**

(Clause 9.17(c))

**Causes of delay entitling Contractor to  
claim extension of time:**

(Clause 10.7(a)(ii))

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**Rates to be used in determining delay damages:** Not used  
(Clause 10.13)

**Percentage for compression:**  
(Clause 10.18(b)(i)(B))

**Maximum amount payable under clause 11.4:**  
(Clause 11.4(d))

**Liquidated damages:**  
(Clause 12.7)

Limit of liability under indemnity for  
late return of Track Possessions and  
liquidated damages for delay:

(Clause 12.7(f))

Principal's insurance:

(Clause 13.4)

Works Insurance, General Liability Insurance and Public  
Liability Insurance on the terms of the policies which  
appear as Exhibit D to the Deed.

Amount of Contractor's insurance:

(Clause 13.6)

- **Workers compensation insurance**  
as required by Law
- **Construction Plant insurance**  
current market full replacement value
- **Asbestos liability insurance**  
\$10,000,000 for any one occurrence and  
\$20,000,000 in the aggregate
- **Professional indemnity insurance**  
\$20,000,000 per occurrence  
\$1,530,000 maximum excess
- **Motor vehicle insurance**  
\$20,000,000
- **Marine transit insurance**  
cost, insurance, freight value plus 10% to cover the  
risk of loss or damage to each shipment
- **Insurance required by Law or Change in Law**  
as required by Law
- **Insurance of materials fabricated overseas**  
replacement value

Period for Professional Indemnity

Insurance:

(Clause 13.8(d))

12 years

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**Person in Insolvency Event:**  
(Clause 14.4(a)(iii))

Laing O'Rourke Australia Pty Limited (ACN 111 023 431)  
Level 4, Innovation Place  
100 Arthur Street  
North Sydney, NSW 2060

**Amount for termination for  
convenience:**  
(Clause 14.10(a)(v))

**Clauses in respect of which directions  
of a Principal's Representative are  
subject of a Dispute**  
(Clauses 15.1, 15.2, 15.3 and 15.4(a))

2.3(g)(iii), 2.11(e), 3.1(e)(ii), 3.8 (final paragraph), 6.4, 6.7,  
8.4, 8.5, 9.14(d)(iii), 10.10, 10.11, 10.13, 10.14, 10.15,  
10.18(b), 11.3, 11.15, 12.3(b), 12.3(d), 12.8(c), 12.8(e),  
14.6(b), 14.10, 14.12(a)

**Addresses:**  
(Clause 16.1(a))

**Principal:** Level 5, Tower A, Zenith Centre,  
821 Pacific Highway,  
Chatswood NSW 2067;  
Fax: 02 9200-0290

**Principal's  
Representative:** Level 5, Tower A, Zenith Centre,  
821 Pacific Highway,  
Chatswood NSW 2067;  
Fax: 02 9200-0290

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

**Time for giving notices:**  
(Clauses 17.1(a) and 17.3(a))

14 days

**Time for written Claims:**  
(Clauses 17.1(b) and 17.3(c))

28 days

### 3. Temporary Works

(Clause 3.2)

#### 3.1 Temporary Works required for the Site

The Contractor must provide, maintain and remove all the Temporary Works required to deliver the Works, including, the Temporary Works set out in this Schedule 3.

Purposes	Description of Part of Temporary Works	Location
Site Compound Establishment	Establishment of the Site, site compounds, perimeter and other fencing as required by this Schedule 3 including <ul style="list-style-type: none"> <li>(a) provision of all amenities for the Contractor's employees and Subcontractors;</li> <li>(b) provision of all site office facilities for the Principal in accordance with clause 3.3 of this Schedule 3; and</li> <li>(c) connection of all required Services (including utilities, water, power, sewer, telephone).</li> </ul>	Within the Site.
Fencing Type AA	1.8 m high chainwire fencing with a design life of at least seven (7) years and sufficiently robust to prevent unauthorised access with a minimum of two (2) layers of blue shade cloth (Pantone/PMS 281) (as approved by the Principal's Representative) to provide a solid visual screen.	As identified on the Site Drawings where the Contractor has not installed permanent fencing required by the Principal's Design.
Fencing Type BB	Temporary fence with height and construction sufficient to prevent unauthorised access and provide security.	As identified on the Site Drawings where the Contractor has not installed permanent fencing required by the Principal's Design.
Fencing Type CC	Installation of safety barrier mesh fencing 1.8m high (orange) or other fence that complies with RailCorp Standard G 8001. This type of fencing must be electrically isolated in accordance with RailCorp requirements.	As identified on the Site Drawings where the Contractor has not installed permanent fencing required by the Principal's Design.  The face of this fencing type is to be located a

Purposes	Description of Part of Temporary Works	Location
		minimum of 3m from the closest rail.
Fencing Type EF	Fencing existing on the Site at the Commencement Date altered as required by the Contractor to ensure security of the Site.	As identified on the Site Drawings where the Contractor has not installed permanent fencing required by the Principal's Design.
General Site Access	Site access provisions during construction including: (a) temporary sealed roads for vehicular access; (b) erection of temporary signage; (c) emergency vehicle access; and (d) all associated environmental controls.	All parts of the Site where vehicle and other access is required, including for Other Contractors.
Traffic Management	All vehicle and pedestrian traffic management and coordination arrangements during construction including: (a) temporary roadworks, and all associated temporary fencing, drainage, flood control, silt/chemical traps and related works; (b) temporary pavement markings; (c) temporary signage; (d) temporary traffic signals; (e) temporary lighting; (f) temporary roadside furniture, including safety barriers for pedestrian safety; (g) for public events; and (h) any other temporary provisions required to comply with the Traffic Management Plan.	All places near Site access points and where the Contractor's Activities and Other Contractor's work affect normal traffic and pedestrian movements.
Service Diversions	Temporary protection and support of, or adjustments to, Services affected by, or at reasonable risk of being affected by the Contractor's Activities.	All locations where Services are affected by, or at reasonable risk of being affected by, the Contractor's Activities.
Wash Bays	Installation and operation of wheel wash bays.	All vehicle access points to and from the Site.
Site Management	Site management provisions during construction including:	The Site and Remote Sites.

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Purposes	Description of Part of Temporary Works	Location
	<ul style="list-style-type: none"> <li>(a) areas for storage of site materials and plant within the site compound area.</li> <li>(b) areas for component preparation within the site compound areas;</li> <li>(c) stockpile areas;</li> <li>(d) areas for disposal of rubbish and site debris;</li> <li>(e) maintenance of temporary fencing around the site compound;</li> <li>(f) general site maintenance; and</li> <li>(g) lockable purpose-designed storage cages for flammable items with appropriate safety signage.</li> </ul>	
Site Security	<p>All temporary measures to:</p> <ul style="list-style-type: none"> <li>(a) prevent unauthorised people entering the Site and Remote Sites, to ensure public safety and prevent access by trespassers;</li> <li>(b) protect against theft and vandalism; and</li> <li>(c) prevent unlawful or accidental access to the Site and Remote Sites.</li> </ul>	The Site and Remote Sites.
Site Safety	All provisions for the protection of members of the public adjacent to the Site or the Remote Sites affected by, or at reasonable risk of being affected by, the Contractor's Activities.	All places involved in or affected by or at reasonable risk of being affected by the Contractor's Activities.
Signage	<p>Installation and maintenance of signage during construction including:</p> <ul style="list-style-type: none"> <li>(a) Safety signage as required for the Contractor's Activities, Other Contractors and as required by the Principal's Representative; and</li> <li>(b) Information and communication signage as required by the Principal's Representative.</li> </ul>	All places affected by the Contractor's Activities, and required for Other Contractors.
Environmental Management	<p>Installation and maintenance of:</p> <ul style="list-style-type: none"> <li>(a) appropriate environmental safety measures to minimise environmental impacts, including erosion and</li> </ul>	All places where there is risk of pollution or need for control of emissions including for Other Contractors.

Purposes	Description of Part of Temporary Works	Location
	sedimentation control; (b) appropriate controls to mitigate noise around noise sensitive site areas, during high noise activities; and (c) all water, air quality, dust, settlement, vibration and noise monitoring measures required by the Deed.	
Pedestrian Access	All temporary measures required to maintain: (a) current pedestrian access adjacent to or through the Site for Other Contractors; and (b) public pedestrian traffic around, through or over the Remote Sites.	All places affected by the Contractor's Activities and required for Other Contractors.
Surface Treatment	Provision of: (a) temporary treatment of natural surfaces; (b) temporary reinstatement works, including all temporary facilities and fencing; (c) temporary drainage as required by the Contractor's Activities. (d) suitable temporary surface stabilisation such as earth mats, mulch or other means to prevent dust, scour or siltation; and (e) planting and seeding of suitable species as temporary treatment.	All places affected by the Contractor's Activities.
Site Disestablishment and Reinstatement	Removal of all equipment, materials, stockpiled items, amenities, temporary fencing and other Temporary Works from the Site and Remote Sites, and reinstatement of all areas affected by the Temporary Works prior to Final Completion except for the site office facilities for the Principal which must be removed and reinstated in accordance with clause 3.3 of this Schedule 3.	The Site and Remote Sites.
Alterations to roads adjacent to the Site	Provision of: (a) all temporary road and footway alterations at access locations; (b) all temporary fencing, drainage (surface and sub-soil) erosion and sediment control,	All parts of the Site where pedestrian, cycle or vehicle access is required.

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Purposes	Description of Part of Temporary Works	Location
	earthworks, structures, pavements; (c) temporary through access ways for cyclists, pedestrians and vehicles as appropriate; and (d) pavement markings, signs, traffic lights and signals, street lighting as appropriate.	
Work impact mitigation	All provisions to monitor and mitigate the impacts of the Contractor's Activities including (a) installation, operation and maintenance of settlement, noise and vibration monitoring stations; and (b) installation of noise and vibration mitigation provisions at critical locations.	All places affected by the Contractor's Activities.

### 3.2 Hoardings and Fencing

Any Temporary Works hoardings and fencing must be designed, installed and maintained in accordance with all applicable standards, guidelines and to withstand the various loads (including wind loads) to which it may be subjected. All hoardings and fencing must be electrically non-conductive where reasonably possible and its design must consider at least the following electrical issues:

- (a) traction return current may be present in the rails of adjacent tracks even though the overhead wiring above the track is isolated;
- (b) electrical step and touch potential may exist between the hoarding or fencing and adjacent structures. The requirements of RailCorp's standard ESC 510 "Boundary Fencing" in relation to insulating panels must be met for construction hoarding and fencing made from conductive materials;
- (c) the earth potential of the track and that of adjacent buildings and structures may be different; and
- (d) the proximity of the hoarding and fencing to the earth mat of electrical substations.

RailCorp has developed a construction hoarding design which is available for the information only of the Contractor from the Principal's Representative on request. If this hoarding design is supplied to the Contractor it will be deemed to form part of the Information Documents and Materials.

### 3.3 Temporary Site Office Facilities for the Principal on the Site

From the date the Contractor establishes its main site compound on the Site the Contractor must provide the following site office facilities for the exclusive use of the Principal's Representatives at the Contractor's main site compound:

- (a) an integrated, air conditioned, single-level site office building to accommodate twelve (12) full-time staff members that complies with all relevant building codes and safety requirements, connected to power, communications, water and sewer services that includes:
  - (i) one (1) open plan office area that includes eleven (11) workstations of four (4) square metres each with an appropriate walkway space. Each workstation must include:
    - A. a desk;
    - B. a lockable pedestal drawer unit;
    - C. an office chair;
    - D. shelving units;
    - E. a separate telephone and computer data point; and
    - F. a minimum of four (4) power sockets;
  - (ii) one (1) lockable office of at least ten (10) square metres suitable for one (1) person equipped with desk, whiteboard, shelving units, meeting table, cabinets and office chairs;
  - (iii) one (1) main meeting room of at least fifteen (15) square metres suitable for ten (10) people, equipped with a large wall-mounted whiteboard, ten-person meeting table, ten (10) chairs and a large cabinet for housing all electronic and communication equipment;
  - (iv) one (1) document storage area separate from the open plan office space, office and meeting room including shelving suitable for lever arch files, three (3) drawing racks including drawing hanger sets and one (1) adjacent plan table with an area of at least two (2) square metres;
  - (v) one (1) kitchen and break-out area of at least ten (10) square metres, including one (1) fridge, hot and cold running water and sink with waste, instant hot water system, one (1) microwave, one (1) toaster, storage cupboards, suitable bench area, tables and chairs for ten (10) people;
  - (vi) locks on all windows and doors;
  - (vii) security grilles and roller blinds on all windows; and
  - (viii) a monitored security system;
- (b) ablution and changing facilities suitable for twelve (12) full time staff which may be incorporated into the Contractor's amenities; and
- (c) car parking for twelve (12) vehicles adjacent to the Principal's site office facilities.

All equipment, furniture, fittings and finishes provided by the Contractor must be new and of a standard that is suitable for a professional office space.

The Contractor must fully service and maintain, at its cost, the Principal's site office facilities including all cleaning and maintenance.

The Contractor must pay all one-off and ongoing costs associated with all utility and service connections, hire arrangements, security arrangements and office supplies except that the Principal will pay its own communication usage charges (cost of telephone calls and electronic data transfers).

When directed by the Principal's Representative, whose direction may be up to two (2) months after the Date of Final Completion, the Contractor must remove and demobilise the Principal's site office facilities, including any works associated with reinstatement of the Site.

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The Principal will supply and install the following items at the Principal's site office facilities:

- (a) supply and installation of a high speed Broadband link from the Principal's site office facilities to its Chatswood office;
- (b) supply and installation of telephone handsets;
- (c) supply and installation of servers, racks and associated hardware; and
- (d) supply and installation of computers and multi-function printers.

The Contractor must cooperatively assist the Principal to connect and install the above items to the utilities and services provided by the Contractor, and provide assistance in resolving any ongoing connection issues that may arise throughout the duration of the Contractor's Activities.



# **Auburn Stabling Project (Stage 1)**

## **Confidentiality Undertaking**

Transport Construction Authority

September 2011

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## Confidentiality Undertaking

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(Clauses 2.2(f)(iii) and 16.11(c))

To: **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*)

We Laing O'Rourke Australia Construction Pty Ltd (ACN 112 099 000) (*Contractor*), undertake to treat as confidential all information received/generated from the Principal in respect of work performed by the Principal and all information generated by the Contractor in the course of performing the Contractor's Activities.

The Contractor hereby undertakes:

- (a) to disclose that information to its employees only on a need-to-know basis;
- (b) not to disclose that information to any other person without first obtaining the written consent of the Principal;
- (c) not to use that information except as necessary in connection with the Contractor's engagement to perform the Contractor's Activities; and
- (d) to ensure that its employees to whom that information is disclosed will comply with (a), (b) and (c) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Contractor, its employees or agents or which was already known to the Contractor).

Any breach of this undertaking by the Contractor's employee or agent will constitute a breach of this undertaking by the Contractor and at the direction of the Principal the Contractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Contractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Contractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated: 28 September 2011

SIGNED for and on behalf of:

.....  
Laing O'Rourke Australia Construction Pty Ltd (ACN 112 099 000)

**MARK GREGORY WILSON**

By: .....  
(Print Name)

.....  
(Signature)

in the presence of:

Cathy O'Rourke  
.....  
(Print Name)

.....  
(Signature)

#### 4. Form of Confidentiality Undertaking

(Clauses 2.2(f)(iii) and 16.11(c))

To: [ ]

We the engaged Consultant / Supplier / Contractor / Subcontractor body, undertake to treat as confidential all information received/generated from the (Principal) in respect of work performed by the Principal and all information generated by the Consultant / Supplier / Contractor / Subcontractor body in the course of performing the Contractor's Activities.

The Consultant / Supplier / Contractor / Subcontractor hereby undertakes:

- (a) to disclose that information to its employees only on a need-to-know basis;
- (b) not to disclose that information to any other person without first obtaining the written consent of the Principal;
- (c) not to use that information except as necessary in connection with the Consultant / Supplier / Contractor / Subcontractor body's engagement to perform the Contractor's Activities; and
- (d) to ensure that its employees to whom that information is disclosed will comply with (a), (b) and (c) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant / Supplier / Contractor / Subcontractor, its employees or agents) or which was already known to the Consultant / Supplier / Contractor / Subcontractor.

Any breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor and at the direction of the Principal the Consultant / Supplier / Contractor / Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Consultant / Supplier / Contractor / Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant / Supplier / Contractor / Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

# Auburn Stabling Project (Stage 1)

Design and Construction Contract  
(ASP-01-D&C)

Dated: .....

SIGNED for and on behalf of:

.....  
(Print Company Name)

By: .....

(Print Name)

.....

(Signature)

in the presence of:

.....

(Print Name)

.....

(Signature)

**5. Certificates of Design Compliance**

(Clauses 1.1, 5.3(b), 9.14(b)(i), and 11.2(i)(ii))

**5.1 Contractor's Certificate of Design Compliance**

<b>CONTRACTOR'S CERTIFICATE OF DESIGN COMPLIANCE</b>	
<b>CONTRACTOR:</b>	
<u>DESIGN PACKAGE (limit of 1 per certificate)</u>	<u>DESCRIPTION:</u>
<p>I certify that the design for the package or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Deed between the Principal and _____ (including as required by the TCA Standard Requirements where applicable), and complies with the requirements of the Deed and the Planning Approval, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the design package.</p> <p>NAME: _____ SIGNATURE: _____ DATE:    /    /</p> <p style="text-align: center;">(Contractor's Representative)</p>	

**TCA**

## 5.2 Designer's Certificate of Design Compliance

DESIGNER'S CERTIFICATE OF DESIGN COMPLIANCE	
<b>DESIGNER:</b>	
<u>DESIGN PACKAGE (limit of 1 per certificate)</u>	<u>DESCRIPTION:</u>
<p>I certify that the [<del>delete one</del>] design for the package / design for the design discipline of [*] for the package] or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Deed between the Principal and</p> <p>_____ (including as required by the TCA Standard Requirements where applicable), and complies with the requirements of the Deed and the Planning Approval, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the design package.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / /</p> <p style="margin-left: 40px;">(Design Team Member)</p>	

(Clauses 1.1, 7.1(c) and 11.2(i)(iii))

CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE		
CONTRACTOR:		
PORTION:		
<u>WORK PACKAGE (limit of 1 per certificate)</u>	<u>DESCRIPTION:</u>	
<p>I certify that the procurement and construction of the work package or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Deed between the Principal and _____, and comply with the requirements of the Deed and the Planning Approval, subject to the register of outstanding minor construction non-conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the work package.</p>		
NAME: _____	SIGNATURE: _____	DATE:    /    /
(Contractor's Representative)		



DESIGNER'S CERTIFICATE OF CONSTRUCTION COMPLIANCE	
DESIGNER: _____	
PORTION: _____	
<u>WORK PACKAGE (limit of 1 per certificate)</u>          	<u>DESCRIPTION:</u>          
<p>I certify that the procurement and construction of [<del>delete one</del>] the work package / that part of the work package relevant to the design discipline of [*]] or part thereof described above have been... completed to the extent indicated above in accordance with the requirements of the Deed between the Principal and _____, and comply with the requirements of the Deed and the Planning Approval, subject to the register of outstanding minor construction non-conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the work package.</p>	
NAME: _____	SIGNATURE: _____ DATE:    /    /
<i>(Design Team member)</i>	

### 7.1 Contractor's Certificate of Works Completion

## DATE: \_\_\_\_\_

## 7.2 Designer's Certificate of Works Completion

DESIGNER'S CERTIFICATE OF WORKS COMPLETION
<b>DESIGNER:</b>
Description of Portion/Works (limit of 1 per certificate):
<p>I certify that the Completion of [<del>delete one</del>] the above Portion/Works related to the design discipline of [*] has been achieved in accordance with the requirements of the Deed between the Principal and _____, complies with the requirements of the Deed and the Planning Approval, subject to the register of unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the Portion/Works.</p> <p>SIGNATURE: _____ (Design Team member)</p> <p>DATE: _____</p>

**8. Contractor's Certificate of Final Completion**

(Clause 12.8(d))

CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION	
<b>CONTRACTOR:</b>	
I hereby certify that Final Completion has been achieved by [the Contractor] on    /    /    in accordance with the requirements of the Deed (including all Variation Orders detailed in (a) below) between the Principal and the Contractor.	
I further certify that:	
(a)	All Variation Orders (including concessions) are listed in the attached compliance register.
(b)	All identified Defects (including any minor non-conformities) have been satisfactorily rectified and their documentation closed out.
(c)	All required documentation has been submitted.
(d)	All deficiency notices regarding system deficiencies have been satisfactorily closed out.
I further certify that the attached compliance records as required by the Deed reflect the true status of the Works.	
SIGNATURE: _____ DATE:    /    /	
(Contractor's Representative)	

**9. Reimbursable Work**

(Clauses 1.1, 7.3(d), 11.1 and 11.2)

**9.1 Valuation**

Reimbursable Work will be valued for Reimbursable Signalling Installation Work, on the basis of the rates set out in this Schedule.

All rates set out in this Schedule 9 are inclusive of all taxes and direct and indirect costs and are not subject to any adjustment to allow for Overhead Costs, profit, rise and fall or any other costs. No other amount is payable by the Principal for the performance by the Contractor of the Reimbursable Work.

Specialist Signalling Installation Personnel	Hourly Rate (\$/hr)
Signal Supervisor	
Signal Electrician	
Signal Mechanical	
Tester-in-charge	
Signal Tester	
Assistant Signal Tester	
Site Foreman	
Tradesmen	
Trade Assistants	

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10. Not Used

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**11. Action in Complying with Planning Approval and Third Party Agreements**

(Clauses 2.3(c) and 2.12)

**Part A – Planning Approval**

The Contractor must fulfil all the conditions and requirements of the Planning Approval except to the extent that the following table allocates responsibilities to the Principal.

This Schedule 11 should be read together with the Conditions of Approval, the review of Environmental Factors and the Preferred Activity Report.

Nothing identified in this table as being a responsibility of the Principal will relieve the Contractor from complying with any obligation set out elsewhere in the Deed including any obligation under TSR E1– Environmental Management System.

**Table 1 Conditions of Approval**

<b>Condition Number</b>	<b>Extent of Principal's responsibility for the Planning Approval condition specified</b>
<b>2 (Project Staging)</b>	The Principal will comply with Stage Two conditions.
<b>9 (Website)</b>	The Principal will comply with this condition except that the Contractor must provide all information and documentation as required by the Principal's Representative to enable the Principal to maintain the website.
<b>10 (Complaints Management)</b>	The Contractor must comply with this condition except that the Principal will establish the 24-hour complaints line.
<b>11 (Community Based Forums)</b>	The Principal will comply with this condition except that the Contractor must administer, attend, contribute, report and manage the Community Based Forums when required by the Principal's Representative.
<b>12 (Environmental Induction)</b>	The Principal will provide this induction to the Contractor at the beginning of the contract. The Contractor must make key personnel available for the induction as required by the Principal's Representative. The Contractor must include all relevant information from this induction in site inductions for workers and subcontractors.
<b>14 (Environmental Management Representative (EMR))</b>	The Principal will comply with this condition except that the Contractor must at all times assist the EMR to carry out its duties under this condition of approval including for site visits and audits.

Condition Number	Extent of Principal's responsibility for the Planning Approval condition specified
<b>16 (Operational Environmental Management)</b>	The Principal will comply with this condition except that the Contractor must provide all information and documentation as required by the Principal to satisfy this condition.
<b>28 (Compliance Monitoring)</b>	The Principal will comply with this condition except that the Contractor must provide all information and documentation as required by the Principal to enable it to undertake the monitoring.
<b>34 (Parking Survey)</b>	The Principal will comply with this condition.
<b>36 (Operational Traffic Management Plan)</b>	The Contractor must comply with this condition except for the requirement of "no net loss in parking at the Maintrain Facility – Stage Two" for which the Principal will be responsible.
<b>48 (Monitoring of the Duck River Grey-headed Flying-fox Roost Camp)</b>	The Principal will comply with this condition.

### Part B – Additional Environmental Requirements

The Contractor must comply with or undertake all of the Stage 1 mitigation measures identified in the Preferred Activity Report except to the extent that the following table allocates responsibilities to the Principal.

Nothing identified in the table as being a responsibility of the Principal will relieve the Contractor from complying with any obligation set out elsewhere in the Deed including any obligation under TSR E1 – Environmental Management System.

**Table 2 Mitigation Measures from Table 7.2 Operation mitigation measures in the Preferred Activity Report**

ID Number	Extent of Principal's responsibility for the Management and Mitigation Measure Specified
O.1	The Principal will fulfill the requirements of this mitigation measure.
O.3	The Principal will fulfill the requirements of this mitigation measure.



ID Number	Extent of Principal's responsibility for the Management and Mitigation Measure Specified
O.6	The Principal will fulfill the requirements of this mitigation measure except that the Contractor must consider wheel squeal impacts during development of the Operational Noise and Vibration Management Plan prepared under mitigation measure O.5.
O.7	The Principal will fulfill the requirements of this mitigation measure.
S.1	The Principal will fulfill the requirements of this mitigation measure.
T.2	The Principal will fulfill the requirements of this mitigation measure once the Defect Rectification Period has lapsed.
U.1	The Principal will fulfill the requirements of this mitigation measure.
V.1	The Principal will fulfill the requirements of this mitigation measure.
X.1	The Principal will fulfill the requirements of this mitigation measure.

### Part C – Third Party Agreements

The provisions of any Third Party Agreement dealing with security or insurance (or the retention by the Principal via this Schedule 11 of the obligation to perform any such provisions) do not affect the Contractor's obligations under clauses 2 and 13 of the General Conditions.

### Safety Interface Agreement – Draft (February 2011)

The Contractor:

- (a) is responsible for complying with;
- (b) must perform on behalf of the Principal; and
- (c) must do nothing to hinder the Principal or breach,

all of the Principal's obligations under the Safety Interface Agreement as may be amended from time to time.

## 12. Subcontractors - Security of Payment

(Clause 2.2(f)(i))

The following terms must be included in each Subcontract, and the Subcontracts let by those Subcontractors, as referred to in clause 2.2(f) of the General Conditions.

### 12.1 Options as to Form of Security

A clause which allows the Subcontractor to lodge an approved unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the Subcontract.

A clause which provides that if the Subcontractor does lodge an unconditional undertaking for the required amount, the Contractor must not deduct further retention moneys and any retention moneys or other cash security then held will be promptly released to the Subcontractor.

### 12.2 Trust for Cash Security and Retention Moneys

A clause which has the effect that:

- (a) cash securities and retentions under the Subcontract and the cash proceeds of any security converted to cash (other than in exercise of a contractual right of enforcement) is trust money and must be deposited into and held in a trust account with a bank within 24 hours of receipt or conversion;
- (b) the trust money is beneficially owned by the party which provided the security at all times unless the other party becomes entitled to receive them under the Subcontract;
- (c) the security holder must hold proper records and account to the security provider for the trust moneys; and
- (d) any interest earned by the trust account will not be held in trust, and will be owned by the security holder.

### 12.3 Payment Provisions

A clause which:

- (a) has the effect of requiring the Contractor to pay the Subcontractor (and Subcontractors their Subcontractors) regular progress payments for 100% of the value of work (less only retention moneys, if any, paid into the trust account) for which payment is claimed by the Subcontractor and for which the Contractor has claimed payment from the Principal, no later than:
  - (i) in the case of the Contractor's Subcontractors, 7 days; and
  - (ii) in the case of the Subcontractor's subcontractors, 14 days,after the last day for payment by the Principal to the Contractor for such work;

- (b) states nothing in the clause referred to in paragraph (a) is to be read so as to prevent the Contractor from paying the Subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in that clause; and
- (c) states if anything in the clause referred to in paragraph (a) is inconsistent with any other provision in the Subcontract, the provisions of that clause will prevail to the extent of the inconsistency.

A clause that prescribes an interest rate for overdue payments that is not less than the interest rate specified in clause 11.15 of the General Conditions.

## 12.4 Alternative Dispute Resolution

A clause that requires alternative dispute resolution procedures.

A clause making it optional for the Subcontractor to comply with the alternative dispute resolution process if the only remedy it seeks is an order for payment of money which is not disputed to be due and payable under the Subcontract.

## 12.5 Documents to be Provided to Subcontractors

A clause that requires the Contractor to provide the Subcontractor with a copy of extracts from this Deed before the Subcontractor starts work under the Subcontract. The extracts to be provided are:

- (a) clause 2.2(f)(i);
- (b) this Schedule 12; and
- (c) clause 11.

### 13. Consultant Deed of Covenant

(Clause 2.2(f)(ii))

This deed poll is made the                      day of                      20

To: **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*); and

**Rail Corporation of New South Wales** (ABN 59 325 778 353) a corporation constituted by section 4(1) of the Transport Administration Act 1988, of Level 6, 18 Lee Street Chippendale, NSW 2008 (*RailCorp*).

By: [                      ] (*Consultant*)

#### RECITALS

- A. The Principal has engaged [                      ] (*Contractor*) to carry out certain works for the Principal by deed dated [                      ] (*Deed*).
- B. The Contractor has engaged the Consultant by agreement dated [                      ] (*Subcontract*) to carry out the professional services to be performed under the Subcontract (*Professional Services*) for the purposes of the performance of the Contractor's obligations under the Deed as they relate those design services.
- C. Under the Deed, the Contractor is required to procure the Consultant to execute this deed poll in favour of the Principal and RailCorp.

#### OPERATIVE

##### 1. Duty of Care

(a) The Consultant:

(i) warrants to the Principal and RailCorp that:

- (A) in performing the Professional Services, it will exercise the standard of skill, care and diligence that would be expected of a consultant experienced in and expert in the provision of the type of professional services required by the Principal and RailCorp;
- (B) the Professional Services will be fit for the intended purposes disclosed in or reasonably able to be inferred from the Works Brief, which is an exhibit to the Deed; and
- (C) the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right;

- (ii) acknowledges that:
  - (A) in performing the Professional Services it will owe a duty of care to the Principal and RailCorp; and
  - (B) it is aware that the Principal and RailCorp will be relying upon the skill and judgment of the Consultant in performing the Professional Services and the warranties given by the Consultant in this deed poll; and
- (iii) must act in good faith and in the best interests of the Principal and RailCorp and promptly advise the Principal and RailCorp about any matter in which the Consultant has been instructed by the Contractor to provide the Professional Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Deed, including without limitation:
  - (A) where the Contractor's instructions in relation to design are not consistent with the Deed or may result in the Works not being fit for their intended purpose; or
  - (B) where the Contractor's instructions require the Consultant to issue a certificate where the conditions for the issue of that certificate under the Deed have not been satisfied.
- (b) The Consultant must:
  - (i) fully cooperate with each other consultant and contractor engaged by the Principal (**Other Contractor**);
  - (ii) carefully coordinate and integrate the Professional Services with the services and work carried out by each Other Contractor;
  - (iii) carry out the Professional Services so as to minimise any interfering with, disrupting or delaying, the services and work carried out by each Other Contractor;
  - (iv) without limitation, provide whatever advice, support and cooperation is reasonable to facilitate the due carrying out of the services and work being provided by each Other Contractor;
  - (v) ensure title to and Intellectual Property (including any patent, registered design, trademark or name, copyright or other protected right) in or in relation to the Professional Services will vest upon its creation for the purposes of the Deed in the Principal;
  - (vi) obtain an assignment to the Principal from any third party who owns any Intellectual Property in the Professional Services;
  - (vii) if any Intellectual Property in or in relation to documents, designs and computer programs created for the purposes of the Deed is not capable of being vested in the Principal because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, those rights, provide to

- the Principal an irrevocable licence to use that Intellectual Property, by sub-licence from the Consultant or direct licence from a third party; and
- (viii) ensure that the Intellectual Property created for the purposes of the Deed is not used, adapted or reproduced other than for the purposes of the Deed without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).
- (c) The Consultant must indemnify the Principal and RailCorp from and against:
- (i) any liability to or claim by any other person; and
  - (ii) all claims against, and costs, expenses, losses and damages, suffered or incurred by the Principal and RailCorp arising out of, or in any way in connection with:
    - (A) the Consultant's breach of a term of, or warranty under, this deed poll; or
    - (B) any actual or alleged infringement of any patent, registered design, trademark or name, copyright or other protected right.

## 2. Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address or sent to the facsimile number shown below (or to a party's new address or facsimile number which that party notifies to the others):
- (i) to the Principal: Level 5, Tower A  
Zenith Centre  
821 Pacific Highway  
CHATSWOOD NSW 2067  
Fax: (02) 9200 0290
  - (ii) to RailCorp: Level 20, 477 Pitt Street  
SYDNEY NSW 2008  
Fax: (02) 8922 0901
  - (iii) to the Consultant: **[to be completed]**
- (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 slip showing the facsimile number of the party to whom it is addressed in accordance with clause 2.1, which is not a Business Day.
- (d) If the Consultant is a foreign company (as defined in the Corporations Act 2001 (Cth)), the Consultant must within 14 days of the date of this deed poll:

- (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed poll; and
- (ii) obtain the process agent's consent to the appointment.

The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent.

### 3. Miscellaneous

- (a) This deed poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- (b) The Consultant hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- (c) This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and RailCorp.
- (d) Terms used in this deed poll which are otherwise not defined will have the meaning given to them in the Deed.

Schedule

[INSERT DESCRIPTION OF PROFESSIONAL SERVICES] as more particularly described in the Subcontract.

Executed as a deed poll.

Signed Sealed and Delivered )

by the Consultant )

[ ] )

(Signature)

by or in the presence of: )

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

TCA

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**14. Track Possessions**

(Clauses 1.1 and 7.10)

- (a) The following four Track Possessions with power isolations will be made available by the Principal for the Contractor in accordance with clause 7.10 for the Contractor to carry out the Contractor's Activities.

Description of Track Possession	Start Date	Finish Date
Configuration 5	13 October 2012	14 October 2012
Configuration 4	27 October 2012	28 October 2012
Configuration 13	3 November 2012	4 November 2012
Configuration 4	26 January 2013	28 January 2013

- (b) In the case of the Track Possessions set out in the table above, periods of approximately five hours at the beginning, and at the end, of each Track Possession are to be provided for by the Contractor for the arrangement and coordination of safe working procedures and power isolations of overhead or transmission lines.
- (c) The Contractor must pay the Principal the relevant amount from the table below in respect of each Additional Track Possession or Power Isolations and in accordance with clause 7.10 of the Contract.

Type of additional Track Possession	Approximate Period	Amount to be Paid to the Principal
Weekend Track Possession with Power Isolation	02:00 Saturday to 02:00 Monday	\$300,000
Weeknight Track Possession with Power Isolation	20:00 to 04:00 on the following day	\$20,000
Power isolations	N/A	Nil

## 15. Authority Approvals to be obtained by the Principal

(Clauses 2.3(c) and 6.13(b))

The Authority Approval set out in paragraph (a) of the definition of Planning Approval in clause 1.1 of the General Conditions.

(Clauses 2.8(b) and 11.2(i))

**In favour of:** 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*)

## RECITALS

- OPERATIVE**

1. The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # (\$            ).
2. The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.
3. The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Deed or the Contractor's Activities or acts or things to be executed, performed and done under the Deed or by reason of any breach or breaches of the Deed by the Contractor or the Principal.
4. The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.
5. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

# TCA

Executed as a deed poll.

Signed Sealed and Delivered )

by [ ] )

being signed sealed and ) .....

delivered by its duly constituted ) (Signature)

Attorney [ ] )

under Power of Attorney )

No. in the presence of:)

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

TCA

OM

## 17. Information Documents and Materials

(Clauses 1.1 and 3.6(a))

Information Document Number	Description	Date/ Revision	Filename	Electronic Format
A	Stage 1 - Reference Design			
A1	Volume 1 - Stage 1 Reference Design Report			
A1.1	Stage 1 Reference Design Report - Volume 1 of 3	C	A1.1 - ASP-1333-AUR-R-049[C]	.pdf
A2	Volume 3 - Background Reports			
A2.1	Sustainability Report	D	ASP-1333-AUR-R-048 [D]	.pdf
A2.2	Carbon Footprint Report	B	ASP-1333-AUR-R-039[B]	.pdf
A2.3	Site Flooding and Drainage Assessment	B	ASP-1333-AUR-R-043[B]	.pdf
A2.4	Constructability and Staging Report	2	Constructability and Staging Report for Reference Design - Stage 1	.pdf
A2.5	Value Engineering Workshop Report	0	Value Engineering Workshop Report	.pdf
A2.6	BCA Report	B	ASP-1333-AUR-R-038[B]	.pdf
A2.7	Accessibility Report	B	ASP-1333-AUR-R-042[B]	.pdf
A2.8	Fire and Life Safety Engineering Brief	B	ASP-1333-AUR-R-045[B]	.pdf
A2.9	Safety Assurance Report	Executed	A2.9 - Safety Assurance Report - Auburn Stabling Project [executed] - Issued on Addendum 2 DVD 13/04/2011	.doc
A2.10	Safety Risk Management Plan	B	ASP-1333-AUR-R-046[B]	.pdf
A2.11	Security Risk Assessment	B	ASP-1333-AUR-R-047[B]	.pdf
A2.12	Asset Management and Maintenance Strategy	B	ASP-1333-AUR-R-037[B]	.pdf
A2.13	Preliminary Durability Report	B	ASP-1333-AUR-R-044[B]	.pdf
B	Survey & Services			
B1	Services			
B1.1	Proposed Auburn Stabling Yard - DSS No. F2007.2815			
B1.1.1	Proposed Auburn Stabling Yard - DSS No. F2007.2815	D	B1.1.1 - 001 CV0455006	.pdf
B1.1.2	Proposed Auburn Stabling Yard - DSS No. F2007.2815	D	B1.1.2 - Combined RailCorp_ASP DSS	.pdf
B1.1.3	Proposed Auburn Stabling Yard - DSS No. F2007.2815	D	B1.1.3 - Schedule Referenced RailCorp_ASP DSS	.pdf
B1.1.4	Proposed Auburn Stabling Yard - DSS No. F2007.2815	D	B1.1.4 - DSS F2007_02815 FINAL 25.6.10 acad2007	.dwg
B1.1.5	Proposed Auburn Stabling Yard - DSS No. F2007.2815	D	B1.1.5 - DSS F2007_02815 FINAL 25.6.10	.dwg

# Auburn Stabling Project (Stage 1)

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B1.2	Reliance Rail Maintenance Facility Works - Combined Services			
B1.2.1	PDF Files			
B1.2.1.1	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.1 - Schedule Referenced AMC As-Builts	.pdf
B1.2.1.2	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.2 - KBR-DRG-SG-CVL-2300_[1-00]	.pdf
B1.2.1.3	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.3 - KBR-DRG-SG-CVL-2301_[1-00]	.pdf
B1.2.1.4	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.4 - KBR-DRG-SG-CVL-2302_[1-00]	.pdf
B1.2.1.5	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.5 - KBR-DRG-SG-CVL-2303_[1-00]	.pdf
B1.2.1.6	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.6 - KBR-DRG-SG-CVL-2304_[1-00]	.pdf
B1.2.1.7	Reliance Rail Maintenance Facility Works - Combined Services	C-01	B1.2.1.7 - KBR-DRG-SG-CVL-2305_[1-00]	.pdf
B1.2.1.8	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.8 - KBR-DRG-SG-CVL-2306_[1-00]	.pdf
B1.2.1.9	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.9 - KBR-DRG-SG-CVL-2307_[1-00]	.pdf
B1.2.1.10	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.10 - KBR-DRG-SG-CVL-2308_[1-00]	.pdf
B1.2.1.11	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.11 - KBR-DRG-SG-CVL-2309_[1-00]	.pdf
B1.2.1.12	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.12 - KBR-DRG-SG-CVL-2310_[1-00]	.pdf
B1.2.1.13	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.13 - KBR-DRG-SG-CVL-2311_[1-00]	.pdf
B1.2.1.14	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.14 - KBR-DRG-SG-CVL-2312_[1-00]	.pdf
B1.2.1.15	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.15 - KBR-DRG-SG-CVL-2313_[1-00]	.pdf
B1.2.1.16	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.16 - KBR-DRG-SG-CVL-2314_[1-00]	.pdf
B1.2.1.17	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.17 - KBR-DRG-SG-CVL-2315_[1-00]	.pdf
B1.2.1.18	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.18 - KBR-DRG-SG-CVL-2316_[1-00]	.pdf
B1.2.1.19	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.19 - KBR-DRG-SG-CVL-2317_[1-00]	.pdf
B1.2.1.20	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.20 - KBR-DRG-SG-CVL-2320_[1-00]	.pdf
B1.2.1.21	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.21 - KBR-DRG-SG-CVL-2321_[1-00]	.pdf
B1.2.1.22	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.22 - KBR-DRG-SG-CVL-2331_[1-00]	.pdf

TCA  
DM

# Auburn Stabling Project (Stage 1)

Design and Construction Contract  
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B1.2.1.23	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.1.23 - KBR-DRG-SG-CVL-2332 [1-00]	.pdf
B1.2.2	CAD Files			
B1.2.2.1	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.1 - KBR-DRG-SG-CVL-2300 - Standard	.zip
B1.2.2.2	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.2 - KBR-DRG-SG-CVL-2301 - Standard	.zip
B1.2.2.3	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.3 - KBR-DRG-SG-CVL-2302 - Standard	.zip
B1.2.2.4	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.4 - KBR-DRG-SG-CVL-2303 - Standard	.zip
B1.2.2.5	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.5 - KBR-DRG-SG-CVL-2304 - Standard	.zip
B1.2.2.6	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.6 - KBR-DRG-SG-CVL-2305 - Standard	.zip
B1.2.2.7	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.7 - KBR-DRG-SG-CVL-2306 - Standard	.zip
B1.2.2.8	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.8 - KBR-DRG-SG-CVL-2307 - Standard	.zip
B1.2.2.9	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.9 - KBR-DRG-SG-CVL-2308 - Standard	.zip
B1.2.2.10	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.10 - KBR-DRG-SG-CVL-2309 - Standard	.zip
B1.2.2.11	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.11 - KBR-DRG-SG-CVL-2310 - Standard	.zip
B1.2.2.12	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.12 - KBR-DRG-SG-CVL-2311 - Standard	.zip
B1.2.2.13	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.13 - KBR-DRG-SG-CVL-2312 - Standard	.zip
B1.2.2.14	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.14 - KBR-DRG-SG-CVL-2313 - Standard	.zip
B1.2.2.15	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.15 - KBR-DRG-SG-CVL-2314 - Standard	.zip
B1.2.2.16	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.16 - KBR-DRG-SG-CVL-2315 - Standard	.zip
B1.2.2.17	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.17 - KBR-DRG-SG-CVL-2316 - Standard	.zip
B1.2.2.18	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.18 - KBR-DRG-SG-CVL-2317 - Standard	.zip
B1.2.2.19	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.19 - KBR-DRG-SG-CVL-2320 - Standard	.zip
B1.2.2.20	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.20 - KBR-DRG-SG-CVL-2321 - Standard	.zip
B1.2.2.21	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.21 - KBR-DRG-SG-CVL-2331 - Standard	.zip
B1.2.2.22	Reliance Rail Maintenance Facility Works - Combined Services	1-00	B1.2.2.22 - KBR-DRG-SG-CVL-2332 - Standard	.zip

# Auburn Stabling Project (Stage 1)

Design and Construction Contract  
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B1.3	Auburn MainTrain Facility - DSS No. F2010.03488			
B1.3.1	Auburn MainTrain Facility - DSS No. F2010.03488	A	B1.3.1 - Combined MainTrain DSS	.pdf
B1.3.2	Auburn MainTrain Facility - DSS No. F2010.03488	A	B1.3.2 - Schedule Referenced MainTrain DSS	.pdf
B1.3.3	Auburn MainTrain Facility - DSS No. F2010.03488	A	B1.3.3 - MS19+021_F2010_03488 FINAL 10.6.2010 acad2007	.dwg
B2	Survey			
B2.1	Meadows Survey			
B2.1.1	MainTrain Training Room, Auburn Substation and Workshop - 15 Sep 2010			
B2.1.1.1	MainTrain Training Room, Auburn Substation and Workshop - 15 Sep 2011	15 September 2010	B2.1.1.1 - Meadows - 4167-11	.pdf
B2.1.1.2	MainTrain Training Room, Auburn Substation and Workshop - 15 Sep 2012	15 September 2010	B2.1.1.2 - Meadows - 4167-12	.pdf
B2.1.1.3	MainTrain Training Room, Auburn Substation and Workshop - 15 Sep 2013	15 September 2010	B2.1.1.3 - Meadows - 4167-11-12	.dwg
B2.1.2	AMC Clyde Throat - 22 Sep 2010			
B2.1.2.1	AMC Clyde Throat - 22 Sep 2010	22 September 2010	B2.1.2.1 - Meadows - 4167-13	.pdf
B2.1.2.2	AMC Clyde Throat - 22 Sep 2010	22 September 2010	B2.1.2.2 - Meadows - 4167-14	.pdf
B2.1.2.3	AMC Clyde Throat - 22 Sep 2010	22 September 2010	B2.1.2.3 - Meadows - 4167-15	.pdf
B2.1.2.4	AMC Clyde Throat - 22 Sep 2010	22 September 2010	B2.1.2.4 - Meadows - 4167-16	.pdf
B2.1.2.5	AMC Clyde Throat - 22 Sep 2010	22 September 2010	B2.1.2.5 - Meadows - 4167-13-16	.dwg
B2.1.3	AMC Clyde Junction - 28 Jun 2010			
B2.1.3.1	AMC Clyde Junction - 28 Jun 2010	28 June 2010	B2.1.3.1 - Meadows - 4167-05	.pdf
B2.1.3.2	AMC Clyde Junction - 28 Jun 2010	28 June 2010	B2.1.3.2 - Meadows - 4167-06	.pdf
B2.1.3.3	AMC Clyde Junction - 28 Jun 2010	28 June 2010	B2.1.3.3 - Meadows - 4167-07	.pdf
B2.1.3.4	AMC Clyde Junction - 28 Jun 2010	28 June 2010	B2.1.3.4 - Meadows - 4167-05-07	.dwg



# Auburn Stabling Project (Stage 1)

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B2.2	DVD Titled "Whelans Insites Survey - Auburn Stabling Project (Stage 1) - Survey 3D Model - Version A"	Jan-2010	All files in electronic folder titled "B2.2 - DVD Titled - Whelans Insites Survey - Auburn Stabling Project (Stage 1) - Survey 3D Model - Version A"	n/a
B3	Detailed Services Survey			
B3.1	Detailed Services Survey for Auburn Stabling Yard	14 March 2011	B1.4 Detailed Services Survey Report	.pdf
C	Geotechnical and Contamination Information			
C1	Geotechnical and Contamination Investigations			
C1.1	Geotechnical and Contamination Investigations	June 2010	C1.1 - Factual Report on Geotechnical Investigation	.pdf
C1.2	Geotechnical and Contamination Investigations	June 2010	C1.2 - Interpretative Report on Geotechnical Investigation	.pdf
C1.3	Geotechnical and Contamination Investigations	June 2010	C1.3 - Contamination Assessment Report	.pdf
C1.4	C1.4 Native Digital Files		Folder titled C1.4 Native Digital Files- Issued on Addendum 4 DVD 12/05/2011	
C2	Magnetometer and Ground Penetration Radar Search			
C2.1	Geophysical Investigation - Auburn Stabling Yard	n/a	C2.1 - Final - Siteline Report - GPR and Magnetometer - 100311	.pdf
C2.2	Siteline Projects - Total Magnetic Field - Whole Site	n/a	C2.2 - Siteline - Magnetometer - Whole Site View	.pdf
C2.3	Siteline - Magnetometer - Area One	n/a	C2.3 - Siteline - Magnetometer - Area One	.pdf
C2.4	Siteline - Magnetometer - Area One Zoomed	n/a	C2.4 - Siteline - Magnetometer - Area One Zoomed	.pdf
C2.5	Siteline - Magnetometer - Area Two	n/a	C2.5 - Siteline - Magnetometer - Area Two	.pdf
C2.6	Siteline - Magnetometer - Area Three	n/a	C2.6 - Siteline - Magnetometer - Area Three	.pdf
C2.7	Siteline - Magnetometer - Area Three Zoomed	n/a	C2.7 - Siteline - Magnetometer - Area Three Zoomed	.pdf
C2.8	Siteline - Magnetometer - Area Four	n/a	C2.8 - Siteline - Magnetometer - Area Four	.pdf
C2.9	Siteline - Ground Penetration Radar - Area Four	n/a	C2.9 - Siteline - Ground Penetration Radar - Area Four	.pdf
C2.10	Siteline - Magnetometer - Area Five	n/a	C2.10 - Siteline - Magnetometer - Area Five	.pdf
D	Safety Information			
D1.1	Stage 1 - Project Safety Master Plan (PSMP)	2	D1.1 - DRAFT - Stage 1 - Project Safety Master Plan (PSMP)	.doc
D1.2	Stage 1 - Safety Assurance Plan	6	D1.2 - DRAFT - Stage 1 - Safety Assurance Plan	.doc
D1.3	Stage 1 - Project Safety Hazard Log	Rev 3	D1.3 - Stage 1 - Project Safety Hazard Log	.xls
D1.4	Goal Structuring Notation_GSN Model for Auburn Stabling Project	12/06/2010	D1.4 - ASP - Goal Structring Notation (GSN)	.pdf

# Auburn Stabling Project (Stage 1)

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D1.5	Executed Project Safety Master Plan		Folder titled Executed Project Safety Master Plan lussed on Addendum 5 DVD 25/05/2011	
D1.6	Auburn Stabling Facility - Safety, Environmental and Reliability Site Hazard Inspection		Folder titled D1.6 Safety, Environment and Reliability Site Hazard Inspection Issued on Addendum 6 DVD 7/06/2011	
E	Signalling Information			
E1.1	Signalling Functional Specification	10 January 2011	E1.1 - Signalling Functional Specification	.pdf
E1.2	Stage 1 - Signalling Plan	2/03/2011	E1.2 - DRAFT - Stage 1 - Signalling Plan	.pdf
F	Electrical Information			
F1.1	Western Line DC Power Study Scope Report	January 2011	F1.1 - Western Line DC Power Study Scope Report - January 2011	.pdf
G	Environmental Information			
G1.1	REF - Volume 1 - Main Report	0	G1.1 - REF - Volume 1 - Main Report	.pdf
G1.2	REF - Volume 2 - Noise and Vibration Assessment	G	G1.2 - REF - Volume 2 - Noise and Vibration Assessment	.pdf
G1.3	REF - Volume 2 - Remediation Action Plan	March 2011	G1.3 - REF - Volume 2 - Remediation Action Plan	.pdf
G1.4	REF - Volume 2 - Traffic Impact Assessment	November 2010	G1.4 - REF - Volume 2 - Traffic Impact Assessment	.pdf
G1.5	REF - Volume 2 - Heritage Impact Assessment	October 2010	G1.5 - REF - Volume 2 - Heritage Impact Assessment	.pdf
G1.6	REF - Volume 2 - Ecological Impact Assessment	October 2010	G1.6 - REF - Volume 2 - Ecological Impact Assessment	.pdf
G1.7	Draft Preferred Activity Report Table of Contents	XX 2011	G1.7 - Draft Preferred Activity Report TOC	.pdf
G1.8	Revised RAP		File Titled Revised RAP Issued on by email on 27/05/2011	
H	RailCorp Information			
H1.1	DVD Titled "RailCorp Standards and Publications"	11 March 2011	All files in electronic folder titled "H1.1 - DVD Titled -RailCorp Standards and Publications"	n/a
H1.2	Major Closedowns and Weekend Possessions Programme	14	H1.2 - Major Closedowns and Weekend Possessions Programme - 20112012 - Draft 14	.xls
H1.3	HV 721 - Drawings EL0004531 rev b and EL0004532 rev A		Folder titled H1.3 HV 721 Drawings- Issued on Addendum 4 DVD 12/05/2011	
H1.4	RailCorp Standard Electrical Drawings		Folder Titled RailCorp Standard Electrical Drawings Issued on Addendum 5 DVD 25/05/2011	
I	General Information			
I1.1	Auburn Stabling Project - Options Report	C	I1.1 - Options Report - Revision C - 23Apr10	.pdf
I1.2	CAD Protocols	2	I1.2 - CAD Protocols - EN-ST-084_2.0	.pdf

# Auburn Stabling Project (Stage 1)

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I1.3	State Rail Authority Way & Works Branch - Layout of Area Location - B247 - A	A	I1.3 - Wagon Maintenance Centre - Old Layout of Clyde Area.tif	.tif
I1.4	Auburn Stabling Project - Reference Design Stage 1 - Staging Diagrams - Clyde Throat	Various	I1.4 - ASP Staging Diagrams - Reference Design Stage 1 - 17 Feb 2011.	.pdf
I1.5	Schematic Diagram of Auburn Stabling Project	n/a	I1.5 - Schematic Diagram of Auburn Stabling Project	
I1.6	Critical Design Review Design Report		Folder titled I1.6 Critical Design Review Design Report - Issued on Addendum 3 DVD 21/04/2011	
I1.7	Drainage Waiver and related Waiver Application		Folder titled I1.7 Drainage Waiver and related Waiver Application - Issued on Addendum 3 DVD 21/04/2011	
I1.8	Revised TSR - E1 with tracking (the tracking shows the changes compared to the original version of TSR-E1 that was issued with the Invitation to Tender)		Folder titled I1.8 Tracked TSR-E1 - Issued Addendum 4 DVD 12/05/2011	
J	Principal's Design			
J1.1	DVD Titled "Principal's Design CAD Files"	16 March 2011	All files in electronic folder titled "J1.1 - DVD Titled - Principal's Design CAD Files".	n/a
J1.2	Auburn Stabling Project Stage 1 Tender Drawing Issue - Schedule of Drawings	B	J.2 - ASP-1333-TD-0040-GN-1001	.pdf
J2.1	Zip file of X-refs for OHW design		Folder Titled J2.1 X-ref Zip file Issued on Addendum 4 DVD 12/05/2011	
K	Utilities Drawings			
K1.1	Auburn Stabling Project Stage 1 Utilities (Existing) - Keyplan - Sheet 1 of 1	A	K1.1 - ASP-1333-TD-0040-UT-1300	.pdf
K1.2	Auburn Stabling Project Stage 1 Utilities (Existing) - Legend - Sheet 1 of 1	A	K1.2 - ASP-1333-TD-0040-UT-1305	.pdf
K1.3	Auburn Stabling Project Stage 1 Utilities (Existing) - Potential Relocations - Sheet 1 of 1	A	K1.3 - ASP-1333-TD-0040-UT-1306	.pdf
K1.4	Auburn Stabling Project Stage 1 Utilities (Existing) - Layout Plan - Sheet 1 of 4	A	K1.4 - ASP-1333-TD-0040-UT-1313	.pdf
K1.5	Auburn Stabling Project Stage 1 Utilities (Existing) - Layout Plan - Sheet 2 of 4	A	K1.5 - ASP-1333-TD-0040-UT-1314	.pdf
K1.6	Auburn Stabling Project Stage 1 Utilities (Existing) - Layout Plan - Sheet 3 of 4	A	K1.6 - ASP-1333-TD-0040-UT-1315	.pdf
K1.7	Auburn Stabling Project Stage 1 Utilities (Existing) - Layout Plan - Sheet 4 of 4	A	K1.7 - ASP-1333-TD-0040-UT-1316	.pdf
L	Property Acquisition Drawings			

# Auburn Stabling Project (Stage 1)

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L1.1	Auburn Stabling Project Stage 1 Property Adjustments - Land Acquisition - Keyplan - Sheet 1 of 1	A	L1.1 - ASP-1333-TD-0040-PA-1300	.pdf
L1.2	Auburn Stabling Project Stage 1 Property Adjustments - Land Acquisition - Plan - Sheet 1 of 4	A	L1.2 - ASP-1333-TD-0040-PA-1312	.pdf
L1.3	Auburn Stabling Project Stage 1 Property Adjustments - Land Acquisition - Plan - Sheet 2 of 4	A	L1.3 - ASP-1333-TD-0040-PA-1313	.pdf
L1.4	Auburn Stabling Project Stage 1 Property Adjustments - Land Acquisition - Plan - Sheet 3 of 4	A	L1.4 - ASP-1333-TD-0040-PA-1314	.pdf
L1.5	Auburn Stabling Project Stage 1 Property Adjustments - Land Acquisition - Plan - Sheet 4 of 4	B	L1.5 - ASP-1333-TD-0040-PA-1316	.pdf

N				
N1	Auburn Stabling Project Reference Design Report, 7 December 2010 [Full Scope]		Folder titled N1 - Reference Design Report [full scope] - Issued on Addendum 2 DVD 13/04/2011	
N2	N2 Auburn Stabling Project Reference Design Drawings [Full Scope]		Folder titled N2 - Reference Design Drawings [full scope] - Issued on Addendum 2 DVD 13/04/2011	
N3	N3 Reference Design Background Reports [Full Scope]		Folder titled - N3 - Background Reports [full scope]- Issued on Addendum 2 DVD 13/04/2011	
O				
O1	Auburn Stabling Facility, Business Requirements Specification (BRS), 28 November 2009 [Full Scope]		File titled - O1 - System Requirements Specification 03092010 V2.0 [fullscope] - Issued on Addendum 2 DVD 13/04/2011	.pdf
O2	Auburn Stabling Yard, Systems Requirements Specification (SRS), 3 August 2010 [Full Scope]		File titled - O2 - Business Requirement Specification 281109 V1.0 [full scope] - Issued on Addendum 2 DVD 13/04/2011	.pdf
P				
P1	Selection of Electrical Operating Drawings		File titled P1 - Selection of Electrical Operating Diagrams.zip - Issued by email 03/05/2011	.zip

# Auburn Stabling Project (Stage 1)

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Q			
Q1.1	RailCorp Design Review Comments Sheet		Folder Titled - Q1.1 RailCorp Design Review Comments Sheet - Issued on Addendum 3 DVD 21/04/2011
R			
R1.1	12 D model		File name - Attachment 3.A 12 D Model.12da - Addendum 1 issued by email 04/04/2011
R1.2	MX models		File name - Attachment 4.A MX Models.txt - Addendum 1 issued by email 04/04/2011
R1.3	Drains model		Folder titled R1.3 DRAINS Model - Issued on Addendum 3 DVD 21/04/2011
R1.4	MX Survey model		Folder titled R1.4 MX Survey model - Issued on Addendum 3 DVD 21/04/2011

## 19. Form of Warranty

(Clause 2.2(g))

This Deed Poll is made the                      day of                      20

To: **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*); and

**Rail Corporation of New South Wales** (ABN 59 325 778 353) a corporation constituted by section 4(1) of the Transport Administration Act 1988, of Level 6, 18 Lee Street Chippendale, NSW 2008 (*RailCorp*).

By: That person described in Item 1 of the Schedule (*Warrantor*) which expression will include its successors and assigns.

### RECITALS

- A. The Warrantor has supplied the items described in Item 2 of the Schedule (*Equipment*) to the person described in Item 3 of the Schedule (*Contractor*) or the person described in Item 4 of the Schedule, a subcontractor of the Contractor (*Subcontractor*), for the works (*Works*) being carried out by the Contractor under the deed described in Item 5 of the Schedule (*Deed*) with the Principal.
- B. It is a requirement of the Deed that the Contractor procure the Warrantor to give the following warranties in favour of the Principal and RailCorp with respect to the Equipment.

### OPERATIVE

#### 1. Quality

The Warrantor:

- (a) warrants to the Principal and RailCorp that the Equipment will be to the quality and standard stipulated by the Deed and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

#### 2. Replacement

The Warrantor warrants to the Principal and RailCorp that it will replace so much of the Equipment as:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or RailCorp the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise,

within the period described in Item 7 of the Schedule.

### 3. Warrantor to bear cost

The Warrantor covenants to the Principal and RailCorp that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

### 4. Principal not liable

The Warrantor acknowledges to the Principal and RailCorp that nothing contained in this Deed Poll is intended to nor will render either the Principal or RailCorp in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.

### 5. This Deed Poll may not be revoked

This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal and RailCorp.

### 6. Governing Law and jurisdiction

- (a) This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- (b) The Warrantor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

### 7. Enforcement of this Deed Poll

For the avoidance of doubt this Deed Poll is enforceable by any of the Principal or RailCorp.

### Schedule

Item 1	Name and Address of Warrantor	[#]
Item 2	Equipment (Recital A)	[#]
Item 3	Contractor (Recital A)	[#]

Item 4	Subcontractor (Recital A)	[#]
Item 5	Deed (Recital A)	The Auburn Stabling Project (Stage 1) Design and Construction Contract dated on or about the date of this Deed Poll between the Principal and the Contractor
Item 6	Detailed Warranty of Warrantor (Clause 1(b))	[#]
Item 7	Period of Years (Clause 2)	[#] years from the expiry of the last "Defects Rectification Period" as defined in the General Conditions (including any extension under clause 8.6 of the General Conditions)

## EXECUTED AS A DEED POLL

Executed by *[insert name of Warrantor]* (ABN *[insert ABN]*) by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full



## 20. Form of Statutory Declaration

(Clause 11.2(i))

Statutory Declaration	Oaths Act (NSW) Ninth Schedule
I,.....	insert full name of Declarant
of .....	insert address
do solemnly and sincerely declare that:	
1. I am the representative of: ..... ("the Contractor") in the Office Bearer capacity of: .....	insert name of Contractor, and ACN if applicable  insert position title of Declarant
2. The Contractor has a contract with the [ ..... ]: ..... ("the Contract")	insert name of Contract
3. I personally know the facts which I have set out in this declaration.	
4. All employees who have at any time been engaged by the Contractor for work done under the Contract:	
(a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and	
(b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,	
with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:	insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances,
Employee: Amount unpaid or not accrued:	
.....	
.....	
.....	
.....	
.....	
.....	

5. All subcontractors and suppliers to the Contractor have been paid all moneys which as at the date of this declaration have been claimed by them to the Contractor for the performance of work under the Contract (as applicable ) and the supply of materials for use in work under the Contract, with the exception of the subcontractors and suppliers and the respective unpaid amounts listed below:

Subcontractor or supplier:

Amount unpaid:

.....  
 .....  
 .....  
 .....  
 .....

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

- (a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors;
- (b) that all their employees and subcontractors, as at the date of the making of such a declaration:
  - (i) have been paid all remuneration and benefits due and payable to them by; or
  - (ii) had accrued to their account all benefits to which they are entitled from;

holiday pay, long service leave payments and superannuation entitlement etc.

insert names and addresses of the unpaid subcontractors and suppliers, the amounts owing and whether in respect of materials supplied, work performed etc.

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract; and

- (c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Subcontractor:

Due amount unpaid:

.....  
.....  
.....  
.....  
.....  
.....  
.....

9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

Employee, subcontractor  
or supplier:

Amount unpaid or not accrued:

.....  
.....  
.....  
.....  
.....  
.....

10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) which is a written statement:

insert names  
and addresses of  
the Contractor's  
subcontractors  
who have not  
submitted a  
declaration, and  
unpaid amounts  
due or otherwise  
due to each of  
them by the  
Contractor in  
respect of this  
claim

insert names of  
the  
subcontractors,  
the name and  
addresses of the  
unpaid  
employees,  
subcontractors  
and suppliers  
and amounts  
listed as unpaid  
or not accrued to  
them.

<p>(a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;</p> <p>(b) under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and</p> <p>(c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.</p> <p>12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.</p> <p>13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:</p> <p>(a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and</p> <p>(b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.</p> <p>14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.</p>	
<p>I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.</p> <p>Declared at ..... on .....</p> <p style="text-align: center;">(place)                      (day)                      (month)                      (year)</p> <p>.....</p> <p>(Signature of Declarant)</p> <p>Before me:</p> <p>.....</p> <p>(Signature of person before whom the declaration is made)</p> <p>.....</p> <p>(Name of the person before whom the declaration is made)</p> <p>.....</p> <p>(Title* of the person before whom the declaration is made)</p>	
<p>* The declaration must be made before one of the following persons:</p> <p>- where the declaration is sworn within the State of New South Wales:</p>	

- (i) a justice of the peace of the State of New South Wales;
- (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
- (iii) a notary public.

- where the declaration is sworn in a place outside the State of New South Wales:

- (i) a notary public; or
- (ii) any person having authority to administer an oath in that place.

**SUBCONTRACTOR'S STATEMENT**  
**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND**  
**REMUNERATION (Note 1 - see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW), and s127 *Industrial Relations Act 1996* (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

**SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.**

Subcontractor: ..... ABN: .....

(Business name)

of .....

(Address of Subcontractor)

has entered into a contract with ..... ABN: .....

(Business name of principal contractor)

(Note 2)

Contract number/identifier .....

(Note 3)

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, (Note 4)

subject of the payment claim dated: ...../...../..... (Note 5)

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box.

(Note 6)

- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../.....

(Note 7)

- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.

(Note 8)

- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)

- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.

(Note 10)

- (f) Signature ..... Full name.....

- (g) Position/Title ..... Date ...../...../.....

**NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987* (NSW).

## Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations Act 1996* (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* (NSW) defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* (NSW) states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.



10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

#### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

### Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**21. Property Owner's Certificate**

(Clause 3.4(b))

This deed poll is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

To: **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*)

By: [\_\_\_\_\_] .

Property Address: .....

1. I/We confirm that the following works has been carried out and completed on my/our property to my/our satisfaction:

*[Insert description of works on property and property]*

2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.

3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1.

4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Executed as a deed poll.

Signed sealed and delivered by *[insert name]* in  
the presence of:

\_\_\_\_\_  
Signature\_\_\_\_\_  
Signature of Witness\_\_\_\_\_  
Name of Witness in full

## 22. Site and Site Requirements

(Clauses 1.1, 2.7, 3.1, 3.3 and 13.1(c))

### 22.1 General

Without limiting the Contractor's other obligations under this Deed in relation to the Site, the Contractor, must, in executing the Contractor's Activities, comply with the requirements set out in this Schedule 22.

The Contractor will be given access to the parts of the Site at the times and under the conditions set out in this Schedule 22.

In this Schedule 22:

**"Control"** of an area of the Site including any Worksite means undertaking all the activities required to manage all access to and across an area of the Site, including any Worksite, and maintaining the temporary and permanent infrastructure provided by the Contractor including the Temporary Works. Such activities will include managing and maintaining the security of an area of the Site, including any Worksite, conducting basic familiarisation and safety inductions for all those accessing an area of the Site including any Worksite (but not inductions specific to Other Contractor's work), operating and maintaining the temporary and permanent infrastructure provided by the Contractor including the Temporary Works and liaising with Authorities.

**"Reinstate"** in respect of a Worksite means restoring that Worksite to a condition not less than that in existence immediately prior to the Contractor obtaining access to the Worksite, in compliance with the conditions set out in the Planning Approval and any additional conditions required by relevant Authorities, but excluding any change to temporary infrastructure required for use of the Worksite after the reinstatement.

**"Contractor's Investigation Access Notice"** means a written notice issued by the Contractor to the Principal that provides at least 10 Business Days notice of the date that the Contractor requires access to a particular Worksite to perform survey, testing or investigation work and also nominates the extent of the work to be undertaken and the period of access required by the Contractor.

**"Contractor's Construction Access Notice"** means a written notice issued by the Contractor to the Principal that provides at least 3 months notice of the date that the Contractor requires access to a particular Worksite to perform construction work. The Contractor's Construction Access Notice must include the following details:

- (a) the date the Contractor requires access to the particular Worksite;
- (b) the period of time the Contractor requires access to the particular Worksite; and
- (c) details of the nature of the Works and/or Temporary Works to be carried out in the particular Worksite.

**22.2 Site**

The Site consists of the Worksites identified in Table 1 below and which are identified on the drawings in Exhibit H of the Deed ("**Site Drawings**"). Table 1 identifies each Worksite as Asset Lands or Temporary Lands.

The Site is comprised of the Asset Lands, Temporary Lands and any other lands and places made available to the Contractor by the Principal for the purposes of the Deed, including the underground strata and air space required to deliver the Works within the Asset Lands at the alignments and depths described in the Principal's Design.

**Table 1. Asset Lands and Temporary Lands**

Drawing Number and Revision	Worksite Identified on Site Drawings	Asset Lands/Temporary Lands
ASP-1333-TD-0040-GN-1353 Rev C	A	Temporary Lands
ASP-1333-TD-0040-GN-1354 Rev B	B	Asset Lands
ASP-1333-TD-0040-GN-1355 Rev B	C	Temporary Lands
ASP-1333-TD-0040-GN-1356 Rev B	D	Temporary Lands (until 1 March 2012)  Asset Lands (from 1 March 2012)
	E	Temporary Lands

**22.3 Site Access and Use Conditions**

- (a) The Contractor has Control of the Site including any Worksites, unless otherwise identified in the table below.
- (b) The Contractor must restore all Temporary Lands to a condition not less than that existing immediately prior to the Contractor obtaining access to that area of the Site including any Worksite, in compliance with the conditions of this Deed, the Planning Approval and any additional conditions required by relevant Authorities, unless otherwise identified in the table below.
- (c) The Contractor must comply with the following general conditions in relation to the Site and the specific requirements identified in the table below:
  - (i) the removal of any trees is subject to the prior written approval of the Principal's Representative;
  - (ii) vehicle access to and from the Site, including the location of all entrances, points of access, turning restrictions, slip lanes, traffic volumes and weight limits on local streets, hours of work and the like must comply with the Planning Approval, all other Authority Approvals, the Traffic Management Plan required under TCA Standard Requirements TSR Prelude and the Site Traffic Management Plan required under TCA Standard Requirements TSR S1;

- (iii) the site office facilities provided for the Principal must be provided as identified in Schedule 3;
  - (iv) the Contractor must ensure that protection and reinstatement of the condition and features of the Site, including any Worksites, comply with the Planning Approval and all other Authority Approvals;
  - (v) the Contractor must comply with the conditions of all leases, licences and easements under which the Principal or RailCorp is entitled (as against the owner of a part of the Site) to have access to a part of the Site; and
  - (vi) relevant property owners and/or their tenants shall have access to the Site, including any Worksites, to facilitate the undertaking of emergency repairs or maintenance on their properties or premises.
- (d) The Contractor acknowledges that the Site, including Worksites, includes vehicular driveways or access and egress points that are shared with property owners, their tenants and/or Other Contractors. The Contractor must not impede or interfere with the use of these driveways or access and egress points.
- (e) The Contractor acknowledges that the Site, including Worksites, extends across, over and under railways. The Contractor will not have exclusive use of these railways. The Contractor must coordinate its use of these railways with RailCorp and Other Contractors.

Table 2. Access Dates and Conditions

Worksite Identified on Site Drawings	Access Dates	Conditions of Access and Use
A	<p>The earlier of:</p> <p>(a) 1 March 2012; or</p> <p>(b) the access date identified on the Contractor's Investigation Access Notice, subject to the Principal's approval, but which date must not be before 31 October 2011.</p>	<p>In the event the Contractor requires access prior to 1 March 2012 to undertake survey, testing or investigation work it must provide to the Principal's Representative a Contractor's Investigation Access Notice. Access for the Contractor under a Contractor's Investigation Access Notice is subject to the Principal's approval.</p> <p>The Contractor will not have access to this Worksite to undertake construction activities prior to 1 March 2012.</p> <p>The Contractor has Control of this Worksite from the relevant Access Date and for the duration of the Contractor's Activities in this Worksite, except that it must provide access to the owner or tenant of the Worksite at all times.</p> <p>The Contractor must access the Worksite from the Site.</p> <p>The Contractor must obtain a condition survey, prepared by an independent entity, prior to commencing any Contractor's Activities on this Worksite. The condition survey must be agreed by, and provided to, the Principal's Representative.</p> <p>The Contractor must Reinstate the Worksite.</p>

Worksite Identified on Site Drawings	Access Dates	Conditions of Access and Use
B	Commencement Date	<p>The Contractor has Control of this Worksite from the Commencement Date.</p> <p>Access for Other Contractors must be provided from Manchester Road at all times.</p>
C	The access date identified on the Contractor's Investigation Access Notice or the access date identified on the Contractor's Construction Access Notice.	<p>The Contractor must provide to the Principal's Representative a Contractor's Investigation Access Notice and a Contractor's Construction Access Notice.</p> <p>Access to this Worksite is subject to the requirements of the Auburn Maintenance Centre and MainTrain Facility.</p> <p>The Contractor must coordinate its Works and Temporary Works with the Auburn Maintenance Centre and MainTrain Facility in respect of all train movements in this Worksite.</p> <p>The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times.</p> <p>The Contractor must Reinstate this Worksite.</p>
D	The earlier of: (a) 1 March 2012; or (b) the access date identified on the Contractor's Investigation Access Notice, but which date must not be before 31 October 2011.	<p>In the event the Contractor requires access prior to 1 March 2012 to undertake survey, testing or investigation work it must provide to the Principal's Representative a Contractor's Investigation Access Notice. Access for the Contractor under a Contractor's Investigation Access Notice is subject to the Principal's approval.</p> <p>The Contractor will not have access to this Worksite to undertake construction</p>

Worksite Identified on Site Drawings	Access Dates	Conditions of Access and Use
		<p>activities prior to 1 March 2012.</p> <p>The Contractor has Control of this Worksite from the relevant Access Date and for the duration of the Contractor's Activities in this Worksite, except that it must provide access to the owner or tenant of the Worksite at all times.</p> <p>The Contractor must access this Worksite from the Site.</p>
E	The access date identified on the Contractor's Investigation Access Notice or the access date identified on the Contractor's Construction Access Notice.	<p>The Contractor must provide to the Principal's Representative a Contractor's Investigation Access Notice and a Contractor's Construction Access Notice.</p> <p>The Contractor has Control of this Worksite from the relevant Access Date.</p> <p>The Contractor must access this Worksite from the Site.</p> <p>The Contractor must Reinstate this Worksite.</p>



## 23. Form of Subcontractor Deed

(Clause 2.2(f))

THIS DEED POLL is made on ....., 20..... by

..... ACN..... of

..... (the **Subcontractor**).

### RECITALS:

- A. **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**) has entered into a deed with [ ] (**Contractor**) for the design and construction of [ ] (**Works**).
- B. The Subcontractor has an agreement (the **Subcontract**) with the Contractor for the execution and completion of the [ ] (the **Subcontract Works**) for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

**THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES** with and for the benefit of the persons named in the Schedule as follows:

1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
3. The Subcontractor:
  - (a) must if required by a written notice by the Principal sign a deed in the form of the attached Deed of Novation with such substitute contractor as the Principal may nominate; and
  - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
4. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
5. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
7. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Contractor in respect of that breach.

## PERSONS NAMED IN THE SCHEDULE TO THIS DEED POLL

Transport Construction Authority (ABN 28 458 799 157)

Rail Corporation New South Wales (ABN 59 325 778 353)

## EXECUTED AS A DEED POLL.

Executed by *[insert name]* (ABN *[insert ABN]*) by  
or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

(Attached Deed Of Novation)

THIS DEED OF NOVATION is made on [ ] 20 between the following parties:

- (1) [ ] ACN [ ] of [ ] ("Contractor")  
(2) [ ] ACN [ ] of [ ] ("New Contractor"); and  
(3) [ ] ACN [ ] of [ ] ("Subcontractor").

Recitals

- A. By agreement dated [ ] (the "Agreement"), the Contractor engaged the Subcontractor to, and the Subcontractor agreed to, carry out certain works for the Contractor.
- B. Under clause 3 of the Deed Poll executed on [ ], which forms part of the Agreement, the Subcontractor must enter into this deed when the Principal under the Deed Poll requires it to do so.
- C. Subject to this deed, the Subcontractor agrees to accept the New Contractor in place of the Contractor for the performance of all the obligations of the Contractor and to release completely and discharge the Contractor from all of its obligations under the Agreement and from all claims and demands in respect of it.

**THIS DEED WITNESSES** that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. The Subcontractor must perform its obligations under, and be bound by, the Agreement as if the New Contractor was originally named in the Agreement as the Contractor.
2. The Subcontractor:
  - (a) releases and forever discharges the Contractor from its obligations under the Agreement and from all claims and demands in respect of the Agreement; and
  - (b) accepts the liability of the New Contractor in place of the liability of the Contractor in respect of the Agreement.
3. The New Contractor must perform all the obligations of the Contractor under, and be bound by, the Agreement as if the New Contractor were originally named in the Agreement as the Contractor.
4. Upon the execution and exchange of this deed:
  - (a) the Contractor must release any securities given to it by the Subcontractor in accordance with the Agreement;
  - (b) the Subcontractor must give the New Contractor security in the same form and for the same amounts as any security required by the Agreement; and
  - (c) the Subcontractor must ensure that the New Contractor is appropriately noted on all relevant insurance policies as required by the Agreement.
5. The New Contractor must pay all stamp duty and any penalties in respect of this deed.
6. This deed is governed by the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of the courts of that state.

**EXECUTED** by the parties as a deed:

Executed by [ ] ABN [ ] by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [ ] ABN [ ] by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [ ] ABN [ ] by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

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## 24. Pre-Condition Surveys

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(Clause 3.12(a))

Nil

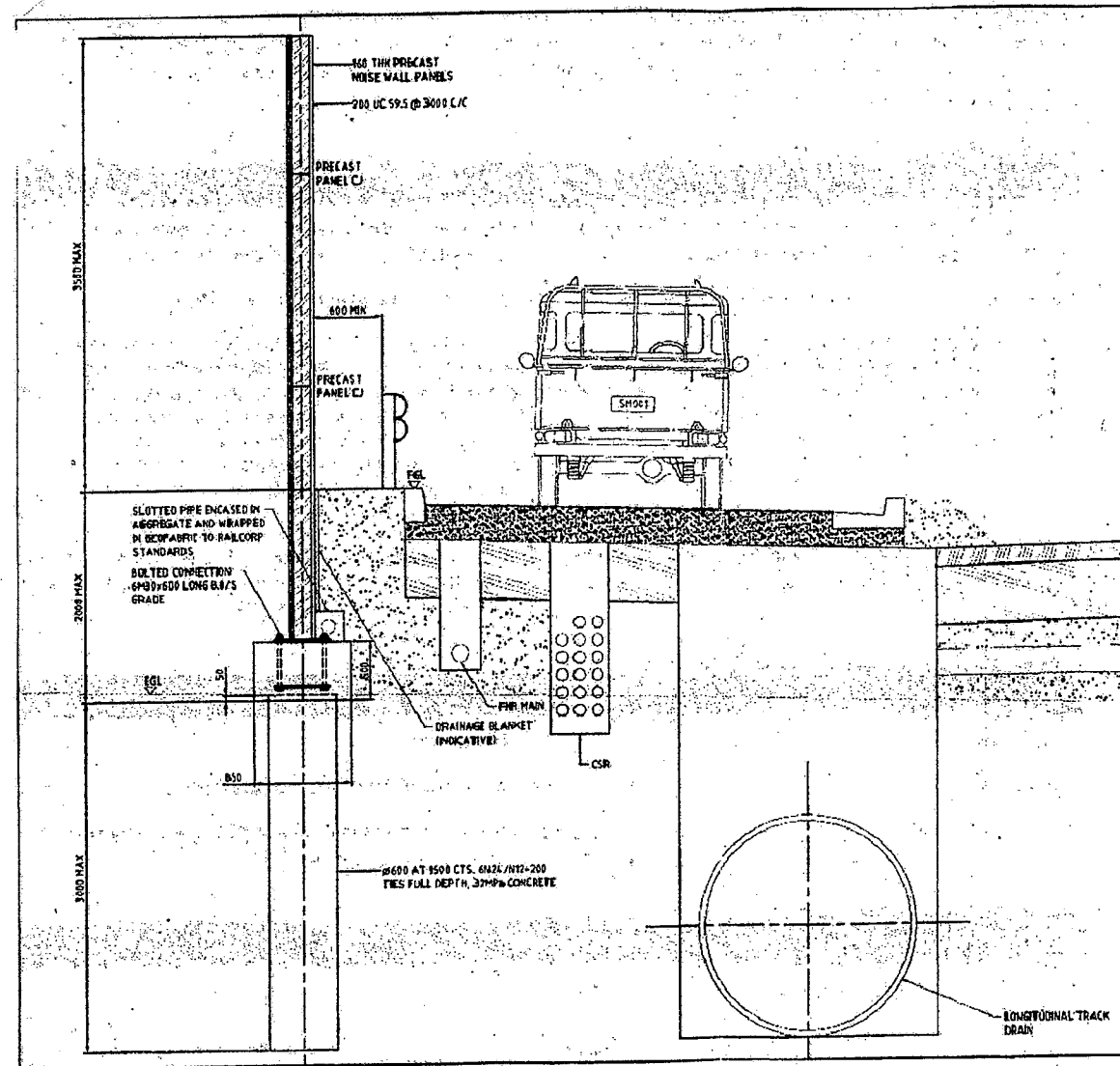
SA

**TCA**

**25. Options**

(Clauses 1.1 and 6.3)

Option ASP-01-D&C-1	Realign Stormwater Trunk Drainage
<b>Description:</b>	<p>The Principal's Design is modified as follows:</p> <ul style="list-style-type: none"> <li>• The alignment of the stormwater trunk drainage pipe-work is swapped with the Combined Services Route (CSR) and Fire Hydrant Route (FHR) under the western access road generally in accordance with drawing ASP-DC-1 attached herewith;</li> <li>• The depth of retaining wall piles to be suitable for the modified design with a minimum piled depth at the same level as the bottom of the trunk drain invert level; and</li> <li>• At locations where the CSR and FHR cross over the trunk drainage sufficient clearances must be maintained to the trunk drain and other services in line with best practice.</li> </ul>
<b>Adjustment to the Contract Sum:</b>	
<b>Period for exercising the Option:</b>	<p>This Option may be exercised at any time up to six calendar weeks after the date of the Deed. If the Principal exercises this Option after either test in clause 9.14(g)(ii) has been satisfied in respect of all SDR design packages affected by this Option then the relevant SDR design packages can proceed directly to PDR submission.</p>
<b>Works Brief amendments:</b>	Nil
<b>Drawing Amendments:</b>	Nil
<b>Relevant Portion:</b>	Portion 3



No.	BY	DATE	DESCRIPTION	APPD
1	DC	17.08.11	OPTION 1 INDICATIVE SKETCH	JL

Scale

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DESIGN	PREPARED	CHECKED	APPROVED
DRAFTING			DATE
THE INFORMATION SHOWN ON THIS DRAWING IS FOR THE PURPOSES OF THIS RAIL PROJECT ONLY. NO WARRANTY IS GIVEN OR IMPLIED AS TO ITS SUITABILITY FOR ANY OTHER PURPOSE.			



Transport  
Construction  
Authority

# AUBURN STABLING PROJECT OPTION 1 INDICATIVE SKETCH

STATUS: SKETCH	SHEET 1 OF 1	A1
ORG No. ASP-DC-1	A	EDMS No.

TCA  
DU



rkss A0118575262v5	120071555	27.9.2011
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Option ASP-01-D&C-2	Realign 623 and 721 HV Feeders to Minimise Routing Through MainTrain
<b>Description:</b>	The Principal's Design is modified to alter the cable route for feeder 721 and 623 between the Clyde Substation and the Auburn Stabling Yard to be through the area between the detention basin No. 2 and the MainTrain site.
<b>Adjustment to the Contract Sum:</b>	
<b>Period for exercising the Option:</b>	This Option may be exercised at any time up to six calendar weeks after the date of the Deed. If the Principal exercises this Option after either test in clause 9.14(g)(ii) has been satisfied in respect of all SDR design packages affected by this Option then the relevant SDR design packages can proceed directly to PDR submission.
<b>Works Brief amendments:</b>	Nil
<b>Drawing Amendments:</b>	Nil
<b>Relevant Portion:</b>	Portion 3



TCA

**Auburn Stabling Project (Stage 1)**  
**Form of Contractor Deed Poll**

Transport Construction Authority

September 2011

DM  
TCA

This deed poll (*Deed Poll*) made the <sup>28</sup> day of September 2011

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

in favour of: Rail Corporation New South Wales (ABN 59 325 778 353) a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW), of Level 20, 477 Pitt Street, Sydney NSW 2000 (*RailCorp*).

#### RECITALS

- A. RailCorp operates the commuter rail system in Sydney.
- B. 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 (*TCA*), is responsible for developing certain major railway systems and other major projects .
- C. TCA is responsible for procuring the execution and completion of a new train stabling facility and associated facilities known as the Auburn Stabling Yards. It has entered into a deed (*Main Deed*) with the Contractor to design and construct a certain part of the Auburn Stabling Yards (the *Works*).
- D. RailCorp is relying on TCA to procure the Contractor to execute and complete the Works in accordance with the Main Deed to ensure that RailCorp will satisfy, among other things, its obligation to provide an operating commuter rail system.
- E. RailCorp will suffer loss if TCA does not procure the Contractor to execute and complete the Works in accordance with the Main Deed.
- F. It is a condition of the Main Deed that the Contractor executes this Deed Poll.

**THIS DEED WITNESSES THAT THE CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES** with and for the benefit of RailCorp as follows:

- 1. It will comply with its obligations under the Main Deed, including with respect to achieving Completion of each Portion and the Works by the relevant Date for Completion.
- 2. Upon Completion of the Works, the Works will satisfy the requirements of the Main Deed.
- 3. In consideration of RailCorp making available to the Contractor Track Possessions the Contractor agrees that it must indemnify RailCorp against all costs, expenses, losses or damages suffered or incurred by RailCorp in respect of any delay to rail services or late return of Track Possessions arising out of or in connection with the Contractor's Activities.

The maximum liability which the Contractor will have to RailCorp pursuant to this clause for each event resulting in delay to rail services or for late return of a Track Possession will be determined on the basis of the maximum period by which any train was delayed by the event or late return of a Track Possession calculated by applying the following rates:

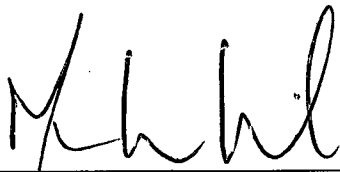
Period in which delay occurs	Rate per hour or part thereof
During peak hours (trains having to arrive and depart Central Station between Monday and Friday (excluding public holidays) during the hours of 0600 and 0900 and 1600 and 1800 respectively)	\$30,000
During all other times	\$15,000

4. The aggregate of the Contractor's liability to RailCorp under this Deed Poll and the Contractor's liability to TCA under the Main Deed:
  - (a) will not exceed the liability which the Contractor would have had under the Main Deed if the Main Deed had named, as Principal, RailCorp and TCA jointly and severally; and
  - (b) is otherwise subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Main Deed.
5. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.
6. RailCorp may assign or charge the benefits and rights accrued under this Deed Poll.
7. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
8. The Contractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
9. This Deed Poll may not be revoked or otherwise modified without the prior written consent of RailCorp.
10. Where terms used in this Deed Poll are defined in the Main Deed, those terms have the meaning given to them in the Main Deed.

Executed and delivered as a Deed poll in Sydney.

Executed as a Deed Poll in accordance with  
section 127 of the *Corporations Act 2001* by  
**Laing O'Rourke Australia Construction Pty Ltd**  
(ACN 112 099 000):

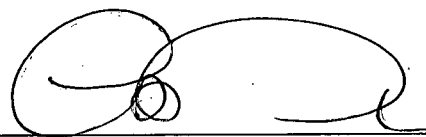
by or in the presence of:



Signature of Director

**MARK GREGORY WILSON**

Name of Director in full



Signature of Secretary/other Director

**CATHAL O'ROURKE**

Name of Secretary/other Director

## 26. Form of Contractor Deed Poll

(Clause 1.6)

This deed poll (*Deed Poll*) made the                      day of                      20

By:                      *[insert name of Contractor]* (ABN *[insert Contractor's ABN]*) of *[insert Contractor's address]* (*Contractor*),

in favour of:      Rail Corporation New South Wales (ABN 59 325 778 353) a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW), of Level 20, 477 Pitt Street, Sydney NSW 2000 (*RailCorp*).

### RECITALS

- A.      RailCorp operates the commuter rail system in Sydney.
- B.      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 (*TCA*), is responsible for developing certain major railway systems and other major projects .
- C.      TCA is responsible for procuring the execution and completion of a new train stabling facility and associated facilities known as the Auburn stabling yards. It has entered into a deed (*Main Deed*) with the Contractor to design and construct a certain part of the Auburn stabling yards (the *Works*).
- D.      RailCorp is relying on TCA to procure the Contractor to execute and complete the Works in accordance with the Main Deed to ensure that RailCorp will satisfy, among other things, its obligation to provide an operating commuter rail system.
- E.      RailCorp will suffer loss if TCA does not procure the Contractor to execute and complete the Works in accordance with the Main Deed.
- F.      It is a condition of the Main Deed that the Contractor executes this Deed Poll.

**THIS DEED WITNESSES THAT THE CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES** with and for the benefit of RailCorp as follows:

- 1.      It will comply with its obligations under the Main Deed, including with respect to achieving Completion of each Portion and the Works by the relevant Date for Completion.
- 2.      Upon Completion of the Works, the Works will satisfy the requirements of the Main Deed.
- 3.      In consideration of RailCorp making available to the Contractor Track Possessions the Contractor agrees that it must indemnify RailCorp against all costs, expenses, losses or damages suffered or incurred by RailCorp in respect of any delay to rail services or late return of Track Possessions arising out of or in connection with the Contractor's Activities.

The maximum liability which the Contractor will have to RailCorp pursuant to this clause for each event resulting in delay to rail services or for late return of a Track Possession will be determined on the basis of the maximum period by which any train was delayed by the event or late return of a Track Possession calculated by applying the following rates:

Period in which delay occurs	Rate per hour or part thereof
During peak hours (trains having to arrive and depart Central Station between Monday and Friday (excluding public holidays) during the hours of 0600 and 0900 and 1600 and 1800 respectively)	\$30,000
During all other times	\$15,000

4. The aggregate of the Contractor's liability to RailCorp under this Deed Poll and the Contractor's liability to TCA under the Main Deed:
  - (a) will not exceed the liability which the Contractor would have had under the Main Deed if the Main Deed had named, as Principal, RailCorp and TCA jointly and severally;
  - (b) is otherwise subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Main Deed.
5. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.
6. RailCorp may assign or charge the benefits and rights accrued under this Deed Poll.
7. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
8. The Contractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
9. This Deed Poll may not be revoked or otherwise modified without the prior written consent of RailCorp.
10. Where terms used in this Deed Poll are defined in the Main Deed, those terms have the meaning given to them in the Main Deed.

Executed as a deed poll.

Executed by *[insert Contractor's name]* ABN  
*[insert Contractor's ABN]* by in the presence  
of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full



**27. Performance and Compliance Incentive Payment Table**

(Clauses 1.1 and 11.4).

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
Safety – 01/10/2011 for 27 months			The maximum monthly amount payable for the Safety Category is
	Induction	<p>Site induction process well documented, effectively delivered and includes fatigue and Drug and Alcohol management.</p> <p>Site personnel inducted before commencing on site.</p> <p>Visitors provided with brief induction and accompanied by inducted site staff.</p> <p>Records of inductions maintained.</p>	<p>Payment in respect of the Safety category for each month will be determined by the Principal's Representative as percent of the maximum monthly amount set out above.</p> <p>Percentage of payment is dependant on the Contractor's achievement of the performance requirements.</p>
	Safety Management	Project Safety Management Plan implemented. Provision of Safety Statistics to the Principal each month on schedule.	No payment will be made in respect of the Safety category in respect of any month in which any lost time injury occur.
	Safety Assurance	All documentation required for the safety assurance report is provided on an ongoing basis to the Principal's Representative.	No payment will be made in respect of the Safety category in respect of any month in which any infringement notices, PINs or fines are issued or prosecutions notified or commenced in respect of safety breaches.
	Safe Work Method Statements	Safe Work Method Statements documented and implemented for all significant activities and incorporate Principal's review comments. Hierarchy of controls applied.	
	Toolbox Meetings	Toolbox meetings held at start of new activities.	
	Safety Committee	Safety Committee inspections carried out regularly and recommendations documented.	

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
		Evidence that recommendations have been considered and appropriately dealt with.	
	Personal Protective Equipment	<p>All on site personnel wearing appropriate PPE and complying with RailCorp requirements, including but not limited to:</p> <ul style="list-style-type: none"> <li>• high visibility safety vests with reflective strips front and back, closed at the front and with tail flap;</li> <li>• long sleeved shirts with collar and long pants;</li> <li>• safety helmet;</li> <li>• eye protection;</li> <li>• hand protection (including safety gloves);</li> <li>• sun protection;</li> <li>• safety footwear (lace-up); and</li> <li>• no red or green clothing.</li> </ul>	
	Fall Prevention	<ul style="list-style-type: none"> <li>• Preventative measures, using physical barriers such as safety mesh, guard rails, scaffolding, mobile scaffolding and safety nets, or individual fall arrest systems, for work from heights or near exposed edges to prevent falls.</li> <li>• Warning signs to advise of fall hazards.</li> <li>• Ladders properly secured and safe use of ladders (use of platform ladders preferred where</li> </ul>	

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
		relevant). <ul style="list-style-type: none"> <li>Signs "persons working above" and safety fence/barrier to guard the area below.</li> </ul>	
	Traffic Management	Traffic Management Plan implemented including management of external traffic impacts, pedestrian safety and all moving plant on-site.	
	Protection of Existing Infrastructure	Procedures are implemented to avoid damage to existing infrastructure (RailCorp and adjacent Stakeholders)	
	Site "Housekeeping"	<ul style="list-style-type: none"> <li>Site and amenities clean and tidy.</li> <li>Access ways well defined and kept clear of obstacles.</li> <li>Signs to warn hazards.</li> <li>Entry points to Site controlled or locked.</li> <li>Adequate lighting provided.</li> <li>Protection of excavation areas.</li> <li>Work areas provided with good drainage.</li> <li>Electrical leads tagged and properly supported clear of the ground.</li> <li>Waste materials cleared regularly.</li> <li>No obstacles to existing access of adjacent stakeholders.</li> </ul>	
	Emergency Procedures	<p>Emergency procedures documented and all site personnel trained as part of site induction in:</p> <ul style="list-style-type: none"> <li>evacuation procedure, including</li> </ul>	

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
		<p>assembly areas;</p> <ul style="list-style-type: none"> <li>• how to summon first aid for injuries or medical conditions;</li> <li>• location of fire extinguishers onsite.</li> </ul>	
	Site Incidents and/or Injuries	<p>No Lost Time Injuries (LTIs) during the month and no major safety investigations and no fatalities during the month.</p> <p>Compliance with Principal's reporting and 'close out' process including proper completion of Safety Occurrence Reports, minor and major investigations and forwarding to the Principal's Representative in a timely manner.</p>	
	Infringement notices/fines/prosecutions	No infringement notices, PINs or fines issued and no prosecutions notified or commenced in respect of safety breaches.	
Rail Safety and Reliability 01/10/2011 for 27 months			The maximum monthly amount payable for the Rail Safety and Reliability Category is
	Rail Safety Management	<p>Project Safety Management Plan adequately covers rail safety matters.</p> <p>Contractor and relevant Subcontractors have appropriately documented systems and processes in compliance with the <i>Rail Safety Act 2008</i>, <i>Rail Safety (General) Regulation 2008</i> and <i>Rail Safety (Drug and Alcohol Testing) Regulation 2008</i> and TCA's accreditation.</p>	<p>Payment in respect of the Rail Safety and Reliability category for each month will be determined by the Principal's Representative percent of the maximum monthly amount set out above.</p> <p>Percentage of payment is dependant on the Contractor's achievement of the performance requirements.</p> <p>No payment will be made in respect of Rail Safety</p>
	Safety Interface	Contractor undertakes all	

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
	Agreement	actions required by the Safety Interface Agreement.	<p>and Reliability category in respect of any month in which any notifiable Incident occurs.</p> <p>No payment will be made in respect of the Rail Safety and Reliability category in respect of any month in which there is any delay or disruption to the Auburn Maintenance Centre, MainTrain or scheduled train services arising from any act or omission of the Contractor in performing the Contractor's Activities.</p> <p>Where the contractor damages RailCorp infrastructure, in any given month, a minimum of 50 percent of the payment for reliability will be withdrawn for the month. Where there is more than one incident of infrastructure damage then 100 percent reliability payment for the month will be withdrawn.</p>
	RailCorp Interface	Contractor attends all RailCorp Interface (incl SIA meetings) Meetings and submits Project Safety Agreement (PSA) forms 6 weeks prior to the works being undertaken.	
	Competency Management	Competency certification system implemented and effective.	
	Safety Management System	Compliance with TCA Standard Requirements TSR S1.	
	Worksite Protection	<p>Contractor to have in place appropriate Worksite Protection at all relevant times.</p> <p>All Project personnel to adhere to all instructions given by the Worksite Protection staff.</p>	
	Work Activity Advice (WAA)	All WAA's are provided to the Principal's Representative 6 weeks prior to works being undertaken.	
	Work trains and Hi-rail vehicles	<p>Vehicles are listed on the TCA Infrastructure Maintenance Vehicle Register.</p> <p>Vehicles operated only by persons with appropriate competencies.</p> <p>Vehicles checked and certified as fit for service at the start of each shift.</p> <p>Responsibilities identified and documented.</p> <p>Past record of potential Subcontractors assessed for compliance with rail safety obligations.</p> <p>Performance of operators reviewed (including at least after every major Track Possession and major incident or every 3 months).</p>	

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
	Track Possession Management	<p>Contractor attends Track Possession planning meetings required as per TSR Prelude Clause (5.4).</p> <p>Contractor constructively and co-operatively participates in planning activities to be carried out during Track Possessions.</p> <p>Contractor attends post Track Possession meetings as required to review performance and lessons learned from the Track Possession.</p>	
	Train Delays or damage to RailCorp infrastructure	The Principal will measure reliability incidents as potential and actual as a result of Contractors activities (An actual incident is when a peak hour train delay is incurred. Other incidents are judged as potential when RailCorp infrastructure may be damaged, but it is repaired before any peak hour train delays are incurred).	
	<p>Close out of Rail Reliability issues identified</p> <p>Damage to Rail Infrastructure</p> <p>Damage to other utilities</p> <p>Damage to other parties infrastructure train services</p>	Reliability issues raised by the Principal and agreed between the two parties are closed out within the timeframe agreed with the Principal's Representative.	
	Compliance Audits	<p>Contractor and the Principal conduct regular audits of its compliance with TCA's Accreditation and the obligations under the Contract.</p> <p>The Principal's Representative is provided with the results and other</p>	

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
		relevant information from the Contractor's audits.	
Environmental Management – 01/10/2011 for 27 months			The maximum monthly amount payable for the Environmental Management category is
	Environmental Compliance	<p>Compliance with conditions of Planning Approval, Preferred Activity Report and all other permits and licenses.</p> <p>Number of Incidents and NCRs recorded for the period.</p> <p>If Incidents or NCRs occur, they have been responded to, appropriately acted on and closed out within the nominated timeframes.</p> <p>Suggestions by the Principal or relevant Authorities are considered and dealt with in the nominated timeframes.</p> <p>Environmental Management obligations and requirements as identified in the contract are fulfilled.</p> <p>Compliance data required to populate the Planning and Environment Compliance Monitoring System (PECOMS) is supplied in accordance with required format and timeframes.</p>	<p>Payment in respect of the Environmental Management category for each month will be determined by the Principal's Representative percent of the maximum monthly amount set out above.</p> <p>Percentage of payment is dependant on the Contractor's achievement of the performance requirements.</p> <p>No payment will be made in respect of the Environmental Management category in respect of any month in which any notifiable Incident occurs.</p> <p>No payment will be made in respect of the Environmental Management category in respect of any month in which any infringement notices or fines are issued or prosecutions notified or commenced in respect of environmental breaches.</p> <p>No payment will be made in respect of Environmental Management category in respect of any month in which any SDN or Stop Work direction is issued in respect of environmental non-compliance.</p> <p>No payment will be made in respect of</p>
	EMR directions and suggestions	<p>System Deficiency Notices (SDNs) initiated by the Environmental Management Representative (EMR) and issued by the Principal's Representative are responded to, appropriately acted on and closed out promptly.</p> <p>No stop work direction has been issued.</p> <p>Suggestions by the EMR are considered and dealt within the nominated timeframes.</p>	

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
	Environmental Management Plan and Environmental Control Map(s)	Environmental Management Plan and Environmental Control Map(s) implemented and updated as works progress or in response to issues identified by the Contractor, EMR, the Principal or relevant Authorities.	Environmental Management category in respect of any month in which any NCR, SDN, Stop Work direction or report in respect of an Incident is not responded to, acted on or closed out within the specified timeframe.
	Environment Training	<p>Site induction includes the Environmental Control Map(s) and environmental management components, including as a minimum site contamination, water management, storm water management, erosion and sediment control, dust control, working hours restrictions, noise and vibration mitigation measures, safe handling, storage and spill prevention for hazardous substances, flora and fauna protection and management, incident response procedures, and any site specific environmental management issues.</p> <p>Site inductions are carried out for all site personnel and Subcontractors working on the project.</p> <p>Compulsory environmental training, including toolbox talks, are carried out regularly throughout the life of the project for all site personnel and Subcontractors. Training should be relevant for stages of work and for any current environmental issues identified.</p> <p>Relevant personnel to attend all environmental training provided by the Principal.</p>	
	Implementation of Remediation Action Plan	The Contractor must implement Remediation Action Plan prepared by	



# Auburn Stabling Project (Stage 1)

Design and Construction Contract  
(ASP-01-D&C)

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
		Douglas Partners and obtain all signoffs from the Site Auditor as nominated by the Principal's Representative, All environmental controls documented in the RAP and additional controls as identified by the EMR or Principal's Representative are to be implemented during the construction stages.	
	Meetings and inspections and resources	Contractor's Environmental Manager attends, as required by the Principal's Representative, meetings and joint inspections with environmental agencies, the EMR and the Principal's Representative.  The Contractor's Environmental Manager must prepare an inspection schedule and carry out weekly independent environmental inspections.  Environmental management personnel are provided and available in accordance with contract requirements.	
Communications – 01/10/2011 for 27 months			The maximum monthly amount payable for the Communications category is
	Community notification	All notices, signage, advertisements etc are accurate, submitted within the timeframes stipulated in the TCA Standard Requirements –C1 for review by TCA's Director Communications and published or delivered within the times specified in the Planning Approval.	Payment in respect of the Communications category for each month will be determined by the Principal's Representative as percent of the maximum monthly amount set out above.  Percentage of payment is dependant on the Contractor's achievement of the performance requirements.
	Community meetings	Material provided as required for the Community Meetings submitted with reasonable notice for review by TCA's	

# Auburn Stabling Project (Stage 1)

Design and Construction Contract  
(ASP-01-D&C)

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
		Director Public Affairs. Contractor's appropriate personnel attend community liaison coordination meetings and meetings with the community and other stakeholders as required by the Principal's Representative.	
	Complaints	All complaints by members of the public are appropriately responded to and closed out within the times specified in the TCA Standard Requirements - C1.	
	Incidents	All Incidents are promptly notified in accordance with the TCA Standard Requirements.	
	Regulatory notifications and inspections	All notices, correspondence, contacts and site visits by regulatory agencies including Department of Environment Climate Change and Water, Department of Planning, ITSIR and WorkCover NSW are promptly notified to the Principal's Representative and TCA's General Manager Public and Corporate Affairs.	
	Media Contacts	Media contacts are promptly referred to TCA's General Manager Public and Corporate Affairs.	
Compliance Audits - 01/10/2011 for 27 months			The maximum monthly amount payable for the Compliance Audits category is
	Audit Process and Program	Contractor has a documented six month confirmed and 12 month planned program of Principal's Collaborative Compliance Audits, including audits on its relevant Subcontractors.  Contractor and its Subcontractors participate	Payment in respect of the Compliance Audits category for each month will be determined by the Principal's Representative percent of the maximum monthly amount set out above.  Percentage of payment is

# Auburn Stabling Project (Stage 1)

Design and Construction Contract  
(ASP-01-D&C)

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
		with the Principal's Representative in a collaborative audit process.	dependant on the Contractor's achievement of the performance requirements.
	Audit Procedure	Contractor has a systematic documented procedure to manage Principal's and Contractor's Collaborative Compliance Audit standard and associated documentation requirements.	
	Audit Findings	Audit reports are made available to the Principal's Representative.  Audit findings are promptly closed out (without becoming overdue) in accordance with the timeframes agreed with the Principal's Representative and documented in the Audit Action List.	
	Compliance Working Group (CWG)	Contractor's Audit Manager attends the CWG meetings managed by Principal's Representative to manage the audit program, audit reports, audit findings and closeout of audit actions and resolve any issues with audit activities.	
	Compliance Audits	Contractor conducts regular audits of its compliance with TCA's various accreditations and the obligations under the Contract.  The Principal's Representative is provided with the results and other relevant information from the Contractor's audits.	
Quality commences - 01/10/2011 for 27 months			The maximum monthly amount payable for the Quality commences category is
	Verification & records	Contractor has carried out verification, certification and maintained all appropriate records of the	Payment in respect of the Quality for each month will be determined by the Principal's Representative

# Auburn Stabling Project (Stage 1)

Design and Construction Contract  
(ASP-01-D&C)

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
		Subcontractor's and Contractor's activities.	percent of the maximum monthly amount set out above.
	Records Management	The Contractor maintains all records as required by the Principal, stipulated through all TSR documents provided by the Principal.	Percentage of payment is dependant on the Contractor's achievement of the performance requirements.
	Hold and Witness Points	Contractor provides notice as specified in the Deed and TSR Q1 (Clause 8.5.2) of upcoming Hold and Witness Points to the Principal's Representative.	<u>Rejection of any design package will be grounds for withholding 100 percent of contractor's incentive payments for each month until the design is accepted by Principal's Representative.</u>
	Defects Management	Identified Defects are promptly rectified by the Contractor or its Subcontractor.  All proposed methods for rectifying Defects are submitted to the Principal's Representative for approval before they are implemented.  Utilising Scenario 6 as a tool supplied by the Principal for the Management of Defects.	
	Engineering Authority	All necessary personnel engaged in rail-related engineering activities have been granted Engineering Authority	
	Design Approval	Designs are provided to the Principal's Representative in a manner, of a high quality and not requiring significant modifications or amendments.  <u>Design packages rejected by the Principal or RailCorp as part of the Design Review process.</u>	
	Management Plans	Management Plans are provided to the Principal's Representative on or before the time specified in TSR Prelude, are of a high quality and not requiring significant modifications or amendment.  Contractor Management Reviews of Plans and	

Performance Category	Performance Indicator	Performance requirement for monthly payment	Conditions for payment
		progress are scheduled and the Principal is informed of outcomes. Points of interest are brought to the attention of the Principal in sufficient time.	
	Non-conformance, corrective action and preventative action measures	The Contractor provides the Principal with its methodology to monitor, measure and improve	

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## 28. Dispute Resolution Board Agreement

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(Clauses 1.1 and 15)

This Agreement is made on the 29<sup>th</sup> day of September 2011 between the following parties:

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 (**TCA**)

and

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

and

3. **Members of the Dispute Resolution Board** (collectively **Members**), namely:

Graham Easton

Level 46, Governor Phillip Tower

1 Farrer Place, Sydney NSW 2000

Barry Tozer

c/- Tozer & Associates Pty Limited

Suite 22

193 Macquarie Street, Sydney, NSW, Australia 2000

\_\_\_\_\_  
Name of third member

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Address of third member

**TCA**

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## RECITALS:

- A. TCA is responsible for procuring the execution and completion of a new twin train stabling facility and associated facilities known as the Auburn stabling yards. It has entered into a deed (**Project Deed**) with the Contractor to design and construct a certain part of the Auburn stabling yards.
- B. Clause 15 of the Project Deed provides for a dispute resolution process through the establishment and the operation of a dispute resolution board to assist in resolving Disputes under the Project Deed.
- C. This agreement sets out the rights, obligations and duties of the Members, TCA and the Contractor in relation to the Dispute Resolution Board and the Disputes (the **Agreement**).

## THIS AGREEMENT PROVIDES

### 1. Definitions and Interpretation

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#### 1.1 Definitions

In this Agreement:

**Members** means the three individuals appointed to the Dispute Resolution Board in accordance with this Agreement.

**Rules** has the meaning in clause 4(c) of this Agreement.

#### 1.2 Terms defined in the Project Deed

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the Project Deed.

#### 1.3 Interpretation

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:

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- (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
    - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
  - (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
  - (f) a reference to any legislation or to any section or provision of it includes:
    - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
    - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
  - (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
  - (h) headings are for convenience only and do not affect the interpretation of this Agreement;
  - (i) a reference to:
    - (i) a party or clause is a reference to a party or clause of or to this Agreement; and
    - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
  - (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  - (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
  - (l) a reference to "\$" is to Australian currency;
  - (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
  - (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions,



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deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

## 2. Agreement to prevail

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- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the Project Deed the terms of the Agreement will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 15.10 of the Project Deed.

## 3. Formation of the Dispute Resolution Board

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The Parties acknowledge that the Dispute Resolution Board:

- (a) has been formed;
- (b) is constituted by the Members; and
- (c) must perform its obligations and functions under the Project Deed and this Agreement.

## 4. Establishment of procedures

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- (a) During the first meeting at the Site, the Dispute Resolution Board will, with the agreement of all parties, establish procedures for the conduct of its routine site visits and other matters (excluding the rules governing the Dispute Resolution Board determination of a Dispute referred to it pursuant to clause 15.4 of the Project Deed). Template procedures are included in Appendix 1 to this Agreement.
- (b) The Dispute Resolution Board may initiate, with the concurrence of TCA and the Contractor, new procedures or modified procedures, whenever this is deemed appropriate.
- (c) The parties agree to comply with the rules for the Dispute Resolution Board decision process (**Rules**) set out in Appendix 2 to this Agreement in respect of any Dispute referred to the Dispute Resolution Board pursuant to clause 15.4 of the Project Deed.

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## **5. Dispute Resolution Board Member's obligations**

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### **5.1 Dispute Prevention**

Each Member agrees to do all things and to take such action as may be practicable in accordance with this Agreement to assist the parties in preventing disputes from arising under the Project Deed.

### **5.2 Impartiality**

Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the Dispute Resolution Board.

### **5.3 Independence**

Each Member agrees to act honestly and independently in the performance of its obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 5 of this Agreement.

### **5.4 General duties**

Each Member agrees to carry out his or her obligations as a Member of the Dispute Resolution Board:

- (a) with due care and diligence;
- (b) in compliance with the Project Deed and this Agreement; and
- (c) in compliance with all applicable Laws.

## **6. Costs and fees**

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- (a) TCA and the Contractor are jointly and severally liable for the payment of the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Appendix 3.
- (b) TCA and the Contractor agree as between themselves that:
  - (i) they will each pay one half of:
    - (A) the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Appendix 3;
    - (B) any third party costs incurred in holding the conference referred to in clause 2 of the Rules, including any booking fee, room hire and transcript costs; and
  - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any decision process of the Dispute Resolution Board.

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**7. TCA's commitment and responsibilities**

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TCA acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Resolution Board;
- (b) comply with the reasonable requests and directions of the Dispute Resolution Board; and
- (c) except for its participation in the Dispute Resolution Board's activities as provided in the Project Deed and this Agreement, not solicit advice or consultation from the Dispute Resolution Board or the Members on matters dealing with the resolution of Disputes which may compromise the Dispute Resolution Board's integrity or compliance with this Agreement.

**8. Contractor's commitments and responsibilities**

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The Contractor acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Resolution Board;
- (b) comply with the reasonable requests and directions of the Dispute Resolution Board; and
- (c) except for its participation in the Dispute Resolution Board's activities as provided in the Project Deed and this Agreement, not solicit advice or consultation from the Dispute Resolution Board or the Members on matters dealing with the resolution of Disputes which may compromise the Dispute Resolution Board's integrity or compliance with this Agreement.

**9. Confidentiality**

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In relation to all confidential information disclosed to the Dispute Resolution Board at any time each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than the resolution of the Dispute; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

**10. Conflict of interest**

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- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must

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inform TCA and the Contractor and the other Members of the Dispute Resolution Board.

- (b) The other Members of the Dispute Resolution Board will within five Business Days of notification under clause 10(a) confer and inform the parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member will immediately resign from the Dispute Resolution Board and a reappointment will occur pursuant to clause 14.3.

## **11. Liability**

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### **11.1 Liability**

- (a) Each Member is not liable to either TCA or the Contractor for any act or omission done in good faith and with due care and diligence.

### **11.2 Due care and diligence**

- (b) For the purpose of clause 11.1, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

## **12. Indemnity**

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### **12.1 Indemnity**

- (a) TCA and the Contractor each indemnify each Member against all claims from a person not a party to this Agreement for any act or omission done in good faith and with due care and diligence.

### **12.2 Due care and diligence**

- (b) For the purpose of clause 12.1, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

## **13. Termination of Agreement**

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Subject to clause 14.3, this Agreement may be terminated by mutual written agreement of TCA and the Contractor. However, this Agreement will remain in force until a replacement to this Agreement has been fully executed.

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## **14. Members' termination**

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### **14.1 Resignation**

A Member may resign from the Dispute Resolution Board by providing 30 Business Days' written notice to the other Members, TCA and the Contractor.

### **14.2 Termination**

A Member may be terminated at any time if TCA and the Contractor agree to do so.

### **14.3 Re-appointment**

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 10(b) or 14.1; or
- (b) the appointment of a Member is terminated by TCA and the Contractor under clause 14.2;

then

- (c) a replacement Member may be appointed in accordance with clause 15.9 of the Project Deed; and
- (d) the parties, the Members and any new Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment under the terms of the Project Deed.

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## **15. Governing law**

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- (a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

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## **16. Relationship of the parties**

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Nothing in this Agreement will be construed or interpreted as constituting the relationship between TCA, the Contractor and the Members as that of partners, joint venturers or any other fiduciary relationship.

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## **17. Notices**

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- (a) Any notices contemplated by this Agreement must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others).

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- (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.

#### **18. Giving effect to this Agreement**

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Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

#### **19. Survival of terms**

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The parties agree that clauses 6 and 11 and this clause 19 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

#### **20. Waiver of rights**

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A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

#### **21. Operation of this Agreement**

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- (a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

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- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

## **22. Amendment**

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This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

## **23. Counterparts**

- 
- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

## **24. Attorneys**

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Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

## **25. Third Member**

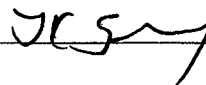
- 
- (a) TCA and the Contractor:
- (i) Acknowledge that the terms of this Agreement (other than this clause) are effective only once the third member is identified, details completed and signed by the third member;
  - (ii) Authorise the first member and the second member to do all things necessary to identify a third member, complete the details and have the third member sign this Agreement;
- (b) The first member and the second member will use best endeavours to select the third member from the following list:
- (i) \_\_\_\_\_
  - (ii) \_\_\_\_\_
  - (iii) \_\_\_\_\_
  - (iv) \_\_\_\_\_
- (c) Once the third member signs this Agreement, all parties are immediately bound by this agreement. No ratification or further step is required for this Agreement to come into effect.

EXECUTED as an agreement

SIGNED FOR AND ON BEHALF OF TRANSPORT  
CONSTRUCTION AUTHORITY by its duly  
authorised representative in the presence of:



Representative



Witness

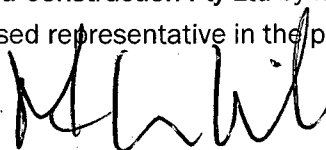
**CHRISTOPHER DECCAN LOCK**

Name of Representative (Please Print)

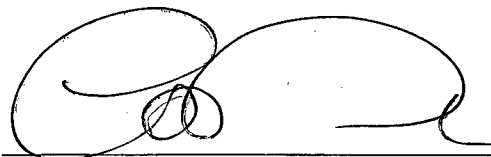
**Justine Gray**

Name of Witness (Please Print)

SIGNED FOR AND ON BEHALF OF Laing O'Rourke  
Australia Construction Pty Ltd by its duly  
authorised representative in the presence of:



Representative



Witness

**MARK GREGORY WILSON**

Name of Representative (Please Print)

**CATHAL O'ROURKE**

Name of Witness (Please Print)



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**SIGNED BY THE MEMBER** Graham Easton in the  
presence of:

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Member

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Witness

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Name of Witness (Please Print)

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**SIGNED BY THE MEMBER** Barry Tozer in the  
presence of:

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Member

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Witness

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Name of Witness (Please Print)

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**SIGNED BY THE MEMBER**  
in the presence of:

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Member

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Witness

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Name of Witness (Please Print)

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## APPENDIX 1

### Dispute Resolution Board general operating procedures

#### 1. General

- 1.1 The role of the Dispute Resolution Board is to provide specialised expertise in technical and administration aspects of the Project Deed in order to assist the parties to the Project Deed in firstly, preventing, and if unsuccessful, in resolving Disputes and other matters in a timely and equitable manner.
- 1.2 Except when participating in the Dispute Resolution Board's activities as contemplated by the Project Deed, the parties to the Project Deed shall not solicit advice or consultation from the Dispute Resolution Board or its Members on matters dealing with the conduct of the work or resolution of problems.
- 1.3 The Contractor will furnish to each of the Dispute Resolution Board members all documents necessary for the Dispute Resolution Board to perform its functions, including copies of all Project Deed documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Dispute Resolution Board Members of Disputes and other matters.
- 1.4 It must be clearly understood that individual Dispute Resolution Board Members are not the representative of the party which appointed that representative. The entire Dispute Resolution Board must function as an objective, impartial and independent body at all times.
- 1.5 In order to avoid any suggestion of partiality, there should be no individual communication between Dispute Resolution Board Members and employees of the parties to the Project Deed during the life of the Dispute Resolution Board without the Dispute Resolution Board members informing the parties to the Project Deed. The parties to the Project Deed must direct any matters needing attention between meetings of the Dispute Resolution Board to the chairperson of the Dispute Resolution Board.
- 1.6 The Members shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.

#### 2. Frequency of Regular Meetings and Site Visits

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the Dispute Resolution Board properly informed of the project circumstances will generally be agreed between the Dispute Resolution Board and the parties to the Project Deed.

- 
- 2.2 In the case of a failure to agree between the Dispute Resolution Board and the parties to the Project Deed, the Dispute Resolution Board will schedule the meetings and visits as it sees fit.
  - 2.3 The frequency of meetings of the Dispute Resolution Board should generally be two monthly but this may be influenced by work progress, unusual events and the number and complexity of potential Disputes.
  - 2.4 The first Dispute Resolution Board meeting should be held within one month of the date of this Agreement.

### **3. Agenda for Regular Meetings**

- 3.1 The chairperson will develop an agenda for each regular meeting in accordance with the requirements of the Project Deed.
- 3.2 Dispute Resolution Board meetings held for the purposes of briefing and updating the Members on performance and progress of the work under the Project Deed and issues or potential issues between the parties shall be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.
- 3.3 The provisions of clause 3.2 shall not apply to any inspection or conference convened in accordance with Appendix 2 – Rules for Dispute Resolution Board Decisions in relation to a Dispute referred to the Dispute Resolution Board for determination.
- 3.4 At the conclusion of the meeting, the Dispute Resolution Board will generally inspect the Works, the Temporary Works and the Site in the company of representatives of both parties to the Project Deed. Any areas of the Works, the Temporary Works or Site that are or may be the subject of any potential Dispute will be pointed out by the parties to the Project Deed.

### **4. Minutes of Meetings**

- 4.1 TCA will prepare minutes of the regular meetings of the Dispute Resolution Board and these draft minutes will be circulated to the Dispute Resolution Board members for comments, additions and corrections.
- 4.2 In accordance with clause 3.2 above, the minutes of Dispute Resolution Board meetings held, other than in accordance with Appendix 2 – Rules for Dispute Resolution Board Decisions, shall be marked "in-confidence, without prejudice".
- 4.3 Minutes as amended will be adopted by the Dispute Resolution Board Members at the next meeting.

### **5. Communications**

All communications by the parties to the Dispute Resolution Board outside the Dispute Resolution Board meetings should be directed in writing to the chairperson and copied to the other Members and to the other party. All communications by the Members to

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the parties should be addressed to the Principal's Representative and the Contractor's Representative.

**6. Representation**

The parties shall each ensure they are represented at Dispute Resolution Board meetings by at least one senior project personnel and at least one senior off-site person to whom the on-site personnel reports. The parties shall inform the chairperson of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternatives.

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## APPENDIX 2

### Rules for Dispute Resolution Board decisions

#### 7. Written submissions

- 1.1 Within 7 days after the referral of a Dispute to the Dispute Resolution Board under clause 15.4 of the Project Deed, or such other time as the Dispute Resolution Board may consider reasonable in the circumstances, Party A (i.e. the party who gave the DRB Referral Notice under clause 15.4 of the Project Deed) must, in addition to any particulars provided by Party A in the relevant DRB Referral Notice, give the other party and the Dispute Resolution Board a written statement of the Dispute referred to the Dispute Resolution Board, any agreed statement of facts, and a written submission (which may include witness statements) on the Dispute in support of Party A's contentions.
- 1.2 Within 14 days after the statement in clause 1.1 is served, or such other time as the Dispute Resolution Board may consider reasonable in the circumstances, the other party must give Party A and the Dispute Resolution Board a written response to Party A's submissions.
- 1.3 If the Dispute Resolution Board considers it appropriate, Party A may reply in writing to the other party's response in clause 1.2 within the time allowed by the Dispute Resolution Board.
- 1.4 If the Dispute Resolution Board decides further information or documentation is required for the determination of the Dispute, the Dispute Resolution Board may direct one or more parties to provide such further submissions, information or documents as the Dispute Resolution Board may require.
- 1.5 The Dispute Resolution Board must disclose to both parties all submissions, further submissions, information and documents received.
- 1.6 Any failure by a party to make a written submission, will not terminate or discontinue the decision making process.

#### 8. Conference

- 2.1 Either party may, in writing, request the Dispute Resolution Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- 2.2 If neither party requests the Dispute Resolution Board to call a conference, the chairperson of the Dispute Resolution Board may nevertheless call a conference if they think it appropriate.
- 2.3 Unless the parties agree otherwise, the conference will be held at the Site.
- 2.4 At least five days before the conference, the Dispute Resolution Board must inform the parties in writing of the date, venue and agenda for the conference.

2.5 The parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that party had been notified under clause 2.4, the Dispute Resolution Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the decision making process.

2.6 The parties:

- (a) may be accompanied at a conference by legal or other advisers; and
- (b) will be bound by any procedural directions as may be given by the Dispute Resolution Board in relation to the conference both before and during the course of the conference.

2.7 The conference must be held in private.

2.5 If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Resolution Board and the parties.

**9. The decision**

3.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 35 days after referral of a Dispute to the Dispute Resolution Board's under clause 15.4 of the Project Deed (or such other period as the parties may agree), the Dispute Resolution Board must:

- (a) determine the Dispute between the parties; and
- (b) notify the Parties of that decision.

3.2 The decision of the Dispute Resolution Board must:

- (a) be in writing stating the Dispute Resolution Board's decision and giving reasons;
- (b) be made on the basis of the submissions (if any) of the parties, the conference (if any), and the Dispute Resolution Board's own expertise; and
- (c) meet the requirements of the Project Deed.

3.3 If the Dispute Resolution Board's decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Resolution Board must correct the decision.

**10. Modification**

These rules may be modified only by agreement of TCA and the Contractor.

## 29. Criteria for Members of Dispute Resolution Board

(Clause 15.9(c))

### 29.1 Criteria

Each nominee must meet the following criteria:

(a) Experience

It is desirable that all Dispute Resolution Board members (**DRB members**) be experienced in the type of construction required for the Works, interpretation of project documents and resolution of construction issues or disputes.

(b) Neutrality

- (i) The DRB members must be neutral, act impartially and be free of any conflict of interest;
- (ii) For the purposes of this clause, the term "member" also includes the member's current primary or full time employer, and "involved" means having a contractual relationship with either party to the Project Deed, or any other entity, such as a subcontractor, design professional or consultant having a role in the project.

(c) Prohibitions and disqualifying relationship for prospective members

DRB members must not have:

- (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Resolution Board;
- (ii) previous employment by, or financial ties to, any party involved in the project within a period of 2 years prior to award of the Project Deed, except for fee-based consulting services on other projects;
- (iii) a close professional or personal relationship with any key member of any entity involved in the project which, in the judgment of either party, could suggest partiality; or
- (iv) prior involvement in the project of a nature which could compromise that member's ability to participate impartially in the Dispute Resolution Board's activities.

(d) Prohibitions and disqualifying relationships for members

The following matters may be construed as a conflict of interest in respect of a member:

- (i) the member being employed within the past 2 years, including for fee based consulting services, by any entity involved in the project except with the express approval of both parties; or

- (ii) the member entering into discussions concerning, or making an agreement with, an entity involved in the project regarding employment after the project is completed.

## 29.2 Disclosure Statement

A disclosure statement for each nominee must be submitted. Each disclosure statement must include:

- (a) a resume of relevant experience;
- (b) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the prospective member's primary or full time employer, to the project and with all entities involving the project, including subcontractors, design professionals and consultants; and
- (c) disclosure of close professional or personal relationships with any key members of any entity involved in the project.



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31. Not Used

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## 32. Escrow Deed

(Clause 5.11(a))

Between [Name] of [Address] (ABN [\*]) (*Escrow Holder*).  
and [Name] of [Address] (ABN [\*]) (*Supplier*); and  
and 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 (TCA).

### RECITALS

- A. The Supplier has agreed to deposit with the Escrow Holder a copy of the Source Code and to allow TCA to access and use the Source Code under certain circumstances.
- B. The Escrow Holder agrees to deal with the Source Code Material on the terms and conditions of this agreement.

### 1. Interpretation

#### 1.1 Definitions

Unless otherwise specified, words and phrases used in this agreement have the same meaning as that which is given to them under the Deed. In this agreement:

**Annual Fee** means the annual fees set out in section 1 of the Information Schedule.

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

**CPI** means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

**Deed** means the Auburn Stabling Project (Stage 1) Design and Construction Contract between TCA and the [\*] dated [insert].

**Escrow Deposit Specification Form** means the form set out in Schedule 2.

**Establishment Fee** means the establishment fee set out in section 1 of the Information Schedule.

**Government Agency** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Information Schedule** means Schedule 1 to this agreement.

A person is *Insolvent* if:

- (i) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);

- (ii) it has had a Controller (as that term is defined in the Corporations Act) appointed, or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
- (iii) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (iv) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (i), (ii) or (iii) above;
- (v) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (vi) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (vii) it is otherwise unable to pay its debts when they fall due; or
- (viii) something having a substantially similar effect to (i) to (vii) happens in connection with that person under the Law of any jurisdiction.

**Insurance** means the insurance (if any) specified in section 3 of the Information Schedule.

**Software Application** means the software application to which the Source Code relates.

**Source Code Material** means reasonably commented Source Code for the then currently implemented version of the Software Application and all other software, information, documentation and other material described in section 2 of the Information Schedule.

**Tax Invoice** has the same meaning as in the GST Legislation.

**Taxable Supply** has the same meaning as in the GST Legislation.

**Update** means any material update, new release, modification or new version of the computer programs or computer interfaces provided by the Supplier.

## 1.2 References to certain general terms

In this agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;

- (d) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
  - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this agreement;
- (i) a reference to:
  - (i) a party, clause or Appendix is a reference to a party, clause or Appendix of or to this agreement; and
  - (ii) 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 agreement includes all Appendices;
- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (m) a reference to "\$" is to Australian currency;
- (n) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this agreement or any part; and
- (o) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations,

drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

## 1.3 Inconsistency

If there is an inconsistency between a provision in clauses 1 to 16 and a provision in the Information Schedule, then the provision in clauses 1 to 16 prevails to the extent of the inconsistency.

## 2. Supplier's deposit obligations

### 2.1 Supplier to make deposits

The Supplier must deposit the then currently implemented version of the Source Code Material, accompanied by a completed Escrow Deposit Specification Form, with the Escrow Holder:

- (a) within 7 days of the date of this agreement;
- (b) within 7 days of the issue of a Notice of Completion in respect of the Works or a Portion which incorporates computer programs or computer interfaces; and
- (c) within 7 days after any update or material change is made to the implemented version of the computer programs or computer interfaces referred to in paragraph (b).

### 2.2 TCA may test deposits

TCA may, after providing the Supplier with at least seven days notice, conduct tests on the Source Code Material to determine whether the Supplier has met its obligations under clause 2.1.

### 2.3 Escrow Holder to provide access

The Escrow Holder will provide TCA with access to the Source Code Material to enable testing under clause 2.2 to be carried out and will, in the presence and with the oversight of the Supplier, allow TCA to:

- (a) remove the Source Code Material from the custody of the Escrow Holder;
- (b) install, download or copy the Source Code Material onto such computer system or hardware as TCA may reasonably specify; and
- (c) analyse and conduct reasonable tests in relation to the Source Code Material as provided for under clause 2.2.

Following the testing, TCA will (in the presence of and with the oversight of the Supplier) ensure that all copies of the Source Code Material are deleted from the computer system or hardware referred to in clause 2.3(b), and the material referred to in clause 2.3(a) is promptly returned to the Escrow Holder.

## 2.4 Support to provide assistance with testing

The Supplier must, at TCA's request and at no charge, give TCA all reasonable assistance to enable TCA to carry out the tests referred to in clause 2.2.

## 2.5 Failure to deposit correct version in escrow

If testing by TCA reveals that the Source Code Material does not contain the correct version of the computer programs or computer interfaces, the Supplier must, at no charge, deliver a copy of the correct version of the Source Code Material to the Escrow Holder within 2 Business Days of the completion of testing.

## 3. Escrow Holder's obligations

### 3.1 Obligations

The Escrow Holder must:

- (a) accept each deposit of the Source Code Material and, subject to the terms and conditions of this agreement, hold it on behalf of the Supplier and TCA;
- (b) take all reasonably necessary steps to ensure the preservation, care, safe custody and security of the Source Code Material whilst it is in the possession, custody or control of the Escrow Holder;
- (c) only use, access, copy and release the Source Code Material to the extent necessary to enable the Escrow Holder to comply with its obligations under this agreement;
- (d) establish and maintain a register of deposits of the Source Code Material (**Register**) showing deposit and release dates and to whom each deposit was released;
- (e) allow the Supplier or TCA to examine the Register at any time during regular business hours; and
- (f) provide the Supplier or TCA with a copy of the Register within seven days of receiving a request to do so.

### 3.2 Limit on obligations

The Escrow Holder has no obligation to and is not responsible for:

- (a) verifying the nature, completeness or accuracy of Source Code Material; or
- (b) any transaction between the parties, other than the performance of the Escrow Holder's obligations under this agreement.

## 4. Confidentiality

The Escrow Holder must not disclose to any person:

- (a) any part of the Source Code Material;
- (b) any information about the Source Code Material; or
- (c) any information about this agreement,

other than as permitted by this agreement or as required by Law.

## 5. Release to TCA

### 5.1 TCA may request release

If one of the following circumstances occurs:

- (a) the Supplier becomes insolvent;
- (b) the Supplier ceases to carry on business;
- (c) the Supplier has ceased for any reason to maintain or support the Software Application;
- (d) the Supplier breaches the terms of this Agreement;
- (e) the Supplier breaches the terms of the Deed; or
- (f) the Supplier assigns copyright in the Software Application to a third party,

then TCA may notify the Escrow Holder and the Supplier of this event and request that the Escrow Holder release the Source Code Material to TCA (*TCA Notice*).

### 5.2 Supplier may dispute release

If the Supplier disputes the TCA Notice, then it may notify the Escrow Holder and TCA that it objects to release of the Source Code Material on the basis that the event relied on by TCA does not exist and the Supplier has provided substantial evidence to support its objection (*Supplier Objection*).

### 5.3 Release of Source Code Material to TCA

Unless otherwise ordered by a court the Escrow Holder must release the Source Code Material to TCA:

- (a) if no Supplier Objection is received, within 2 Business Days after the Escrow Holder receives a TCA Notice; or
- (b) if a Supplier Objection is received, within 7 days after the Supplier Objection is received.

### 5.4 Grant of licence

If the Source Code Material is released to TCA under this clause 5, then the Supplier grants TCA an irrevocable, perpetual, royalty-free, worldwide, non-exclusive licence in relation to that Source Code Material to use it for all purposes in connection with the Works.

## 6. Release to Supplier

### 6.1 Release of Source Code Material to Supplier

If TCA has given the Escrow Holder written notice of its consent to the release of the Source Code Material to the Supplier, then the Supplier may request that the Escrow Holder release

the Source Code Material to the Supplier, and the Escrow Holder must immediately release the Source Code Material to the Supplier.

## **6.2 No other release to Supplier is permitted**

Other than as provided for in clause 6.1 and clause 7, the Escrow Holder must not release any Source Code Material to the Supplier.

## **7. Release by agreement or by court order**

### **7.1 Release by agreement**

Within five days after receipt of a joint notice from the Supplier and TCA requesting release of the Source Code Material, the Escrow Holder must release the Source Code Material in accordance with that notice.

### **7.2 Release by court order**

Each party acknowledges that the Escrow Holder must release the Source Code Material in accordance with any court order requiring the Escrow Holder to do so.

### **7.3 Notice to TCA**

The Escrow Holder must immediately notify the TCA if it receives a court order (or any document that refers to a court order being sought) in relation to the Source Code Material.

## **8. Fees and charges**

### **8.1 Payment of fees**

TCA must pay the Establishment Fee and Annual Fee to the Escrow Holder within 30 days of the TCA's receipt of the invoices referred to in clause 8.3.

### **8.2 Annual Fee subject to change**

The Escrow Holder may increase the Annual Fee for any year by giving 30 days notice to TCA. An increase must not exceed the increase in the CPI for the previous year.

### **8.3 Invoices**

The Escrow Holder may issue invoices as follows:

- (a) for the Establishment Fee, on or after the date of this agreement, to TCA;
- (b) for the Annual Fee, on or after each anniversary of the date of this agreement, to TCA; and
- (c) for reasonable delivery costs incurred by the Escrow Holder in releasing the Source Code Material, to the party that requested the release.

All invoices issued by the Escrow Holder must state the basis on which fees are charged and, in respect of amounts invoiced pursuant to sub-clause (c) above, must attach evidence justifying the amounts claimed.

**TCA**



## 8.4 GST inclusive prices

Unless otherwise stated, the Fees include GST, but exclude Taxes.

## 8.5 Taxes

TCA is responsible for the payment of all Taxes arising from or relating to this agreement, regardless of who they are imposed on, and indemnifies the Escrow Holder against any costs or expenses that the Escrow Holder incur as a result of TCA failing to meet this obligation.

## 9. GST

### 9.1 GST gross up

Subject to clauses 9.2, 9.3 and 9.4, if GST is imposed on any Taxable Supply made by a party under this agreement (**Supplying Party**), then the party receiving the Taxable Supply (**Receiving Party**) must pay, in addition to any consideration payable or to be provided under this agreement for the supply, an additional amount calculated by multiplying the prevailing GST rate by the consideration for the relevant Taxable Supply payable, or to be provided, by the Receiving Party under any other clause in this agreement.

### 9.2 Tax invoice

Payment for Taxable Supplies is conditional upon the issue of a Tax Invoice. Each Tax Invoice must provide full details of the Taxable Supply, the subject of the Tax Invoice, including any details the payer of the fee may specifically require and such other details required to ensure that it is a Tax Invoice.

### 9.3 Adjustment

If the amount of GST recovered by the Supplying Party from the Receiving Party differs from the amount of GST payable at law by the Supplying Party (or an entity grouped with the Supplying Party for GST purposes) in respect of the supply, the amount payable by the Receiving Party to the Supplying Party will be adjusted accordingly.

### 9.4 Reimbursements

Where one party (**Payer**) is liable to reimburse another party (**Payee**) for any expenditure incurred by the Payer (**Expenditure**), the amount reimbursed by the Payer shall be the GST exclusive Expenditure plus any GST payable to the Payee by the Payer pursuant to clause 9.1.

## 10. Ownership, risk and insurance

### 10.1 Acknowledgements

Each party acknowledges that:

- (a) nothing in this agreement assigns any Intellectual Property in the Source Code Material;

- (b) title in the physical media on which the Source Code Material is stored passes from the Supplier to TCA on release of the Source Code Material to TCA under clause 5 or clause 7;
- (c) if the Information Schedule requires the Escrow Holder to take out Insurance to cover loss of, or damage to, the Source Code Material or associated media, then the Escrow Holder will bear the risk of that loss or damage; and
- (d) if the Information Schedule does not require the Escrow Holder to take out Insurance to cover loss of, or damage to, the Source Code Material or associated media, then risk of that loss or damage remains with the Supplier and does not pass to the Escrow Holder.

## 10.2 Loss or damage to Source Code Material

Without limiting any rights or remedies that any of the parties may have, if any of the Source Code Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control:

- (a) the Escrow Holder must promptly notify each other party; and
- (b) the Supplier must provide the Escrow Holder with replacement Source Code Material within 2 Business Days or receiving such notice from the Escrow Holder.

## 10.3 Warranty

The Supplier warrants and represents that it has the necessary authority to comply with its obligations under this agreement (including the right to grant the licence in clause 5.4).

## 10.4 Act or omission of Escrow Holder

Notwithstanding any other provision of this agreement, if any of the Source Code Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control, and that loss, damage or destruction is caused by:

- (a) the Escrow Holder's breach of this agreement; or
- (b) the negligent, wilful or unlawful act or omission of the Escrow Holder,

then the Escrow Holder must, at its own expense, reimburse the Supplier for the reasonable cost of replacing the relevant part or parts of the Source Code Material.

## 11. Exclusions and limitations

### 11.1 Scope of exclusions and limitations

Nothing in this agreement excludes or limits the application of any provision of any statute (including the *Trade Practices Act 1974* (Cth) (or the *Competition and Consumer Act 2010* (Cth) when it comes into force)) where to do so would:

- (a) contravene that statute; or
- (b) cause any part of this clause to be void.

---

**11.2 Exclusion of implied warranties**

The Escrow Holder excludes all implied conditions and implied warranties (except any implied condition or implied warranty the exclusion of which would contravene any statute or cause this clause to be void) (*Implied Condition*).

**11.3 Cap on liability**

Subject to clause 11.4, the Escrow Holder's liability to each other party for breach of any express provision of this agreement, for any Implied Condition or for any other cause of action (including, but not limited to, negligence) is limited to refunding the unexpired portion of the Annual Fee applicable to the calendar year in which the breach occurred.

**11.4 Exception**

The cap on the Escrow Holder's liability in clause 11.3 does not apply to:

- (a) any breach of clause 5.3 by the Escrow Holder;
- (b) any liability of the Escrow Holder under clause 10.4 or
- (c) any claims covered by Insurance.

---

**12. Termination****12.1 Upon insolvency**

This agreement terminates immediately if the Escrow Holder becomes Insolvent.

**12.2 Upon release of Source Code Material**

This agreement terminates immediately if the Source Code Material is released to TCA or the Supplier under this agreement.

**12.3 Upon provision of notice**

This agreement may be terminated by:

- (a) the Escrow Holder giving 90 days written notice to the Supplier and TCA;
- (b) TCA giving 90 days written notice to the Supplier and the Escrow Holder; or
- (c) the Supplier giving 90 days written notice to TCA and the Escrow Holder.

**12.4 By TCA or the Supplier**

Either the Supplier or TCA may, by giving notice to the Escrow Holder (with a copy to TCA or the Supplier, as applicable), terminate this agreement with immediate effect if:

- (a) the Escrow Holder commits a material breach of this agreement; and
- (b) the breach is not remedied within 14 days of the Escrow Holder receiving a notice detailing the breach and requiring that it be rectified.

## 12.5 Consequences of an Escrow Holder termination event

Within 14 days after the termination of this agreement under clause 12.1, 12.3 or 12.4, the Supplier must, at the direction of TCA (and TCA must, if the Supplier so requests), enter into another agreement between the Supplier, TCA and a new escrow service provider in a form substantially similar to this agreement.

## 12.6 Return of Source Code Material on termination

- (a) If this agreement terminates for any reason other than under clause 12.2 and 12.3(b), then, unless a new escrow agreement is entered into within 14 days in accordance with clause 12.5, the Escrow Holder must, within a further 20 days, deliver the Source Code Material to TCA.
- (b) If this agreement terminates under clause 12.3(b), then the Escrow Holder must within 7 days deliver the Source Code Material to the Supplier.

## 13. Notices

- (a) Any notices contemplated by this agreement must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (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.

## 14. No assignment

A party may not assign or otherwise deal with all or any of its rights or obligations under this agreement without the written consent of the other parties.

## 15. General

### 15.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

### 15.2 Partial exercise of rights

If a party does not exercise a right or remedy at a given time, the party may still exercise it later.

## 15.3 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

## 15.4 Remedies cumulative

The rights and remedies provided in this agreement are in addition to other rights and remedies given by Law independently of this agreement.

## 15.5 Operation of Law

Rights given to the parties under this agreement and the parties' liabilities under it are not affected by anything which might otherwise affect them by Law.

## 15.6 Indemnities

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

Nothing in this clause 15.6 prevents any other provision of this agreement, as a matter of interpretation also surviving the termination of this agreement.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this agreement.

## 15.7 No partnership, joint venture or other fiduciary relationship

Nothing in this agreement will be construed or interpreted as constituting the relationship between the Principal, the Supplier and the Escrow Holder as that of partners, joint venturers or any other fiduciary relationship.

## 15.8 Entire agreement

This agreement 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; or
- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed.

## 15.9 Joint and several liability

- (a) The obligations of the Escrow Holder, if more than one person, under this Deed, are joint and several. Each person constituting the Escrow Holder 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.

- (b) The obligations of the Supplier, if more than one person, under this Deed, are joint and several. Each person constituting the Supplier 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.

#### 15.10 Severance

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
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Deed.

#### 15.11 Provisions limiting or excluding liability

Any provision of this Deed which seeks to limit or exclude a liability of the Principal, the Supplier or the Escrow Holder is to be construed as doing so only to the extent permitted by Law.

#### 15.12 Variations

This Deed may only be varied by a document signed by or on behalf of the Principal, the Supplier and the Escrow Holder.

#### 15.13 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 agreement 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 agreement.
- (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.
- (c) No waiver by the Principal of:
  - (i) a breach of any term of this Deed; or
  - (ii) any other failure by the Escrow Holder to comply with a requirement of this agreement,

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 agreement or failure to comply with any other requirement of this agreement.

## 15.14 Survival

Clauses 3.1(e) and 3.1(f) ("Obligations"), 4 ("Confidentiality"), 5.4 (Grant of licence"), 8.4 ("GST inclusive prices"), 8.5 ("Taxes"), 9 ("GST"), 10.3 ("Warranty"), 11 ("Exclusions, limitations and indemnity"), 12.5 ("Consequences of a Escrow Holder termination Event"), 12.6 ("Return of Source Code Material on termination"), 15 ("General"), 16 ("Governing Law") and 1 ("Interpretation") survive the termination (for any reason) of this agreement.

## 16. Governing law and jurisdiction

- (a) This agreement shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

## Schedule 1 to Escrow Deed - Information Schedule

**1. Fees and charges**

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Establishment Fee: (first year)	\$[ ] plus GST
Annual Fee: (first year and subsequent years) subject to increases under clause 8.2)	\$[ ] plus GST

**2. Source code material**

- 
- (a) The Source Code which incorporates computer programs or computer interfaces;
  - (b) all documentation relating to the material referred to in (a) which a reasonably qualified programmer would require for understanding, maintaining, modifying such material; and
  - (c) media on which source code will be deposited:  
*[insert description of media, eg CD ROM]*

**3. Insurance**

---

*[Insert details]*



## Schedule 2 to Escrow Deed - Escrow Deposit Specification Form

## 1. Depositor information

Company Name: \_\_\_\_\_

Technical Contact: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

## 2. Software Application information

Product Name(s)/Version(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_Modules: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 3. Media information

Medium

Quantity

Label

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

## 4. Escrow deposit details

## 4.1 Compilation

(a) What hardware is required to compile the Software Application?

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(b) What operating system and version is used in the compilation process?

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(c) What operating system and version is used in the compilation process?

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(d) What development environment (compilers/linkers/other tools) is necessary to compile the Software Application?

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(e) List all third party libraries/components that are required to compile the software (brand name, version & supplier) and indicate which (if any) are not included in the deposit?

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(f) List all non third party libraries/components that are required to compile the software.

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(g) Detail the steps to follow to compile the source code and produce a version of the Software Application that runs.

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(h) List all of the files that are created by the compilation process and are needed to successfully run the Software Application.

---

## 4.2 Running the application

(a) What hardware is required to successfully run the Software Application (if identical to item 3.4.1.1 please leave blank)?

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(b) What software (in addition to the operating system) is required to successfully run the Software Application?

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## 4.3 Documentation

(a) Please provide an overview of the technical documentation.

(b) Please provide an overview of the user documentation.

(c) Please include a short description on the layout of the deposit.

(d) Please include a full directory listing of the contents of the deposit media.

## 4.4 General information

(a) What are the main functions performed by the Software Application?

(b) List the additional material (reports, databases, etc.) included with the deposit

(c) Is a copy of the development environment (compilers & third party software) included with the deposit?

(d) Does your company use a formal coding convention (please provide a brief description of the convention used).

## 5. Remarks

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6. Signature

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Date:

---

Signature:

Name (please print):

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For and on behalf of the Supplier

The Supplier warrants that the details set out above  
are correct and complete.

Executed and delivered as a Deed in Sydney

Signed for and on behalf of **TRANSPORT  
CONSTRUCTION AUTHORITY** (ABN: 28 458  
799 157):

\_\_\_\_\_  
Signature of Authorised Officer

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name

(block letters)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position held

(block letters)

\_\_\_\_\_  
Position held

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001*  
by [**\* Limited**]:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001*  
by [**\* Limited**]:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## 34. Principal Supplied Items

(Clauses 1.1 and 7.12)

Nil

Executed and delivered as a Deed in Sydney  
The SEAL of the TRANSPORT  
CONSTRUCTION AUTHORITY (ABN: 28 458  
799 157) was affixed, and the sealing is  
attested by:



A handwritten signature in black ink, appearing to read "C Deccan Lock".

Christopher Deccan Lock

Chief Executive

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001*  
by Laing O'Rourke Australia Construction  
Pty Ltd (ACN 112 099 000):

A handwritten signature in black ink, appearing to read "Mark Gregory Wilson".

Director Signature

**MARK GREGORY WILSON**

Print Name

A handwritten signature in black ink, appearing to read "Catherine O'Rourke".

Director/Secretary Signature

**Catherine O'Rourke**

Print Name

## LIST OF EXHIBITS




EXHIBIT A	TCA STANDARD REQUIREMENTS
EXHIBIT B	WORKS BRIEF
EXHIBIT C	- NOT USED
EXHIBIT D	- PRINCIPAL'S INSURANCE POLICIES
EXHIBIT E	- PLANNING APPROVAL
EXHIBIT F	- DEED OF DISCLAIMER
EXHIBIT G	- NOT USED
EXHIBIT H	- SITE DRAWINGS
EXHIBIT I	- THIRD PARTY AGREEMENTS
EXHIBIT J	- PRINCIPAL'S DESIGN