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Gosford Passing Loops
Design and Construction Contract (GPL-01-D&C)

Transport for NSW
Downer EDI Works Pty Ltd
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Date: 18th January 2013

Parties

1. Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted by section 3C(1) of the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 (Principal).

2. Downer EDI Works Pty Ltd (ACN 008 709 608) registered in NSW incorporated in Sydney of Triniti 3, Triniti Business Campus, Level 2, 39 Delhi Road, North Ryde NSW 2113 (the Contractor).

Recitals

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

B The Principal is responsible for developing the Gosford Passing Loops Project which is part of the Northern Sydney Freight Corridor Program.

C The Works comprise the design, construction and commissioning of two passing loops north of Gosford Station to improve the capacity and reliability of the rail freight paths between Sydney and Newcastle.

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

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context otherwise indicates:

Act of Prevention means:

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

(b) any other act or omission of the Principal, the Principal’s Representative, or an Other Contractor engaged by the Principal (other than an Interface Contractor), except where such act or omission is expressed as not constituting an Act of Prevention pursuant to the provisions of this Deed; or
(c) a Variation the subject of a direction by the Principal's Representative under clause 6.2, except where that Variation is directed in the circumstances described in clause 8.2(c) or approved under clause 6.9(b).

The valuation of entitlements to money under clauses 3.6(e), 8.4(a), 10.1, and 13.3 is not a Variation for the purposes of this definition of Act of Prevention.

_AFC Design Documentation_ means the Design Documentation which:

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

(b) is submitted by the Contractor in accordance with clause 9.14(g)(i)(D) and in respect of which the preconditions to submission set out in clause 9.14(g)(ii) have been satisfied;

(c) where relevant, has received a Configuration Change Notice;

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

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

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

_ARTC_ means Australian Rail Track Corporation Limited (ABN 75 081 455 754).

_Authority_ includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes RailCorp), and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Works or the Contractor's Activities.

_Authority Approval_ means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be) to:
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(a) carry out the Contractor's Activities including, for the avoidance of doubt, all things required for conducting work within the Rail Corridor or affecting rail operations and all things required for dealing with, transporting and disposing of Contamination or any other spoil or waste; or

(b) occupy and use for its intended purpose the completed Works or a completed Portion,

and for the avoidance of doubt includes:

(c) the Planning Approval;

(d) the EPL;

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

(f) all Permits to Work; and

(g) Third Party Agreements.

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

Change in Authority Approval means a change:

(a) in an Authority Approval which is in existence as at the date of this Deed;

and

(b) which occurs after the date of this Deed.

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

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

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

in substantially the same form as the change in the Codes and Standards eventuating after the date of this Deed.

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

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

(b) a new Law (other than a new Authority Approval),
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compliance with which:

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

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

but excludes:

(e) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes; and

(f) a change in an existing Law or a new Law which, as at the date of this Deed:

(i) was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law); or

(ii) a party experienced and competent in the delivery of works and services similar to the Works or the Contractor's Activities (as applicable) would have reasonably foreseen or anticipated, in substantially the same form as the change in an existing Law or new Law eventuating after the date of this Deed.

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

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

(b) arising out of, or in any way in connection with, the Contractor's Activities or the Works or either party's conduct prior to the date of this Deed; or

(c) otherwise at Law including:

(i) under or for breach of any statute;

(ii) in tort for negligence or otherwise, including negligent misrepresentation; or

(iii) for restitution, including restitution based on unjust enrichment.

Codes and Standards means:

(a) the relevant building codes (including the Building Code of Australia), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Deed (including the Disability (Access to Premises – Buildings) Standards 2010);
(b) the Code of Practice for Procurement (January 2005), Aboriginal Participation in Construction Guidelines (January 2007), Industrial Relations Management Guidelines (December 1999), Environmental Management Systems Guidelines (2nd edition) (September 2009), Occupational Health & Safety Management Systems Guidelines (4th edition) (June 2004), Guidelines for Auditing Project OHS Management Plans (June 2004), Training Management Guidelines (February 2009), Waste Reduction and Purchasing Policy (WRAPP) and any other NSW Government guidelines and requirements specified or required by this Deed; and

(c) if (and to the extent) the codes and standards referred to in paragraphs (a) or (b) are irrelevant, then relevant international codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Deed.

**Code of Practice** means the National Code of Practice for the Construction Industry 1997.

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

**Commissioning** has the meaning given to that term in the TfNSW Standard Requirements and is comprised of stages 1 (factory acceptance tests), 2 (installation / operational checks), 3 (Site acceptance tests), 4 (system integration tests and commissioning), 5 (integration with RailCorp network) and 6 (acceptance tests) of Commissioning and Operational Readiness, as described in the TfNSW Standard Requirements.

**Commissioning and Operational Readiness** has the meaning given to that term in the TfNSW Standard Requirements and is comprised of Commissioning and Operational Readiness.

**Common Dispute** has the meaning given to that term in clause 15.17(a).

**Commonwealth** means the Commonwealth of Australia.

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

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

   (i) that do not prevent the Works or the Portion from being reasonably capable of being used for the intended purpose of the Works or the Portion;

   (ii) that can be rectified without prejudicing the convenient intended use of the Works or the Portion; and
(iii) in respect of which the Contractor has reasonable grounds for not promptly rectifying;

(b) the Contractor has:

(i) carried out and passed all tests that:
   (A) are required under this Deed to be carried out and passed before the Works or a Portion reaches Completion; or
   (B) must necessarily be carried out and passed to verify that the Works or a Portion is in the condition this Deed requires the Works or Portion (as the case may be) to be in at Completion;

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

(iii) given to the Principal's Representative all other documents and information:
   (A) required (including in accordance with the TfNSW Standard Requirements) for the use, operation, maintenance and repair of the Works or a Portion; and
   (B) that are to be handed over to the Principal's Representative before Completion of the Works or a Portion;

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

(v) provided the Principal's Representative with:
   (A) where there are Portions:
      (1) in respect of a particular Portion (other than the last Portion to reach Completion), the Contractor's Certificate of Portion Completion in respect of the relevant Portion and the Designers' Certificates of Portion Completion in respect of the relevant Portion; and
      (2) in respect of the last Portion to reach Completion, copies of all Contractor's Certificates of Portion Completion and the Designers' Certificates of Portion Completion for all Portions; or
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(B) where there are not any Portions, the Contractor's Certificate of Works Completion and the Designers' Certificates of Works Completion; and

(vi) in respect of the Works or the Portion, completed all Commissioning and Operational Readiness (other than stage 10 (setting to work for commercial operation) of Operational Readiness) in accordance with this Deed and the TfNSW Standard Requirements; and

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

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

**Condition Survey** has the meaning given to that term in clause 3.13(b).

**Confidentiality Undertaking** means a confidentiality undertaking in the form provided for in Schedule 4.

**Configuration Change Notice (or CCN)** means a notice of that name issued by RailCorp in respect of Design Documentation.

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

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

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

**Contamination** means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

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

(b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica,

but excludes Virgin Excavated Natural Material and Excavated Natural Material.
Contemporaneous Work means work carried out:
(a) by Other Contractors on or after the date of this Deed;
(b) on or adjacent to the Site; and
(c) upon or by which the proper execution of the Contractor's Activities is dependent or may be appreciably affected by it being unsuitable, unsatisfactory or detrimental in any way.

Contract Control Group means the group described in clause 9.7.

Contract Documentation means all documentation in computer readable or written forms brought into (or required to be brought into) existence as part of, or for the purpose of, performing the Contractor's Activities (whether before or after the date of this Deed) including:
(a) all Design Documentation;
(b) the Signalling Design;
(c) the Track Geometry Design;
(d) the 1500V Sectioning Diagram; and
(e) all plans, manuals, programs and other documents.

Contract Management Plan means the documents required to be provided and implemented by the Contractor pursuant to the TfNSW Standard Requirements, as developed, amended or updated from time to time in accordance with this Deed.

Contract Particulars means Schedule 1.

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

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

Contractor's Activities means all things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Deed, including:
(a) the design, construction, commissioning and handover of the Works;
(b) the provision of Temporary Works and Construction Plant;
(c) Reimbursable Work;
(d) Commissioning and Operational Readiness; and
(e) anything incidental or ancillary to the obligations in paragraphs (a) to (d).

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

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

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

Contractor’s Certificate of Works Completion means a certificate from the Contractor in the form provided for in clause 7.2 of Schedule 7 certifying that Completion of the Works has been achieved in accordance with this Deed.

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

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

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

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

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

Date of Completion means:

(a) the date of Completion of the Works or a Portion, set out in a Notice of Completion; or

(b) where another date is determined in any determination by the Dispute Resolution Board, any arbitration or any other final and binding dispute resolution procedure under clause 15 as the date upon which Completion was achieved, that date.
Date of Final Completion means:

(a) the date determined in accordance with clause 12.8(e)(i) as the date Final Completion was achieved; or

(b) where another date is determined in any determination by the Dispute Resolution Board, any arbitration or any other final and binding dispute resolution procedure under clause 15 as the date upon which Final Completion was achieved, that date.

Deed of Disclaimer means Exhibit F.

Defect means any:

(a) defect, deficiency, fault, error or omission in the Works or Temporary Works, including subsidence, shrinkage and movement outside the required tolerances; or

(b) other aspect of the Works, Temporary Works or Contractor’s Activities that is not in accordance with the requirements of this Deed, including non-compliances, non-conformances and non-conformities.

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

Design Documentation means all design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, drawings, digital records, computer software and all other relevant data) in computer readable and written forms, or stored by any other means, required by this Deed or necessary to be produced by the Contractor or a Designer to design and construct the Works and Temporary Works but excludes the Signalling Design, the Track Geometry Design and the 1500V Sectioning Diagram.

Design Due Date means:

(a) for Signalling Design - signalling electrical detail design to support the removal of Down Loc Sidings 1 and 2 31 January 2013

(b) for Signalling Design -signalling electrical detail design to support the commissioning of Portion 1 and Portion 2 31 July 2013

(c) for Signalling Design -signalling plan 15 Dec 2013
(d) for Signalling Design - signalling electrical detail design for all new signalling locations and bungalows 23 February 2014
(e) for Signalling Design - signaling track insulation plan 15 November 2014
(f) for Signalling Design - signalling electrical detail design for the final signalling arrangements 24 July 2014
(g) for Track Geometry Design 18 March 2013
(h) for 1500V Sectioning Diagram 28 February 2013

as any of these dates may be extended in accordance with clause 5.1A(g).

Design Program means the Program titled “Design Program” and the initial version of which is prepared by the Contractor and provided to the Principal on the date of this Deed, as updated in accordance with Clause 10.2(c).

Design Working Group has the meaning given to that term in clause 5.12(a).

Designer means each Subcontractor engaged by the Contractor to undertake the design of the Works (or any part) and, to the extent relevant, the Temporary Works (or any part).

Designers’ Certificates of Construction Compliance means the certificates from:

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

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

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

Designers’ Certificates of Design Compliance means the certificates from:

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

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

involved in the design of the relevant package or element in the form provided for in clause 5.2 of Schedule 5 certifying that the Design Documentation complies with the requirements of this Deed.
Designers' Certificates of Portion Completion means the certificates from:

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

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

in the form provided for in clause 7.3 of Schedule 7 certifying that Completion of a Portion has been achieved in accordance with this Deed.

Designers' Certificates of Works Completion means the certificates from:

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

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

in the form provided for in clause 7.4 of Schedule 7 certifying that Completion of the Works has been achieved in accordance with this Deed.

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

Detailed Services Survey means the report titled "North Sydney Freight Corridor, Gosford Passing Loops, Updated Detailed Services Search Investigation Report" compiled by the Principal and dated 22 May 2012, which forms part of the Information Documents and Materials, a copy of which is located in Exhibit G, Reports.

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

Dispute Resolution Board means the board consisting of:

(a) the person nominated by the Contractor in Schedule 1;

(b) the person nominated by the Principal under clause 15.7(a)(ii); and

(c) the person nominated in accordance with clause 15.7(a)(iii) (as chairperson),

or their replacements, referred to in clause 15.

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

DRB Agreement means the agreement which appears in Schedule 28.

Engineering Authority means the engineering authority from RailCorp issued in accordance with RailCorp's Engineering Design Competency System (EPA 241).
Environment means components of the earth, including:

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

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


Excavated Natural Material has the meaning given to that term in the exemption entitled "The excavated natural material exemption 2012" which was issued by the Environment Protection Authority pursuant to the Protection of the Environment Operations (Waste) Regulation 2005.

Excepted Risk means anyone of:

(a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, act of terrorism, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
(b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its Subcontractors or either's employees or agents; or
(c) any other event so described in Schedule 1.

Excluded Claim means any claim:

(a) with respect to a Change in Law under clause 2.3(g);
(b) for a Variation directed in accordance with clause 6.2 or a direction by the Principal's Representative to which clause 17.1 applies;
(c) for an extension of time to any Date for Completion under clause 10.8; or
(d) for payment under clause 11, including a claim under clause 11.10.

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

Final Completion means the stage in the execution of the Contractor's Activities when:
(a) all Defects Rectification Periods (including any extension under clause 8.6) have expired;

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

(c) the Contractor has done everything else which it is required to do under this Deed before Final Completion.

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

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

First Statement of Outstanding Claims has the meaning given to that term in clause 11.10(b).
Force Majeure Event means earthquake, flood, bushfire, act of terrorism, act of a public enemy, war (declared or undeclared) or revolution.

General Conditions means clauses 1-18 of this Deed.

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

(a) greenhouse gas emissions, energy production or energy consumption; and
(b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project, relating to any aspect of any Relevant Matters.

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

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

Head MOU means the memorandum of understanding titled "National Partnership Agreement on Implementation of Major Infrastructure Projects in New South Wales, 2009-2014" between the Commonwealth and New South Wales, dated 6 March 2009 and as varied on 12 June 2009.

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


Incident means:

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

(i) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;
(ii) loss of containment, escape of or migration of Contamination off-site and into the Environment;
(iii) any fire or dangerous event on the Site, a Remote Site or Extra Land;
(iv) a security breach;
(v) any unauthorised removal of trees;
(vi) a non-compliance with an Authority Approval or Third Party Agreement; or
(vii) any public complaint; or
(b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,
and includes:
(c) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and
(d) "occurrences" and "notifiable occurrences" under the WHS Legislation and Rail Safety Act 2008 (NSW).

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

**Information Documents and Materials** means:
(a) the items specified in Schedule 17; and
(b) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor unless expressly identified as forming part of this Deed,

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

**Insolvency Event** means when:
(a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;
(b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;
(c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
(d) in relation to a corporation any one of the following:
(i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);

(ii) the corporation enters a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;

(iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;

(iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;

(v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;

(vi) a sequestration order or winding up order is made in respect of the corporation;

(vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members’ voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;

(viii) a mortgagee of any property of the corporation takes possession of that property; or

(ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

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

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

**Intellectual Property** means all rights in copyright, inventions (including patents and innovation patents), registered and unregistered trademarks or name, registered and registrable designs, confidential information, trade secrets, technical data and know-how, circuit layout rights, and all other protected rights of intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.
**Interface Agreement** means the Third Party Agreement of that name between TfNSW and RailCorp, a copy of which (as at the Commencement Date) is contained in Exhibit I.

**Interface Agreement Deed Poll** means the deed poll in the form set out in Schedule 36.

**Interface Contractor** means an Other Contractor listed in Schedule 1, or otherwise identified by the Principal's Representative, as an Interface Contractor, that is carrying out, or that will carry out, Interface Work.

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

**Latent Condition** means any Service on the Site:

(a) the existence of which:

(i) is not identified in the Detailed Services Survey or not reasonably able to be inferred from the Detailed Services Survey; and

(ii) a competent and experienced contractor would not reasonably have been expected to anticipate as at the date of this Deed if it had:

(A) examined all documents and information relevant to the risks, contingencies and other circumstances having an effect on the Contractor's Tender and the Contractor's obligations under this Deed and which was obtainable by the making of reasonable enquiries (including the Information Documents and Materials); and

(B) inspected the Site and its surroundings;

(b) which is discovered only after the Contractor has undertaken potholing of the Services identified in the Detailed Services Survey to confirm their exact location; and

(c) which is operational and has not been made redundant by the owner of the Service.

**Law** means:

(a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other building codes, or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;

(b) principles of law or equity established by decisions of courts; and
Authority Approvals (including any condition or requirement under them).

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

Mitigation Measure means a measure, action, standard or precaution to mitigate the impact of the Works.

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

Nation Building Program Act means the Nation Building Program (National Land Transport) Act 2009 (Cth).

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

Nominated Subcontractor means a Subcontractor identified in Schedule 1, or a Subcontractor included in a list of Subcontractors identified in Schedule 1, to whom the Contractor must subcontract, the relevant Nominated Subcontract Work.

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

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

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

NSFC MOU means the Memorandum of Understanding in relation to the Northern Sydney Freight Corridor between the Commonwealth of Australia and The Crown in right of the State of New South Wales, dated 7 December 2011.

OH&S means occupational health and safety.

OH&S Accreditation Scheme means the Australian Government Building and Construction OH&S Accreditation Scheme established by the Fair Work (Building Industry) Act 2012 (Cth).

OH&S Guidelines means the NSW Government Occupational Health & Safety Management Systems Guidelines (4th edition) (June 2004) or any document issued from time to time which amends or substitutes this document.

Operational Readiness has the meaning given to that term in the TfNSW Standard Requirements and is comprised of stages 7 (accreditation of new infrastructure), 8 (pre-commercial operations and RailCorp staff training), 9...
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(completion and handover of the Works to the Principal), and 10 (setting to work for commercial operation) of Commissioning and Operational Readiness, as described in the TfNSW Standard Requirements.

Option means an option referred to in Schedule 25.

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

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

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

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

Payment Schedule means Schedule 2.

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

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

Permit to Work means the Permit to Work from RailCorp issued in accordance with RailCorp Procedure TMB A1419 Authority to Work on RailCorp Signalling Infrastructure – Permit to Work.

Planning Approval means:

(a) the Authority Approval set out in Exhibit E as it may be modified from time to time and any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning and Infrastructure (acting in their capacity as determining authority under the Environmental Planning and Assessment Act 1979 (NSW)) in respect of the Works; and

(b) any Mitigation Measures and statement of commitments that are required to be complied with or fulfilled in the documents referred to in paragraph (a).

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

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

PPS Law means:

(a) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time; and
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(b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a).

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

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

Principal’s Design means Appendix C of the Works Brief.

Principal’s Representative means:
(a) the person nominated in Schedule 1; or
(b) any other person appointed from time to time by the Principal under clause 9.2,
and includes any appointee under clause 9.3.

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

Prohibited Subcontractor means:
(a) any Subcontractor:
   (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
   (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in,
corrupt conduct as defined in the Independent Commission Against Corruption Act 1988 (NSW); or
(b) any Subcontractor employing an employee in respect of whom paragraphs (a)(i) or (a)(ii) apply.

Project Safety Management Plan means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TfNSW Standard Requirements and which must:
(a) set out in adequate detail the procedures the Contractor will implement to manage the Works and the performance of the Contractor’s Activities from a work health and safety perspective;
(b) describe how the Contractor proposes to ensure the Works and Contractor’s Activities are performed consistently with Law in relation to work health and safety; and
(c) address the matters specified in Schedule 1.

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

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

**Rail Systems and Services** has the meaning given to that term in clause 1.1 of the TfNSW Standard Requirements TSR T1 - Technical Management.

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

**Reimbursable Signalling Works** means those activities identified in Appendix J of the Works Brief that require the Contractor to obtain a Permit to Work from RailCorp for the activities to be performed by the Contractor's personnel in live signalling locations.

**Reimbursable Work**

(a) means the following specific activities:

(i) Reimbursable Signalling Works; and

(ii) Stage 10 (Setting to Work for Commercial Operation) of Operational Readiness specifically detailed in the TfNSW Standard Requirements TSR-O1;

(b) but only where those specific activities are undertaken by the Contractor's identified personnel stated in Part A of Schedule 9 (or such other personnel may be approved from time to time by the Principal's Representative) or using the plant and equipment stated in Part B of Schedule 9 ; and

(c) excludes:

(i) personnel for the project management, coordination and supervision of those specific activities; and

(ii) personnel required to obtain a permit to work in areas other than in live signalling locations.

**Reimbursable Work Breakdown Plan** means a draft Reimbursable Work breakdown plan submitted by the Contractor under clause 11.20 in respect of which:

(a) the Contractor has received a notice referred to in clause 9.14(d)(iii)(C); or
(b) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected the draft plan or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a matter satisfactory to the Principal's Representative as referred to in clause 9.14(c)).

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

**Related Party** means a related body corporate as defined in the Corporations Act 2001 (Cth) and any other entity determined by the Principal's Representative to be a related party for the purposes of this Deed.

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

**Remote Works** are those parts of the Works or Temporary Works that must be constructed on Remote Sites, including:

- (a) minor roadworks;
- (b) public art;
- (c) landscaping;
- (d) any item of work required by any Authority Approval to be constructed outside the Site;
- (e) any item of work required by the Third Party Agreements to be constructed outside the Site; and
- (f) connections to, augmentation of, and construction of any Service on a Remote Site.

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

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

**Second Statement of Outstanding Claims** has the meaning given to that term in clause 11.12(b).

**1500V Sectioning Diagram** means a diagram that:

- (a) shows the Electrical Feed Configuration to support the proposed 1500V sectioning configuration for the area;
- (b) details the sections that the 1500V can be broken up into by using the DCCBs and switches located in the substation and the section huts; and
- (c) is drawn to RailCorp's standards and signed off by key stakeholders.
Security Interest has the meaning given to that term in clause 16.29(a).

Service includes any service, facility or item of public or private infrastructure (including railway systems, pedestrian and vehicular corridors, water, electricity, gas, ethane, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service).

Signalling Design means the following design elements:

(a) signalling electrical detail design to support the removal of Down Loc Sidings 1 and 2;
(b) signalling electrical detail design to support the commissioning of Portion 1 and Portion 2;
(c) signalling plan;
(d) signalling electrical detail design for all new signalling locations and bungalows;
(e) signalling track insulation plan; and
(f) signalling electrical detail design for the final signalling arrangements.

Site means:

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

and excludes the Remote Sites and Extra Land.

Site Conditions means any physical conditions above, upon, under or over the surface, or in the vicinity, of the Site, a Remote Site or Extra Land and includes:

(a) surface water, ground water, ground water hydrology and the effects of any de-watering;
(b) physical and structural conditions, above, upon and below the Site, a Remote Site or Extra Land, including old footings, underground structures, buildings, improvements, partially completed structures or in-ground works;
(c) topography of the Site, a Remote Site or Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site, a Remote Site or Extra Land;
(d) climatic and weather conditions including rain, surface water runoff and drainage, floods, water seepage, windblown dust and sand, seasons and physical conditions that are a consequence of climatic and weather conditions;
(e) all existing systems and Services, above or below ground level and all facilities with which such systems and Services are connected;

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

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

(h) underground strata forming part of the Site, a Remote Site or Extra Land.


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

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

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

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

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

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

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

TfNSW means Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW).

TfNSW Standard Requirements or TSR means the documents which appear as Exhibit A to this Deed.

Temporary Lands are the lands so identified in Schedule 22.
**Temporary Works** means any temporary works required to be carried out or provided by the Contractor for the purpose of the execution of the Contractor's Activities but not forming part of the Works, including that identified in Schedule 3.

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

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

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

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

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

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

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

**Track Geometry Design** means the design of:

(a) horizontal track alignment;

(b) vertical track alignment; and

(c) track setting out details for points and catchpoints.

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

**Valuable Find** means any and all:

(a) valuable minerals, fossils, or coins;

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

(c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological, or other special interest,

found on or under the surface of the Site.

**Variation** means:

(a) any change to the Works or the Temporary Works including:

(i) any addition or increase to, or decrease, omission or deletion from, the Works or the Temporary Works;
(ii) any change to the character or quality, or demolition or removal, of any material or work; or

(iii) any change to the levels, lines, positions or dimensions of any part of the Works or the Temporary Works; or

(b) any changes to the boundaries of the Asset Lands or the Temporary Lands (or both),

but for the avoidance of doubt excludes:

(c) any changes to the Works or the requirements of the Works Brief that are required solely as a result of the exercise of an Option by the Principal’s Representative under clause 6.3;

(d) any changes to the Works or the Temporary Works or the requirements of the Works Brief that are required to ensure the Contractor complies with its obligations under this Deed;

(e) any Provisional Sum Work; and

(f) any Reimbursable Work.

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

Virgin Excavated Natural Material has the meaning given to that term in section 50 of Schedule 1 to the Protection of the Environment Operations Act 1997 (NSW).

WHS Legislation means:

(a) the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulations 2011 (NSW); and

(b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works.

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

Works means the whole of the works, including:

(a) any changes to the Works that are required solely as a result of the exercise of an Option by the Principal’s Representative under clause 6.3;

(b) all Variations to the Works;

(c) all Remote Works; and

(d) Principal Supplied Items once made available to the Contractor by the Principal,
that the Contractor must design, construct, commission, integrate, bring to Operational Readiness and handover to the Principal (or its nominee) under this Deed.

Works Brief means Exhibit B.

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

1.2 Interpretation

In this Deed unless the context otherwise requires:

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

(b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";

(c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;

(d) a reference to any Authority, institute, association or body is:

(i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

(ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;

(e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) a reference to any legislation or to any section or provision of it includes:

(i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and

(ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;

(g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
(h) headings are for convenience only and do not affect the interpretation of this Deed;

(i) a reference to:
   (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Deed; and
   (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;

(j) a reference to this Deed includes all Schedules, and (subject to clause 3.7(a)) Exhibits;

(k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

(l) where under this Deed:
   (i) a direction is required to be given or must be complied with;
   (ii) payment of money must be made;
   (iii) an unconditional undertaking must be released; or
   (iv) a default must be remedied,
   within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;

(m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:
   (i) any extension of time to any Date for Completion stated in days; or
   (ii) any reference to “day”,
   will include only those days indicated in Schedule 1, or otherwise approved by the Principal's Representative, as working days;

(n) for all purposes (other than as set out in clauses 1.2(l) and 1.2(m), or where otherwise designated as a Business Day), “day” means calendar day;

(o) for the avoidance of doubt, a reference to an Other Contractor includes an Interface Contractor;

(p) a reference to $ is to Australian currency;

(q) a reference to “direction” in the definition of Claim in clause 1.1 or in any of clauses 7.1(a)(i)(B), 9.1, 9.14(k), 15 and 16.30 will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document (as defined in clause 9.14(a)) under clause 9.14;
(r) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part;

(s) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(t) any reference:

(i) in the definition of Authority Approval and Completion in clause 1.1 to "intended use" or "intended purpose"; or

(ii) to "intended purpose", including in clauses 1.4(c), 2.1, 2.3, 3.2, 4.1, 5.1, 5.7, 7.1, 11.8 or 12.3, will be read as referring to the intended use or intended purpose having regard to:

(iii) the Principal's present intention that the Works or part of the Works will be used as part of a fully integrated operating railway system; and

(iv) any intended use or intended purpose stated in, contemplated by or ascertainable from the terms of this Deed and any other documents provided by the Principal to the Contractor under or pursuant to this Deed including the requirement that the Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; and

(u) any reference in this Deed to "the Contract" or "this Contract" will be taken to be a reference to this Deed.

1.3 Ambiguous Terms

(a) If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in this Deed (including in any Exhibit), the Principal's Representative must, subject to clause 1.4, direct the interpretation of this Deed which the Contractor must follow.

(b) The Principal's Representative, in giving a direction in accordance with clause 1.3(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Deed.

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

(i) will not relieve the Contractor from or alter its liabilities or obligations under this Deed or otherwise at Law;
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(ii) will not entitle the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;

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

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

1.4 Order of Precedence

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

(b) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Deed then:

(i) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the Works Brief, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and

(ii) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in Schedule 1 applies.

(c) The Works Brief, the Principal's Design and the Planning Approval are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Works comply with this Deed and are fit for their intended purposes.

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

1.5 Authorities

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

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

(c) The Contractor:

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

(ii) acknowledges and agrees that:

(A) there are many Authorities with jurisdiction over aspects of the Contractor’s Activities, parts of the Site, Remote Sites, Extra Land and other areas affecting and affected by the Contractor’s Activities;

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

(C) it bears the full risk of all occurrences of the kind referred to in clause 1.5(c)(ii)(B) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.6 Associated Deeds

As a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.5(a) the Contractor must, on or before the date of this Deed, provide the Principal’s Representative with two executed deed polls in favour of RailCorp in the form set out in Schedules 26 and 36.

1.7 Deed Commencement Date

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

(i) clause 1 (Definitions and Interpretation);

(ii) clause 2.2 (Subcontracts);

(iii) clause 2.8 (Unconditional Undertakings and Parent Company Guarantee);

(iv) clause 3.7 (Information Documents and Materials);
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(v) clause 9.16 (Exchange of information between Government Agencies);
(vi) clause 13 (Care of the Work, Risks and Insurance);
(vii) clause 14 (Default or Insolvency);
(viii) clause 15 (Disputes);
(ix) clause 16 (General); and
(x) clause 17 (Notification of Claims),
which will all commence on the date of this Deed.

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

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

2. Contractor's Obligations

2.1 General

The Contractor:

(a) must execute the Contractor's Activities, including design, construct, commission and handover the Works and each Portion, in accordance with this Deed;

(b) warrants that the Works and each Portion will upon Completion be, and will at all relevant times remain, fit for their intended purposes;

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

(d) unless the context otherwise requires:

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

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

(A) Contractor:

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

(2) remains liable for complying with all its obligations under this Deed, including the obligations referred to at clauses 2.1(b), 2.1(c) and 2.1(e); and
(B) Principal makes no representation as to:

(1) the quality of the specified product;
(2) the availability of the specified product; or
(3) the creditworthiness of the manufacturer of the specified product; and

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

2.2 Subcontracts

(a) Subject to clause 2.2(b) the Contractor may enter into Subcontracts for the vicarious performance of its obligations under this Deed.

(b) The Contractor:

(i) must:

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

(B) enter into a Subcontract with each of those Nominated Subcontractors specified in Schedule 1 in respect of the relevant Nominated Subcontract Work;

(ii) agrees that, in respect of Nominated Subcontractors, the:

(A) Contractor:

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

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

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

(1) quality of work;
(2) timeliness of work;
(3) availability to perform the relevant Nominated Subcontract Work; or
(4) ... creditworthiness;

(iii) may only enter into a Subcontract with:

(A) a Designer; or

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

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

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

(v) acknowledges that, within 14 days after a request by the Contractor for approval, the Principal's Representative will advise the Contractor whether the request is approved (and, if approved, any relevant conditions) or not and, where it is not approved, the reasons why approval is not given;

(vi) must ensure that, if any Law, including in the State or Territory in which the Works are situated or the Works are carried out (as the case may be), require that:

(A) a person:

(1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or

(2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
(B) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;

(vii) must not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of subparagraph (vi) are met (including any requirement to be authorised, licensed, qualified or supervised); and

(viii) if requested by the Principal's Representative or required by the WHS Legislation, must produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Contractor or Subcontractor (as the case may be) commences such work.

(c) The Contractor must ensure that each Subcontractor (including each Designer) referred to in Schedule 1:

(i) effects and maintains professional indemnity insurance which:

(A) covers the Subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Subcontractor or its Subcontractors in carrying out the work under the relevant Subcontract;

(B) covers the Subcontractor for liability to the Principal or the Contractor for the relevant minimum amount listed in Schedule 1;

(C) unless the Subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and

(D) remains in place at least until the expiration of a period referred to in Schedule 1 from completion of the relevant Subcontract works or professional services; and

(ii) is obliged under the relevant Subcontract to comply with clause 13.5(e)(i) and (ii) of this Deed in relation to the insurance referred to in sub-paragraph (i).

(d) The Contractor will be:

(i) fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and
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(ii) vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the Contractor’s Activities.

(e) Whenever requested by the Principal’s Representative, the Contractor must give the Principal’s Representative details of each of its Subcontracts, including the name and address of the Subcontractor (and its Subcontractors), and the works, goods or services being provided under the Subcontract.

(f) The Contractor must:

(i) without limiting clause 16.25(c), ensure that each of its Subcontracts that has an initial subcontract price of the amount specified in Schedule 1 or more includes provisions to the effect set out in Schedule 12 and a clause to the same effect as this clause 2.2(f)(i) that is binding on the Subcontractor and provide evidence of this to the Principal’s Representative when requested by the Principal’s Representative;

(ii) where a Subcontractor is to carry out design work or other professional services, unless not required by the Principal’s Representative, procure that Subcontractor to execute a deed in the form of Schedule 13 and provide this to the Principal’s Representative within 7 days of the engagement of that Subcontractor;

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

(iv) procure that each of its Subcontractors:

(A) engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule 1; or

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

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

(g) The Contractor must, as a condition precedent to Completion of the Works or each Portion, procure and provide the Principal’s Representative with those warranties described in Schedule 1 or elsewhere in this Deed from
the relevant Subcontractors undertaking or supplying the work or items the subject of the warranty.

These warranties:

(i) must be in the form set out in Schedule 19 and must be in favour of the Principal, RailCorp and any other entity nominated by the Principal's Representative from time to time; and

(ii) will not derogate from any rights that the Principal may have against the Contractor in respect of the subject matter of these warranties.

(h) If directed by the Principal, the Contractor must, without being entitled to compensation, within 5 Business Days of the date of receipt by the Contractor of the direction, execute and deliver to the Principal a deed of novation in the form required by the Principal, such deed being between the Principal, the Contractor and the Subcontractor stated in Schedule 1.

Any direction given by the Principal and any novation occurring pursuant to this clause 2.2(h) will not:

(i) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Deed);

(ii) limit or otherwise affect the Principal's rights against the Contractor (including those arising out of any warranties given under this Deed); or

(iii) entitle the Contractor to make any Claim, whether under this Deed or otherwise according to any Law.

2.3 Compliance with Law

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

(i) ensure that the Works comply with all applicable Law;

(ii) comply with all applicable Law;

(iii) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this Deed and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;

(iv) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it;
(v) at all times conform and comply with, and ensure that the Works conform and comply with (subject to clause 2.3(b)), all Codes and Standards; and

(vi) not engage in any fraud, bribery or corruption.

(b) Where there is a Change in Codes and Standards:

(i) the Contractor must give a written notice to the Principal’s Representative within 20 Business Days of the Change in Codes and Standards containing:

(A) details of the Change in Codes and Standards; and

(B) an estimate of the Contractor’s increased or decreased costs of complying with the Change in Codes and Standards including sufficient information to support the estimate; and

(ii) if a notice is given by the Contractor which complies with clause 2.3(b)(i), then within 10 Business Days of the notice being given, the Principal’s Representative will either:

(A) direct the Contractor to disregard the Change in Codes and Standards; or

(B) direct a Variation under clause 6.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 6.4.

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

(c) The Contractor must:

(i) obtain all Authority Approvals required for the:

(A) carrying out of the Contractor’s Activities; and

(B) occupation and use of the completed Works or a completed Portion,

except for those Authority Approvals specified in Schedule 15;

(ii) prepare and submit:

(A) to each relevant Authority all applications and associated documents for the purpose of obtaining all Authority Approvals as required by clause 2.3(c)(i); and
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(B) to the Principal copies of:

(1) all applications and associated documents submitted by the Contractor to any Authority;

(2) all documents provided to the Contractor by any Authority, including any Authority Approval;

(3) (on a monthly basis) evidence of compliance with the terms of the EPL (if an EPL is required);

(4) any other document the Principal's Representative reasonably directs the Contractor to provide;

(5) all documents submitted to an Authority in respect of the release of a Hold Point under an Authority Approval or any Codes and Standards, which documents must be submitted within a reasonable period of time before the release of the Hold Point; and

(6) all documents submitted to an Authority in respect of a Witness Point under an Authority Approval or any Codes and Standards, which documents must be submitted within a reasonable period of time before the review, witness, Inspection, or the undertaking of any tests, methods or processes related to or in any way in connection with the Witness Point;

(iii) comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, to comply with, satisfy, carry out and fulfil, other than any conditions and requirements of an Authority Approval expressly specified as being the responsibility of the Principal in Schedule 11;

(iv) in respect of any:

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

(B) conditions and requirements of Authority Approvals which pursuant to Schedule 11 are to be satisfied or fulfilled by the Principal,

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

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

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

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

(B) complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Deed (including obtaining the approval of any person for anything); and

(C) obtained and supplied to the Principal's Representative certification that the Works or the Portion, as designed and built, comply with the requirements of the Building Code of Australia to the extent applicable,

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

(d) If:

(i) an Authority Approval must be obtained or satisfied by the Contractor as a condition precedent to Completion of the Works or a Portion;

(ii) the obtaining or satisfying of the relevant Authority Approval cannot occur until certain Contemporaneous Work or Interface Work is performed; and

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

then in response to any request from the Contractor:

(iv) the Principal's Representative may:

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

(B) impose whatever conditions it considers reasonable in the circumstances (including any additional reasonable
conditions precedent to Completion of the Works or a Portion); and

(v) the Contractor:

(A) will be relieved of its obligation to obtain or satisfy the relevant Authority Approval as a condition precedent to Completion of the Works or the Portion in respect of which the Principal’s Representative deferred the time for obtaining or satisfying the relevant Authority Approval and omitted it as a requirement of Completion of the Works or the Portion under clause 2.3(d)(iv)(A), however the obligation to obtain or satisfy the relevant Authority Approval will not be omitted from the Contractor’s Activities; and

(B) must (at its own cost):

(1) obtain or satisfy the relevant Authority Approval;

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

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

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

(e) The Contractor:

(i) acknowledges that:

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

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

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

(ii) must not seek to or apply for any modification to the Planning Approval other than via the Principal; and

(iii) must pay the Principal all fees, costs and expenses arising out of, or in any way in connection with, such modification.
In respect of any submissions, surveys, investigations, reports, studies or other documents:

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

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

the Contractor:

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

(A) requested by the Principal's Representative;

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

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

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

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

Where there is a Change in Law:

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

(A) details of the Change in Law; and

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

(ii) if the Contractor or the Principal's Representative gives notice under clause 2.3(g)(i):

(A) representatives of the Principal and the Contractor must meet within 28 days of a notice being given under clause 2.3(g)(i) and must negotiate and endeavour to agree to a reasonable increase or decrease (as the case may be)
in the Contractor's cost of carrying out the Contractor's Activities arising from complying with the Change in Law;

(B) if the Principal and the Contractor reach agreement as to the reasonable increase or decrease (as the case may be) in the Contractor's cost of carrying out the Contractor's Activities arising from complying with the Change in Law within 28 days (or such other period that the Principal and the Contractor agree upon) of a notice being given under clause 2.3(g)(i), the Principal's Representative will issue a notice setting out how the Contract Sum will be increased or decreased; and

(C) if the Principal and the Contractor do not reach agreement as to the reasonable increase or decrease (as the case may be) in the Contractor's cost of carrying out the Contractor's Activities arising from complying with the Change in Law within 28 days (or such other period that the Principal and the Contractor agree upon) of a notice being given under clause 2.3(g)(i), the Principal's Representative will determine:

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

(2) for an increase in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Change in Law, the amount of the increased costs reasonably incurred by the Contractor on the basis that the Contractor took all reasonable steps to mitigate those increased costs,

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

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

(h) If a Change in Authority Approval occurs which necessitates a Variation, the Contractor must:

(i) if the relevant Authority Approval was obtained by the Principal, within 14 days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or
(ii) otherwise, within 14 days of the Change in Authority Approval taking effect,

notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Authority Approval necessitates a Variation.

(i) If the Contractor gives a notice under clause 2.3(h) and the Principal's Representative considers that the Change in Authority Approval:

(i) does necessitate a Variation;

(ii) would not have been reasonably foreseen or anticipated as at the date of this Deed by a party experienced and competent in the delivery of works and services similar to the Works or the Contractor's Activities (as applicable) in substantially the same form as the Change in Authority Approval; and

(iii) does not arise out of or in any way in connection with an act or omission by the Contractor,

the Principal's Representative will direct a Variation under clause 6.2(a) after which relevant adjustments will be made under clause 6.4.

(j) Other than as set out in clause 2.3(i), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:

(i) any Change in Authority Approval;

(ii) an Authority Approval obtained or issued or which otherwise takes effect after the date of this Deed;

(iii) a proposed amendment to the Planning Approval sought by the Contractor;

(iv) a change in an Authority Approval after the date of this Deed; or

(v) any:

(A) assumptions the Contractor makes; or

(B) failure by the Contractor to adequately satisfy itself;

as to what work methodologies and Temporary Works might be permissible under all Authority Approvals.

(k) Without limiting the Contractor's obligations under any other clause of this Deed, insofar as the Contractor, in carrying out the Contractor's Activities, is:

(i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the Work Health and Safety Act 2011 (NSW) applies;
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2.3A Environment Protection Licence

(a) In this clause 2.3A:

Non-Compliance means a non-compliance with TfNSW's EPL or any other non-compliance with the POEO Act in connection with the Contractor's Activities while TfNSW's EPL is in force in respect of any Contractor's Activities;

Contractor's EPL means the EPL described in clause 2.3A(c);

EPA means the NSW Environment Protection Authority;

POEO Act means Protection of the Environment Operations Act 1997 (NSW);

TfNSW's EPL means the EPL described in clause 2.3A(b); and

TfNSW's EPL End Date means the date that is 100 days after the Commencement Date, or such other date as the parties may agree in writing.

(b) The Principal will obtain an EPL in respect of the Contractor's Activities which will be in force on and from the Commencement Date until TfNSW's EPL End Date.

(c) The Contractor must obtain an EPL in respect of the Contractor's Activities which will come into force as soon as possible and, in any event, on and from the day after TfNSW's EPL End Date.

(d) The Contractor must keep the Principal's Representative informed of:

(i) the progress of its application for the Contractor's EPL; and

(ii) without limiting clause 2.3A(d)(i), the date on which it is likely the Contractor's EPL will come into force.
(e) If the EPA informs the Contractor, in effect, that the EPA is ready, willing and able to grant the Contractor's EPL so that the Contractor's EPL will come into force on and from a date which is earlier than TfNSW's EPL End Date (as at the time of the EPA's information) (Proposed Contractor EPL Date), then:

(i) without limiting clause 2.3A(d), the Contractor must promptly inform the Principal's Representative of that information; and

(ii) unless the Principal's Representative notifies the Contractor in writing otherwise, the parties will be taken to have agreed that TfNSW's EPL End Date is the Proposed Contractor EPL Date.

(f) The parties acknowledge and agree that TfNSW's EPL may be obtained by means of a variation to an existing EPL or by means of a new EPL.

(g) The Contractor must:

(i) comply with and fulfil all of the terms and conditions of, ensure that the Contractor's Activities are carried out in accordance with, TfNSW's EPL or any other Authority Approval in force under the POEO Act;

(ii) provide the Principal's Representative with all documents and information which the Principal's Representative requests, or which are reasonably likely to be required, in order for the Principal to comply with TfNSW's EPL in connection with the Contractor's Activities; and

(iii) without limiting clause 2.3A(g)(i):

(A) inform the Principal's Representative if it is likely that, or it is proposed that, any Contractor's Activities will be carried out on land, or in a way, which is not authorised by TfNSW's EPL; and

(B) if the Principal elects to request a variation of TfNSW's EPL to authorise those Contractor's Activities, assist the Principal to apply for and obtain that variation on terms satisfactory to the Principal.

(h) If the Principal's Representative, acting reasonably, suspects that there has been or is likely to be a Non-Compliance, the Principal's Representative may issue the Contractor with a notice requiring it to immediately take such steps as the notice specifies, and such other steps as are reasonably necessary to ensure any or all of the following:

(i) if the Non-Compliance has not yet occurred, that it does not occur;
(ii) if the Non-Compliance has occurred, that it stops and that it and any consequences of it are remedied to the satisfaction of the Principal’s Representative; and

(iii) if an Authority has issued a notice or order in respect of the actual or likely Non-Compliance, that the notice or order is satisfied.

(i) The Contractor must comply with any notice issued by the Principal or the Principal’s Representative pursuant to clause 2.3A(h).

(j) The Contractor shall to the maximum extent permitted by law indemnify the Principal and the Principal’s Representative against any claims, damages, expenses, loss liability, fine or penalty which the Principal or the Principal’s Representative may suffer or incur either partly or wholly arising out of or in any way in connection with a breach of clause 2.3A.

2.4 Legal Challenge to Approval

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

(i) the Environmental Planning and Assessment Act 1979 (NSW);

(ii) the Protection of the Environment Operations Act 1997 (NSW);

(iii) the Environment Protection and Biodiversity Conservation Act 1999 (Cth); or

(iv) any other Law,

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

(v) ordered or directed by an Authority;

(vi) ordered by a court or tribunal; or

(vii) directed by the Principal or the Principal’s Representative.

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

(i) an Authority order referred to in clause 2.4(a)(v);

(ii) a court order referred to in clause 2.4(a)(vi); or

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

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

2.5 Services

(a) The Contractor must:

(i) obtain and pay for any Service it needs to perform its obligations under this Deed;

(ii) relocate, remove, modify, support, protect, reinstate and provide all Services necessary for the Contractor to comply with its obligations under this Deed;

(iii) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under this Deed, including any such devices reasonably required by the Principal's Representative;

(iv) despite any other provision in this Deed to the contrary, ensure that no Services are:

(A) damaged or destroyed; or

(B) disconnected, disrupted, interfered with or interrupted during normal operating hours,

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

(v) cooperate and coordinate with the owners of all Services, and implement their requirements as part of the Contractor's Activities; and

(vi) indemnify the Principal against any claim, damages, expense, costs, loss, liability, fine or penalty the Principal suffers or incurs arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to, any Service arising out of or in any way in connection with the Contractor's Activities, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.
(b) Subject to clause 3.6, the Contractor agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities.

2.6 Crown Building Work
(a) The Contractor must, in relation to any part of the Works that is a Crown Building Work, certify (on behalf of the Principal) as required by section 109R of the Environmental Planning and Assessment Act 1979 (NSW).
(b) Any certification under clause 2.6(a) will not lessen or otherwise affect:
(i) the Contractor's other liabilities or responsibilities under this Deed or otherwise according to Law; or
(ii) the Principal's rights against the Contractor, whether under this Deed or otherwise according to Law.

2.7 Principal Contractor
(a) In this clause 2.7 the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation and the word "Control" has the same meaning as in Schedule 22.
For the purpose of the WHS Legislation and this Deed, the Works and any Other Contractor Work is taken to be part of the same 'construction project'.
(b) During any period:
(i) for which the Contractor is specified in Schedule 22 as being; or
(ii) that the Principal's Representative directs the Contractor to be, in Control of any part of the Site and to the extent that the Contractor's Activities or any Other Contractor Work includes construction work:
(iii) the Principal engages the Contractor as the principal contractor in respect of the Contractor's Activities and all Other Contractor Work carried out on that part of the Site;
(iv) the Principal authorises the Contractor to have management and control of each workplace at which the Contractor's Activities and the Other Contractor Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
(v) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.

(c) To the extent not prohibited by Law, the Contractor must indemnify the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in any way in connection with the Contractor's failure to discharge the duties imposed on a principal contractor by the WHS Legislation that the Contractor is required to discharge in accordance with this clause 2.7.

(d) Where the:

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

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

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

(iii) acknowledges that the person who is specified in Schedule 22 as being in Control of that part of the Site is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that part of the Site during the period during which that person is in Control of that part of the Site;

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

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

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

(f) Without limiting anything else in this clause 2.7, the Contractor must, in respect of Remote Works, Remote Sites and Extra Land, discharge the duties of a principal contractor under the WHS Legislation in respect of such construction work.
2.8 Unconditional Undertakings and Parent Company Guarantee

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

(b) The Contractor must give the Principal within 5 Business Days of the date of this Deed, two unconditional undertakings:

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

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

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

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

(i) within 28 days after the Date of Completion of the Works or the last Portion to reach Completion, release so much of the unconditional undertakings provided by the Contractor under clause 2.8(b) as may be then held by the Principal, so that it then holds 2.5% of the Original Contract Price;
(ii) within 28 days after the expiration of all the Defects Rectification Periods (excluding any extensions under clause 8.6), release so much of the unconditional undertakings provided by the Contractor under clause 2.8(b) as may be then held by the Principal, to such amount as the Principal's Representative determines to be reasonable, having regard to the work to which the remaining Defects Rectification Periods (including any extensions under clause 8.6) apply; and
(iii) within 28 days after the Date of Final Completion, release the balance of the unconditional undertakings provided by the Contractor under clause 2.8(b) as may be then held by the Principal.
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(e) The Principal:

(i) may have recourse to either or both of the unconditional undertakings provided under this clause 2.8 or clause 11.2(i)(v)(B) at any time;

(ii) is not obliged to pay the Contractor interest on:

(A) any unconditional undertaking; or

(B) the proceeds of any unconditional undertaking if it is converted into cash; and

(iii) does not hold the proceeds referred to in clause 2.8(e)(ii)(B) on trust for the Contractor.

(f) The Contractor must not take any steps to injunct or otherwise restrain:

(i) any issuer of any unconditional undertaking provided under this clause 2.8 or clause 11.2(i)(v)(B) from paying the Principal pursuant to the unconditional undertaking;

(ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 2.8 or clause 11.2(i)(v)(B) or receiving payment under any such unconditional undertaking; or

(iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.8 or clause 11.2(i)(v)(B).

(g) The Contractor must on or before the date of this Deed give the Principal a guarantee duly executed by the person referred to in Schedule 1 in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped.

(h) Despite any other provision of this Deed to the contrary, where this Deed may otherwise require the Principal to release an unconditional undertaking, or this Deed is terminated by the Principal either pursuant to clauses 14 or 2.16(d) or by reason of the Contractor repudiating this Deed, (or otherwise at law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this Deed to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this Deed or the Contractor's Activities whether for damages (including liquidated damages) or otherwise.
2.9 Collusive Arrangements

(a) The Contractor:

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

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

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

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

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

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

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

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

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

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

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

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

(a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service levy in respect of the Contractor's Activities under the Building and Construction Industry Long Service Payments Act 1986 (NSW); and

(b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 2.10(a).

2.11 Contemporaneous Work

The Contractor must:

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

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

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

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

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

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

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

(e) if the Principal's Representative agrees that the defect, omission or other matter in relation to the Contemporaneous Work necessitates a Variation in order for the proper execution of the Works and carrying out of the
Contractor's Activities, issue a Variation Order to the Contractor pursuant to clause 6.2 directing it to carry out a Variation; or

(f) if the Principal's Representative disagrees with the Contractor, issue a direction to the Contractor to commence or continue with the Contractor's Activities, whereupon the Contractor must nevertheless take such steps as may be necessary to ensure that the part of the Works or Contractor's Activities dependent upon or appreciably affected by the Contemporaneous Work complies with the requirements of this Deed.

If the Contractor fails to:

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

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

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

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

(j) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any work carried out or to be carried out by the Contractor under clause 2.11(i).

2.12 Third Party Agreements

(a) The Contractor:

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

(ii) must:

(A) unless otherwise expressly specified in Schedule 11, comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that the Principal is required,
under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and

(B) comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in Schedule 11 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2.12(a)(ii)(A);

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

(iv) must comply with any reasonable directions of the Principal’s Representative (who will have regard to any reasonable submissions made by the Contractor to the Principal’s Representative) in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;

(v) must, where a Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, provide such document, notice or information to the Principal (and not to the Third Party) within a reasonable time sufficient for the Principal to review and comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;

(vi) must, in carrying out the Contractor’s Activities:

(A) ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement; and

(B) otherwise act consistently with the terms of the Third Party Agreement;

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

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

(b) The parties acknowledge that:

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

(ii) the Contractor has reviewed the Third Party Agreements executed at the date of this Deed and the Draft Third Party Agreements and has included in the Original Contract Price all of its costs (including the cost of all physical works and allowance for any delay or disruption) in complying with its obligations under clause 2.12(a) and the Principal's obligations under the Third Party Agreements executed at the date of this Deed and the Draft Third Party Agreements other than those identified in Schedule 11 for the Principal to perform;

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

(iv) within 28 days of receipt of an executed copy of a Draft Third Party Agreement and the Revised Allocation, the Contractor must inform the Principal's Representative in writing if any terms and conditions of the executed version of the Draft Third Party Agreement or the Revised Allocation are substantially more onerous than those contained in the relevant Draft Third Party Agreement and Schedule 11 (Difference in Conditions) and:

(A) where the Difference in Conditions or Revised Allocation will result in additional administration, details of such additional administration costs to be incurred by the Contractor;
(B) where the Difference in Conditions or Revised Allocation will result in additional physical works:

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

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

details of such additional physical works and the cost of carrying out such additional physical works; and

(C) where the Difference in Conditions or Revised Allocation alters the Contractor's risk profile under this Deed and creates a contingent liability which the Contractor did not previously bear and which may convert to an actual liability on the happening of another event (Trigger Event), details of the altered risk profile, contingent liability and Trigger Event and a notice of intention to claim;

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

(A) Schedule 11 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the executed copy of the Draft Third Party Agreement and Revised Allocation under clause 2.12(b)(iii); and

(B) the Contractor must carry out its obligations under this Deed on the basis of the executed version of the Draft Third Party Agreement and the Revised Allocation without any adjustment to the Contract Sum or any entitlement to make any other Claim;

(vi) if the Principal's Representative receives a notice from the Contractor under clause 2.12(b)(iv) within the 28 day period, then:

(A) Schedule 11 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the executed copy of the Draft Third Party Agreement and Revised Allocation under clause 2.12(b)(iii);

(B) the Contractor must carry out its obligations under this Deed on the basis of the executed version of the Draft Third Party Agreement and the Revised Allocation;

(C) the Principal's Representative must:
(1) where the Contractor has provided the details referred to in clause 2.12(b)(iv)(A), give the Contractor a notice setting out the Principal's Representative's determination of the reasonable, additional administration costs incurred or to be incurred by the Contractor in complying with the executed version of the Draft Third Party Agreement or Revised Allocation and the Contract Sum will be increased by that amount; and

(2) where the Contractor has provided the details referred to in clause 2.12(b)(iv)(B), if the terms of any executed version of a Draft Third Party Agreement or Revised Allocation require the Contractor to carry out any physical work which:

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

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

(D) direct the Contractor to carry out such physical work as a Variation under clause 6.2; and where the Contractor has provided the details referred to in clause 2.12(b)(iv)(C), the Principal's Representative's obligation to make a determination in relation to the altered risk profile or contingent liability referred to in clause 2.12(b)(iv)(C) is deferred until the Trigger Event occurs;

(vii) if:

(A) the Contractor issues a notice under clause 2.12(b)(iv) and provides the details referred to in clause 2.12(b)(iv)(C); and

(B) during the implementation of the executed Draft Third Party Agreement and the Revised Allocation a Trigger Event occurs,

the Contractor may issue a notice to the Principal's Representative providing details of the reasonable costs incurred in satisfying the actual liability which has arisen;

(viii) if the Principal's Representative receives a notice under clause 2.12(b)(vii), the Principal's Representative must give the Contractor a
notice setting out the Principal’s Representative’s determination of the reasonable, additional costs incurred by the Contractor in satisfying the actual liability which has arisen and the Contract Sum will be increased by that amount; and

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

(c) The Contractor:

(i) must indemnify the Principal from and against:
   (A) any claim by a Third Party against the Principal; or
   (B) any liability of the Principal, to a Third Party, arising out of or in any way in connection with a Third Party Agreement (including a Draft Third Party Agreement executed after the date of this Deed) to the extent that the claim or liability arises out of or in any way in connection with the Contractor’s Activities, provided that the Contractor’s responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or liability; and

(ii) agrees that it:
   (A) bears the full risk of:
      (1) complying with the obligations under this clause 2.12; and
      (2) any acts or omissions of Third Parties; and
   (B) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the risks referred to in clause 2.12(c)(ii)(A).

2.13 Co-operation with Interface Contractors

The Contractor:

(a) acknowledges that:
   (i) the Interface Work forms part of the Gosford Passing Loops Project;
   (ii) the Contractor’s Activities interfaces with the Interface Work;
(iii) Interface Contractors will be executing work on parts of the Site, Remote Sites or Extra Land, or adjacent to the Site, Remote Sites or Extra Land, at the same time as the Contractor is performing the Contractor's Activities;

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

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

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

(vii) any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or co-operating and co-ordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the Gosford Passing Loops Project in a way which may lead to the Principal suffering or incurring additional costs, losses and damages;

(b) must at all times:

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

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

(B) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose ensure they have safe, clean and clear access to those parts of the Site, Remote Sites or Extra Land, or property adjacent to the Site, Remote Sites or Extra Land, required by them for the purpose of carrying out their work;

(ii) protect the Works, Temporary Works and other improvements on the Site, Remote Sites or Extra Land from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors;

(iii) fully co-operate with Interface Contractors, and do everything necessary to:
(A) facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative; and

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

(iv) carefully coordinate and interface the Contractor's Activities with the Interface Work, and for this purpose:

(A) make proper allowance in all programs for Interface Work;

(B) review all programs provided by Interface Contractors and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Interface Work with the Contractor's Activities;

(C) monitor the progress of the Interface Work;

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

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

(F) it must cooperate, meet with, liaise, and share information so that the Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);

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

(vi) be responsible for coordinating the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative (in accordance with clause 2.13(b)(vii)) work method statements for those parts of the Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
(vii) provide for the purposes of clause 2.13(b)(vi) (unless otherwise directed by the Principal's Representative), the number and form of copies of the work method statements specified in Schedule 1;

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

(ix) work in accordance with:

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

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

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

(B) the TfNSW Standard Requirements;

(x) attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others each 14 days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;

(xi) when information is required from an Interface Contractor, give at least 10 days (except in special circumstances), and at all times reasonable, written notice to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;

(xii) ensure that any written notice given under sub-paragraph (xi) provides the Interface Contractor with the longest possible time for the provision of the information;
(xiii) when any information is requested by Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Works or the Contractor’s Activities:

(A) provide the information to the Interface Contractor, with a copy to the Principal’s Representative, within the time requested by the Interface Contractor provided that this time is reasonable;

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

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

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

(A) the provision of information;

(B) the obtaining of information;

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

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

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

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

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

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

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

(d) must promptly advise the Principal’s Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Deed or otherwise have an adverse effect upon the Contractor’s Activities; and
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(e) acknowledges that conditions similar to those in this clause 2.13 applying to
the Contractor will apply to all Interface Contractors engaged by the
Principal, whether working on the Site or on any other site.

2.14 Interface Disputes

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

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

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

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

2.15 No Claims Arising out of Interface Work

The Contractor:

(a) acknowledges and agrees that:

(i) no act or omission by an Interface Contractor will, whether or not it
causes any delay, disruption or interference to the Contractor's
Activities, constitute an Act of Prevention; and

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

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

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

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

2.16 Incident Management

(a) The Contractor must identify clear guidelines for responding to any Incident
arising from the performance of the Contractor's Activities and establish
procedures to ensure that the Principal's Representative is promptly notified
of any Incident in accordance with the TfNSW Standard Requirements.
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(b) Should an Incident occur which:

(i) is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal’s Representative in accordance with the TfNSW Standard Requirements; and

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

(c) In relation to any environmental or safety Incident involving Contamination or other waste that arises during the performance of the Contractor’s Activities, the Contractor must:

(i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination or other waste arising from the Incident;

(ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and

(iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal’s Representative.

(d) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Deed, immediately terminate this Deed by written notice to the Contractor.

(e) Without prejudice to the Principal’s other rights under this Deed, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to the Principal.

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

(i) a significant spill of Contamination;

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

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

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

2.17 Working Days and Hours of Work

The Contractor must observe:

(a) all relevant Law; and

(b) any requirements of the Principal as specified in Schedule 1 or otherwise notified by the Principal's Representative from time to time, which regulate working days and hours of work.

2.18 Commissioning and Operational Readiness

The Contractor acknowledges that:

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

(b) Commissioning and stages 7 to 9 of Operational Readiness as set out in the TfNSW Standard Requirements TSR-01 must be completed for Completion to occur;

(c) Stage 10 of Operational Readiness (setting to work for commercial operation) as set out in TfNSW Standard Requirements TSR-01:

(i) must be completed:

   (A) after the Date of Completion; and

   (B) as and when directed by the Principal's Representative;

(ii) does not form part of any Portion; and

(iii) will be complete upon the issue of the notice by the Principal's Representative under clause 12.11.
3. The Site and Location of the Works

3.1 Access

(a) The Contractor acknowledges and agrees that:
   (i) access to the Site will be provided progressively to the Contractor as set out in Schedule 22; and
   (ii) Exhibit H contains drawings of the Site.

(b) Subject to clause 3.1(c) and any other provision of this Deed affecting access, the Principal must:
   (i) give, or ensure the Contractor has, access to the Site in accordance with Schedule 22 and by the dates set out in Schedule 22 (and if a period is specified in relation to access to a part of the Site, then by the last day of that period); and
   (ii) once access to a part of the Site is provided to the Contractor, thereafter continue to allow, or ensure that the Contractor is continued to be allowed, access to that part of the Site.

(c) The Contractor acknowledges and agrees that:
   (i) access to the Site or any part thereof will confer on the Contractor a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this Deed and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor;
   (ii) the Principal is not obliged to give the Contractor access to any part of the Site until the Contractor has:
      (A) complied with clause 2.8(b) of this Deed;
      (B) submitted the Project Safety Management Plan, the Construction Environmental Management Plan and the Construction and Site Management Plan, as required by the TfNSW Standard Requirements, to the Principal's Representative for review under clause 9.14 and:
         (1) the Principal's Representative has issued the notice referred to in clause 9.14(d)(iii)(C) in respect of each of them; or
         (2) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected any of them or made comments on any of
them (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal’s Representative as referred to in clause 9.14(e));

(C) effected the insurance policies required under clauses 13.5 and 13.6;

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

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

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

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

(A) exist under any Third Party Agreement;

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

(C) are specified in Schedule 22;

(v) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain access to the Site or carry out the Contractor’s Activities; and

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

(d) The Principal’s obligations under clause 3.1(a) and 3.1(b) in respect of each part of the Site will cease upon the issue of a Notice of Completion in respect of the last Portion occupying that part of the Site, except to the extent set out in Schedule 22.

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

(i) an extension of time to any relevant Date for Completion under clause 10.10 if the requirements of that clause are satisfied; and
(ii) have the Contract Sum increased by the costs reasonably incurred by the Contractor as a direct result of the failure of the Principal to give access as required by clause 3.1(b) as determined by the Principal's Representative who must, where they are applicable, use the rates and prices in Schedule 1.

(f) The Contractor's entitlement under clause 3.1(e)(ii) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to give access as required by clauses 3.1(a), 3.1(b)(i) or 3.1(b)(ii).

3.2 Temporary Works

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

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

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

(ii) specify the intended commencement and completion dates.

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

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

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

(ii) complies with the requirements set out in the TfNSW Standard Requirements.

(e) The Contractor must:

(i) reinstate any property upon which any Temporary Works have been carried out to a state that is equivalent to the state it was in immediately prior to the Contractor obtaining access; and
(ii) otherwise repair any damage or degradation to any part of any property arising out of or in any way in connection with the performance of its obligations under this clause 3.2.

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

3.3 Management and Control of the Site

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

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

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

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

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

(v) must, subject to clauses 2.13, 3.1(c), 3.11 and 7.4 and the TfNSW Standard Requirements, and any relevant Law, limit access to the Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Site as part of the Contractor's Activities;

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

(vii) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from damage (including from theft and vandalism) until (where relevant) they are due for demolition by the Contractor if that forms part of the Contractor's Activities.
(b) At all times after being given access to a Remote Site for the purposes of carrying out the Contractor's Activities related to Remote Works and before the relevant Date of Completion, the Contractor:

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

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

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

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

(iii) must ensure public safety on and adjacent to the relevant Remote Site; and

(iv) must not impede access or Services to the relevant Remote Site without the consent of the relevant owner, occupier or access provider.

3.4 Remote Sites and Extra Land

(a) The Contractor acknowledges and agrees that:

(i) the Remote Works form part of the Works or Temporary Works;

(ii) the Principal is not responsible for providing (or assisting the Contractor to obtain) access to any Remote Site or Extra Land;

(iii) the location of the Remote Sites may not be fixed and, in such cases, must be determined by the Contractor in consultation with the Principal and any relevant entity who is to take the benefit of the Remote Works;

(iv) it accepts all risk and responsibility in respect of identifying the location of and gaining access to the Remote Sites necessary in respect of Remote Works and it must procure for itself and at its own cost the occupation or use of or relevant rights over the Remote Sites;

(v) it has made and will make adequate allowances in the Contractor Program for Remote Works;

(vi) it will comply with all directions of the owners, occupiers or persons providing access to the respective Remote Sites or Extra Land, including in respect of any Service connection points; and
(vii) it will not be entitled to make, and the Principal will not be liable upon, any Claim in respect of any Remote Works, Remote Sites or Extra Land.

(b) The Contractor must:

(i) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site and Remote Sites, including any land owned by RailCorp, which is necessary or which it may require for the purposes of carrying out the Contractor's Activities;

(ii) at its own cost carry out all activities and procure all Services necessary to make the Remote Sites and Extra Land suitable for use by the Contractor;

(iii) as a condition precedent to Completion of the Works or each Portion:

(A) rehabilitate any Remote Sites and Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and

(B) unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate in the form of Schedule 21 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, any Remote Sites or Extra Land; and

(iv) indemnify the Principal against any damage, expense, loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with a claim by the owner or occupier of, or any other person having any interest in, any Remote Sites or Extra Land, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the damage, expense, loss, cost or liability.

3.5 Not used

3.6 Site Conditions

(a) Without limiting or otherwise affecting clause 3.7(c), the Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this Deed the Contractor:
(i) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this Deed and which was obtainable by the making of reasonable enquiries;

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

(iii) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this Deed, the Deed of Disclaimer, the Information Documents and Materials, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender, the performance of its obligations and its potential liabilities under this Deed; and

(iv) undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this Deed and assume the obligations and potential risks and liabilities which it imposes on the Contractor.

(b) Without limiting or otherwise affecting clauses 3.6(c) and 3.7, the Principal makes no representation and gives no warranty to the Contractor in respect of:

(i) the Site Conditions likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
   (A) the Site, Remote Sites, Extra Land or their surroundings; or
   (B) any structure or other thing on, under, above or adjacent to the Site, Remote Sites or Extra Land;

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

(iii) the feasibility or fitness for purpose of the Principal's Design including, in respect of the constructability of the Principal's Design, having regard to the physical conditions and characteristics of the Site, Remote Sites or Extra Land.
(c) Subject to clauses 3.6(d) to 3.6(f) and clause 3.9(h) (if they apply), the Contractor accepts:

(i) the Site, Remote Sites and Extra Land; and

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

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

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

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

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

(vi) whatever may be the condition or characteristics (including all sub-surface conditions) of:
   (A) the Site, Remote Sites or any Extra Land, the Environment or their surroundings; or
   (B) any structure or other thing on, above or adjacent to, or under the surface of, the Site, Remote Sites or any Extra Land, the Environment or their surroundings; and

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

including:

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

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

(x) water, atmospheric, sub-surface and other conditions or characteristics or aspects; and
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(xi) all existing systems and Services, above or below ground level and
the location of all facilities with which such systems and Services are
connected.

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

(i) promptly; and

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

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

(iii) the conditions encountered and in what respects the Contractor
considers they constitute a Latent Condition;

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

(v) the time the Contractor anticipates will be required to deal with the
conditions and the expected delay in achieving Completion (if any) as
a result of dealing with the conditions;

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

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

(e) If a Latent Condition:

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

(ii) directly results in an increase in the Contractor's costs of carrying out
the Contractor's Activities,

which a competent and experienced contractor could not have avoided or
mitigated, and could not reasonably have anticipated at the date of this
Deed, the Contract Sum will be increased by the additional costs
reasonably incurred by the Contractor in carrying out the Contractor's
Activities as a result of the Latent Condition as determined by the
Principal's Representative together with the percentage referred to in
Schedule 1 in respect of clause 6.4(b)(i)(C) applied to those additional
costs.

(f) In making a valuation pursuant to clause 3.6(e) or determining an extension
of time under clause 10, regard will not be had to any Contractor's
Activities, additional costs or delay suffered or incurred more than 14 days
before the date on which the Contractor gives the written notice required by
the first paragraph of clause 3.6(d).

3.7 Information Documents and Materials

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

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

(i) the Information Documents and Materials or part thereof do not form
    part of this Deed and that clause 3.7(c) applies to the Information
    Documents and Materials or part thereof; and

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

(b) Without limiting clause 3.7(c) or the warranties or acknowledgements in the
    Deed of Disclaimer or the Tender Form:

(i) the Contractor acknowledges that the Principal does not warrant,
    guarantee, assume any duty of care or other responsibility for or
    make any representation about the accuracy, adequacy, suitability or
    completeness of the Information Documents and Materials, and the
    Information Documents and Materials do not form part of this Deed;

(ii) subject to clause 3.7(e), the Principal will not be liable upon any
    Claim by the Contractor arising out of or in any way in connection
    with:

    (A) the provision of, or the purported reliance upon, or use of the
        Information Documents and Materials to or by the Contractor
        or any other person to whom the Information Documents and
        Materials are disclosed; or

    (B) a failure by the Principal to provide any other information,
        data or documents to the Contractor.

(c) The Contractor:

(i) warrants that it did not in any way rely upon:

    (A) any information, data, representation, statement or
        document made by, or provided to the Contractor, by the
        Principal or anyone on behalf of the Principal or any other
information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or

(B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document, for the purposes of entering into this Deed except to the extent that any such information, statement or document forms part of this Deed;

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

(iii) acknowledges that it is aware that the Principal has entered into this Deed relying upon the warranties, acknowledgements and agreements in clauses 3.7(c)(i) and 3.7(c)(ii) and in the Deed of Disclaimer and the Tender Form.

(d) Subject to clause 3.7(e), the Contractor releases and indemnifies the Principal from and against:

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

(ii) (without being limited by clause 3.7(d)(i)) any costs, expenses, losses or damages suffered or incurred by it, arising out of or in any way in connection with:

(iii) the provision of, or the purported reliance upon, or use of the Information Documents and Materials, as referred to in clauses 3.7(b) and 3.7(c)(i), to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed or a failure by the Principal to provide any information, data or documents to the Contractor (other than any information, data or documents which the Principal is required to provide to the Contractor by the terms of this Deed);

(iv) any breach by the Contractor of the warranties in clause 3.6 or this clause 3.7; or

(v) the Information Documents and Materials being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" within the meaning of those terms in sections 18 and 29 of Schedule 2 of the Competition and Consumer Act 2010 (Cth), or any equivalent provision of State or Territory legislation.
(e) The acknowledgements, warranties, releases and indemnities referred to in clauses 3.7(a) to 3.7(d) do not affect the Contractor's rights under clauses 3.6(d) to 3.6(f) and clause 3.9.

3.8 Valuable Finds

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

The Contractor must:

(a) immediately notify the Principal's Representative if any such thing is found;

(b) ensure that it is protected and not lost, removed, disturbed or damaged; and

(c) comply with any directions of the Principal's Representative in relation to the thing.

Despite the acknowledgements, warranties, releases and indemnities referred to in clauses 3.7(a) to 3.7(d):

(d) the Contract Sum will be increased by the extra costs reasonably incurred by the Contractor as determined by the Principal's Representative in complying with the Principal's Representative's directions under clause 3.8(c); and

(e) the Contractor will be entitled to make a claim for an extension of time under clause 10.7 in respect of any delays the Contractor suffers in complying with the Principal's Representative's directions, but only to the extent that the Valuable Find could not have been reasonably anticipated by a competent and experienced contractor having done those things it is deemed to have done by clause 3.6(a), as determined by the Principal's Representative.
3.11 Principal's Right to Access and Inspect

(a) Subject to clause 3.15, the Contractor must:

(i) without limiting clauses 3.3 and 3.4, minimise disruption or inconvenience to:

(A) the Principal, occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the Site, Remote Sites or Extra Land or any other land or buildings above or adjacent to the Site, Remote Sites or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Site, Remote Sites or Extra Land or any other land or buildings above or adjacent to the Site, Remote Sites or any Extra Land, including any occupation or use of the Works, a Portion or a part thereof under clause 12.6; and

(B) others having a right of access to the Site, Remote Sites or Extra Land or any other land or buildings above or adjacent to the Site, Remote Sites or any Extra Land; and

(ii) at all times:

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

(1) the Works;
(2) the Site; or
(3) any other areas where the Contractor's Activities are being carried out, including unobstructed vehicular access through the Site (including access to any hi-rail access point identified in Schedule 22); and

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

(b) The Contractor acknowledges and agrees that:

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

(A) inspect the Contractor's Activities; or
(B) review any design or construction for Defects (including errors and omissions) or compliance with the requirements of this Deed; and

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

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

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

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

3.12 Works to be Constructed on the Asset Lands

The Contractor must ensure that:

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

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

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

3.13 Condition Surveys

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

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

(c) The Condition Survey of any public roads identified under clause 3.13(b) must be prepared in accordance with Austroad’s Guide to Pavement Technology Part 5: Pavement Evaluation and Treatment Design 2008.

(d) The Condition Survey referred to in clause 3.13(b):
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(i) must be performed in accordance with the property damage management plan (referred to in the TSR Prelude) which must be submitted under clause 9.14 for the Principal’s Representative to review its scope;

(ii) may only be performed after:
   (A) the Principal’s Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C) in respect of the property damage management plan; or
   (B) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal’s Representative has not rejected the property damage management plan or made any comments on the scope (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal’s Representative as referred to in clause 9.14(e));

(iii) must be performed by suitably skilled, qualified and experienced personnel or Subcontractors approved by the Principal’s Representative;

(iv) must be repeated immediately prior to the Completion of the Works or a Portion by the same personnel or Subcontractors referred to in clause 3.13(d)(iii), or such others as the Principal’s Representative may reasonably approve;

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

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

(e) The Contractor must prepare the Condition Survey referred to in clause 3.13(b) a minimum of two weeks prior to commencing any work on the Site, or on any other land which is necessary for performing the Contractor’s Activities or undertaking the Works, where that work could damage property on or off the Site.

3.14 Waste Disposal

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

(b) The Contractor must:

(i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the Site holds all relevant Authority Approvals that are necessary or desirable; and

(ii) procure and provide evidence of such Authority Approvals to the Principal's Representative upon request.

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

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

3.15 Principal not in Control

The Contractor and Principal acknowledge that nothing in this Deed including the right to inspect pursuant to clause 3.11 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

(a) the Principal has any management or control over the Contractor's Activities or the Site, Remote Sites or Extra Land; or

(b) the Principal has any responsibility for any act or omission by the Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Authority Approvals, Third Party Agreements or this Deed.

4. Compliance

4.1 Quality of Work

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

4.2 TfNSW Standard Requirements

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

4.3 Environmental Management

The Contractor must:

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

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

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

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

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

4.4 OH&S Management

The Contractor must:

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

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

(c) carry out the Contractor's Activities in accordance with the Project Safety Management Plan;
(d) create a safe working environment for ensuring the safety of all authorised personnel on the Site, Remote Sites and Extra Land and that no unauthorised individual gains access to the Site; and

(e) supervise any Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the TfNSW Standard Requirements in relation to the OH&S management on the Site, Remote Sites and Extra Land.

4.5 No Relief from Obligations

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

(a) the implementation of, and compliance with, any management system or plan by the Contractor;

(b) compliance with the Contract Management Plan by the Contractor;

(c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative, particularly those concerning or relating to the Contractor proceeding past any Hold Point or Witness Point or otherwise directed by the Principal's Representative;

(d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, particularly whilst participating in any Hold Point or Witness Point procedure, including where such a failure is the result of a negligent act or omission; or

(e) any Inspections arranged by the Principal's Representative under the TfNSW Standard Requirements or any related discussions between the Contractor's Representative and the Principal's Representative.

5. Design and Design Documentation

5.1 Contractor's Design Obligations

The Contractor:

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

(i) continue to develop the Principal's Design into the Design Documentation; and
(ii) prepare and complete the design of the Works and Temporary Works (including the Design Documentation), so that it is fit for its intended purpose and otherwise complies with the requirements of this Deed; and

(b) warrants that:

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

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

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

(A) satisfy the requirements of the Works Brief, the Principal's Design and the other requirements of this Deed;

(B) subject to clause 5.2, not depart from the Principal's Design; and

(C) be and remain at all relevant times fit for their intended purposes; and

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

The Contractor must integrate the Design Documentation with the Signalling Design, the Track Geometry Design and the 1500V Sectioning Diagram.

5.1A Principal's Design Obligations

(a) The Principal will use reasonable endeavours to provide the Contractor with the Track Geometry Design, the 1500V Sectioning Diagram and each element of the Signalling Design before the relevant Design Due Date.

(b) If the Track Geometry Design, the 1500V Sectioning Diagram or an element of the Signalling Design, is not provided to the Contractor before the relevant Design Due Date, and the Contractor suffers delay as a result, the Contractor will be entitled to make a claim for an extension of time under clause 10.7.

(c) Subject to compliance by the Contractor with its obligations in this clause 5.1A and Appendix F to the Works Brief, the Contractor is relieved from its obligations under clauses 7.1(a)(ii), 7.1(a)(iii), 7.1(c)(iv) and 2.3(a)(i) to the extent that it is unable to satisfy those obligations as a result of the Track
Geometry Design, the 1500V Sectioning Diagram and the Signalling Design.

(d) The Principal acknowledges and agrees that access to the preliminary Track Geometry Design, the preliminary Signalling Design and the preliminary 1500V Sectioning Diagram will be provided progressively to the Contractor as it is submitted to RailCorp at each design review stage.

(e) The Contractor acknowledges and agrees that the Contractor will:

(i) after it has received the preliminary Track Geometry Design and the preliminary Signalling Design from the Principal, undertake a review of and perform interdisciplinary checks on the designs and provide feedback, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of the designs as specified in the Works Brief or in respect of any matter upon which the Principal's design consultant has requested feedback, to the Principal's Representative within 15 Business Days of receiving the preliminary designs to facilitate the development of the Track Geometry Design and the Signalling Design so as to allow the Principal to provide the Track Geometry Design and the Signalling Design to the Contractor by the relevant Design Due Date; and

(ii) produce a Signalling Scope of Works Document as specified in the Works Brief and submit it to the Principal's Representative for use by the Principal's signalling design consultant 100 Business Days prior to the commissioning of any signal enabling works and 100 Business Days prior to the commissioning of any track alterations which require signal design.

(f) Without limiting clause 5.1A(e) or any other provision of this Deed the Contractor acknowledges and agrees that the Contractor must:

(i) fully co-operate with the Principal and the Principal's design consultants identified in the Works Brief and do everything necessary to:

   (A) facilitate the development of the Track Geometry Design and the Signalling Design including providing the Principal's design consultants with such assistance as may be directed by the Principal's Representative; and

   (B) ensure the effective coordination of the design and construction of the Works and Temporary Works with the design of the Track Geometry Design and the Signalling Design (including the Design Documentation);
(ii) carefully coordinate and interface the Contractor's Activities with the Track Geometry Design and the Signalling Design, and for this purpose:

(A) make proper allowance in all programs for the Track Geometry Design and the Signalling Design;

(B) monitor the progress of the Track Geometry Design and the Signalling Design;

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

(D) provide the Principal's design consultants with sufficient information about the current and expected Contractor's Activities to assist them to coordinate the Track Geometry Design and the Signalling Design with the Contractor's Activities;

(iii) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Track Geometry Design and the Signalling Design;

(iv) provide all necessary information to the Principal's design consultants in respect of the Works and Temporary Works to permit the Principal's design consultants to complete the Track Geometry Design and the Signalling Design;

(v) attend interface coordination meetings chaired by the Principal's Representative with the Principal's design consultants as advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;

(vi) when any information is requested by the Principal or the Principal's design consultants, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Track Geometry Design and the Signalling Design with the Works or the Contractor's Activities:

(A) provide the information to the Principal's design consultants, with a copy to the Principal's Representative, within the time specified in the Works Brief or as requested by the Principal's design consultants provided that this time is reasonable;
(B) ensure that such information is provided to Principal's design consultants by the requested dates; and

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

(vii) use its best endeavours to resolve any problems, and work closely and iteratively, with the Principal's design consultants, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:

(A) the provision of information;

(B) the obtaining of information;

(C) the adequacy of information provided to, or received from the Principal's design consultants;

(D) the compatibility of the Works and Temporary Works with the Track Geometry Design and the Signalling Design;

(E) coordination in accordance with this clause 5.1A; and

(F) technical issues with the information provided to, or received from the Principal's design consultants; and

(viii) in the event that despite using its best endeavours, and working closely and iteratively with the Principal's design consultants, the Contractor and any Principal's design consultants fail to resolve a problem between them:

(A) give written notice to the Principal's Representative with a copy to the Principal's design consultants describing the problem;

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

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

(g) If the Contractor fails to:

(i) respond, or responds but fails to provide the information required by paragraph (e)(i), within the time required by paragraph (e)(i), or
(ii) provide the Signalling Scope of Works Document which complies with the Works Brief within any of the times required by paragraph (e)(ii); or

(iii) comply with clause 5.1A (f), any delay beyond the specified time referred to in subparagraphs (i) or (ii) above or any delay in the issue of the Signalling Design or the Track Geometry Design caused by the failure to comply with clause 5.1A (f), will extend any Design Due Date that is affected by this delay or failure to comply, by the Contractor.

5.2 Departures from the Design

(a) The parties acknowledge that the process of developing the design from the Principal’s Design to the Design Documentation may (subject to this clause 5.2) result in departures from the Principal’s Design.

(b) The Contractor must not make a departure referred to in clause 5.2(a) unless:

(i) the departure is:

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

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

(1) greater or higher requirement;

(2) greater or higher standard;

(3) greater or higher level of service; or

(4) greater scope;

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

(A) the departure complies with the Works Brief or has been consented to by the Principal pursuant to clause 5.2(c); and

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

(1) capacity;

(2) durability;

(3) aesthetics of visible features;
(4) whole of life performance;
(5) functional performance;
(6) safety;
(7) security;
(8) community amenity;
(9) community benefits; or
(10) user benefits,
of any part of the Works, or has been consented to by the Principal pursuant to clause 5.2(c); or

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

(c) The Contractor must submit any request for a departure referred to in clause 5.2(a) for review by the Principal under clause 9.14.

(d) The Contractor must provide the Principal with such information as the Principal requests for the purpose of considering a written request from the Contractor of the nature referred to in clause 5.2(c) and within such time as the Principal prescribes.

(e) Where a departure occurs in accordance with clause 5.2(c), the Contractor will have no entitlement to make any Claim against the Principal.

5.3 Design Documentation

(a) The Contractor must submit all Design Documentation:

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

(ii) at the times set out in:

(A) the Works Brief; and

(B) the TfNSW Standard Requirements; and

(C) the Design Program.

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

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

(ii) the Designers’ Certificates of Design Compliance;
5.4 Review of Design Documentation, Meetings, and Presentations

(a) All Design Documentation must be submitted to the Principal's Representative.

(b) Clause 9.14 applies to all Design Documentation.

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

(d) At each stage of design development, the Contractor must arrange and conduct comprehensive design presentations (in accordance with TfNSW Standard Requirements TSR T1 - Technical Management) for the Principal (and any other persons the Principal reasonably requires) and the Principal's Representative.

(e) The Contractor must give the Principal's Representative reasonable notice of the date and time of each design presentation to be made by the Contractor in accordance with clause 5.4(d) so as to enable the Principal's Representative (and any other persons the Principal's Representative reasonably requires) to attend the design presentations.

(f) At each design presentation referred to in clause 5.4(d), the Contractor must make available sufficient members of the Designer's Team (as determined appropriately by the Contractor) and any other person reasonably requested by the Principal (or the Principal's Representative), at the cost of the Contractor, to demonstrate:

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

(ii) the approach to interfaces with:

(A) existing structures and the surrounding environment; and

(B) Other Contractors (including Interface Contractors);
(iii) the status of review of design information and documents by the relevant Authorities;
(iv) how the current proposed design incorporates the Principal's Design; and
(v) the interrelationship with other design elements of the Works.

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

(h) Within 10 Business Days after receiving a design package marked "For AFC Review" in accordance with TfNSW Standard Requirements TSR-T1 from the Contractor, the Principal must review the design package under clause 9.14. If the Principal:

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

(ii) rejects the design package, then:

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

(B) the Contractor must address those comments and resubmit the design package under this clause 5.4(h) within 10 Business Days after the date on which it received the Principal's comments.

(i) Where:

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

(ii) the Configuration Change Notice (where relevant) for that design package is not issued within 10 Business Days after the date on which the Principal gives notice to the Contractor in accordance with clause 5.4(h)(i) for that design package; and

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

(j) The Principal's obligations under clause 5.4(h) do not:
5.5 Copies of Design Documentation

(a) The Contractor must, in accordance with clause 5.3, progressively submit to the Principal's Representative the number of copies specified in Schedule 1 of all Design Documentation, whether complete or work in progress, which it intends to use for design or construction purposes.

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

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

(ii) all final Design Documentation.

5.6 Availability of Design Documentation

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

(a) on the Site, at least one complete set of all Design Documentation that the Contractor is entitled to use for construction purposes pursuant to clauses 5.3 and 9.14, and any construction related documents provided by the Principal; and

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

5.7 Prior Design Work

The Contractor:

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

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

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

5.8 Ownership of Contract Documentation and Methods of Working

(a) Subject to clause 5.8(c)(vii):

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

(ii) to the fullest extent permitted by Law, the Contractor hereby assigns to the Principal all of its rights, titles, and interests in, and to, all Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor, whenever created; and

(iii) upon request by the Principal, the Contractor must do all things necessary to vest that title or that Intellectual Property in the Principal.

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

(c) The Contractor:

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

(ii) must indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property in connection with the Works, the Temporary Works, the Contractor's Activities or the Contract Documentation, except to the extent that such actual or alleged infringement arises as a direct result of:

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

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

(iii) must ensure that all Subcontracts between the Contractor and all Subcontractors for design and documentation contain provisions to the same effect as clause 5.8(a);
(iv) must obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such Subcontractors for design and documentation;

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

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

(vii) must, if it is unable to obtain the assignment referred to in clause 5.8(c)(vi), grant or have granted to the Principal an irrevocable licence:

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

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

(C) which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the Works; and

(D) which will survive the termination of this Deed on any basis; and

(viii) must ensure that the Intellectual Property created for the purposes of this Deed is not used, adapted or reproduced other than for the purposes of this Deed without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).

5.9 Delivery Up of Contract Documentation

If this Deed is frustrated or terminated the Contractor must:

(a) immediately deliver the original and all but one sets and copies of all Contract Documentation (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to the Principal; and

(b) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation.

5.10 Source Code

If requested by the Principal, the Contractor will, or will procure that the applicable third party supplier will, enter into an escrow agreement with the Principal and an escrow agent:
(a) on terms reasonably satisfactory to the Principal (and terms generally consistent with and no more onerous on the supplier than the terms set out in the sample escrow deed set out in Schedule 32);

(b) to enable the Principal and its Subcontractors to use, maintain, support, operate and otherwise deal with the Intellectual Property in the Contract Documentation for the purposes of the Works or the Northern Sydney Freight Corridor Program or in any way in connection with the Works or the Northern Sydney Freight Corridor Program; and

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

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

5.11 Moral Rights

(a) The Contractor:

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

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

(b) For the purposes of clause 5.11(a), the Principal's use of the Contract Documentation includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or part of the Works to which the Contract Documentation or any other work provided by the Contractor under this Deed relates:

(i) with or without attribution of authorship;

(ii) in any medium; and

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

5.12 Design Working Group

(a) The Contractor and the Principal must establish a Design Working Group, comprising of at least 3 nominees from each party.

(b) The objectives of the Design Working Group will be to:
facilitate discussion on all design issues relating to the Works;

(ii) informally exchange information regarding the development of design of the Works including when appropriate:
   (A) the manner in which and times by which the Design Documentation is to be completed;
   (B) number, names and outline of the content of documentation packages which will be submitted;
   (C) types of documents to be included in each package;
   (D) approximate numbers of drawings to be included in each package; and
   (E) names of Authorities and other persons having jurisdiction over matters which may be relevant to each package;

(iii) set direction for future design processes and schemes;

(iv) meet regularly but in any event as required to keep the Principal informed regarding the progress of the Design; and

(v) consider the Principal’s feedback on the design process.

(c) It is not intended that the Design Working Group will:

(i) avoid, replace, or supplant the operation of clause 9.14; or

(ii) generate presentation materials for subsequent consideration and formal evaluation.

(d) Without limiting any other provision of this Deed, nothing which occurs during a Design Working Group meeting or as part of the process for such meetings will:

(i) relieve the Contractor of its obligations, or constitute a waiver of any of the Principal’s rights, under this Deed; or

(ii) be constructed as a direction or notice by the Principal to do or not to do anything and the parties confirm that all discussions, debates, disagreements and resolutions on any matters raised at meetings of the Design Working Group are only for the purpose of satisfying the objectives in clause 5.12(b) and will not give rise to any obligation on the part of the Contractor to comply with anything which the Principal or the Principal’s advisers say or do as part of the process for such meetings.

(e) The Contractor:

(i) shall issue an agenda for each meeting of the Design Working Group and a written record of matters discussed at each such meeting; and
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(ii) agrees that no such agenda or record shall be relied upon by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this Deed.

(f) The Principal is entitled to invite and have all third parties (and their consultants) attend and participate in Design Working Group meetings.

6. Variations

6.1 Proposed Variations

At any time prior to the Date of Completion of the Works or the last Portion to reach Completion (but without limiting clauses 8 and 13.3) the Principal's Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering.

Within 10 Business Days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

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

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

(c) a statement that the proposed Variation:

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

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

(A) scope and limits of the work changes;

(B) design criteria and how they are to be addressed;
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(C) effect on relevant reports, drawings and studies;

(D) assumptions;

(E) Authority Approvals and Third Party Agreements affected; and

(F) environmental and community impacts;

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

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

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

The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

6.2 Variation Orders

(a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time prior to the Date of Completion of the Works or the last Portion to reach Completion (but without limiting clauses 8 and 13.3) direct the Contractor to carry out a Variation by issuing a Variation Order, in which the Principal's Representative will state one of the following:

(i) the proposed adjustments to the Contract Sum and the Payment Schedule set out in the Contractor's notice under clause 6.1(a) are agreed and the Contract Sum and Payment Schedule will be adjusted accordingly;

(ii) any adjustment to the Contract Sum will be determined under clause 6.4(b); or

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

(b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Deed.
(c) The Contractor must comply with a Variation Order irrespective of:

(i) the nature, extent or value of the work the subject of the Variation;

(ii) the location or timing (including the impact on any Date for Completion) of the work involved in the Variation;

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

(iv) any Dispute related to the Variation.

(d) The Contractor's entitlement (if any) to an extension of time and delay costs arising out of a Variation directed under clause 6.2(a) will be dealt with under clause 10 and not this clause 6. The valuation of a Variation under clause 6.4 or clause 6.7 will exclude any amount for costs incurred by the Contractor as a result of any delay caused by the Variation.

6.3 Options

The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 25, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Deed on the basis that the Contract Sum, the Works Brief and the provisions of this Deed will be adjusted as set out in Schedule 25 for the relevant Option.

For the avoidance of doubt:

(a) the Principal is not under any obligation whatsoever to exercise; and

(b) the Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising, any Option.

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

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

(c) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Deed);

(d) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Deed); or

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

6.4 Valuation

Subject to clauses 6.10, 8.4, 15 and 17, the Contract Sum and the Payment Schedule will be adjusted for all Variations that have been directed by the Principal's Representative by:

(a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order;

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

(i) subject to sub-paragraph (iii) and the remainder of this clause 6.4(b), an amount in respect of the Variation to be determined by the Principal's Representative on the basis of (where applicable or where it is reasonable to use them for valuing the Variation):

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

(B) any other applicable data in this Deed,

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

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

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

(ii) subject to sub-paragraph (iii) and the remainder of this clause 6.4(b), to the extent sub-paragraph (i) does not apply, an amount determined by the Principal's Representative on the basis of reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit) to be agreed between the parties, or failing agreement, determined by the Principal's Representative, which will be increased by the following percentage of that amount:
where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in Schedule 1, which will be in total satisfaction of all the Contractor's Overhead Costs and profit; or

(B) where the adjustment to the Contract Sum is to be a decrease, the percentage set out in Schedule 1 for off-site overheads described in clause 33.2 of Schedule 33 and profit; and

(iii) subject to the remainder of this clause 6.4(b), where the Variation is in respect of the provision of spare parts, an amount determined in accordance with Schedule 1,

provided however that, where the Principal's Representative has issued a Variation Proposal Request, the Contractor's entitlement under this clause 6.4(b) will not be greater than any amount set out in the Contractor's notice under clause 6.1(a); or

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

6.5 Omissions

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

(a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;

(b) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any work being omitted or deleted from the Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work;

(c) the adjustment to the Contract Sum arising from the work that has been omitted or deleted will be valued in accordance with clause 6.4; and

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

6.6 Daywork

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

(i) carry out the daywork in an efficient manner; and
(ii) after the direction, each day provide the Principal's Representative with a written report in respect of that day signed by the Contractor that:

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

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

(b) The Principal's Representative may direct the manner in which the matters referred to in clause 6.6(a)(ii) must be recorded.

6.7 Valuation of Daywork

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

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

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

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

(iii) determined by the Principal's Representative;

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

(c) the reasonable amount of hire charges and associated fuel and other operating costs in respect of Construction Plant approved by the Principal's Representative for use on the work in accordance with such hiring rates and conditions as may be:

(i) agreed between the Principal's Representative and the Contractor; or

(ii) failing agreement, determined by the Principal's Representative;

(d) the reasonable amounts paid by the Contractor for Subcontract work, including professional fees; and

(e) the reasonable actual cost to the Contractor at the Site of all materials supplied and required for the daywork,

to which will be added to the extent that the rates set out in Schedule 18 are not already expressed to be inclusive of the Contractor's Overhead Costs and profit,
the relevant percentage specified in Schedule 1 of the amounts determined under
sub-paragraphs (a) to (e), which will be in total satisfaction of all the Contractor's
Overhead Costs and profit.

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

6.9 Determination by Principal's Representative
If the Contractor makes a request in accordance with clause 6.8, the Principal's
Representative may, in its absolute discretion, give a written notice to the
Contractor:
(a) rejecting the request; or
(b) approving the request either conditionally or unconditionally.
The Principal's Representative will not be obliged to exercise its discretion for the
benefit of the Contractor.

6.10 Variation Approved by the Principal's Representative
If the Principal's Representative issues a written notice under clause 6.9 approving
the Contractor's request under clause 6.8:
(a) unless otherwise agreed in the notice given under clause 6.9, the
Contractor will not be entitled to make, and the Principal will not be liable
upon, any Claim arising out of, or in any way in connection with, the
Variation;
(b) if the Contractor's request offered to share savings in cost with the
Principal, the Contract Sum will be reduced by the amount offered by the
Contractor in its request, or such other amount as may have been agreed
between the Principal's Representative and the Contractor prior to any approval under clause 6.9(b); and

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

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

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

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

6.11 Contractor's Entitlements

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

6.12 No Variation or Claim

(a) Where the Contractor considers that any direction:

(i) constitutes or involves a Variation; or

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

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

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

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

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

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

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

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

(B) may issue a notice of dispute under clause 15.2;
(iii) deny that the direction constitutes or involves a Variation or entitles the Contractor to make a Claim (including an Excluded Claim) by giving a notice under this clause 6.12(b)(iii), in which case the Contractor must:

(A) issue a notice of dispute under clause 15.2; and
(B) not comply with the direction unless and until:

(1) the Dispute is settled or determined under clause 15; and
(2) the Principal's Representative subsequently directs the Contractor to comply with the direction or any part of it; or

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

6.13 Authority Approvals for Variations

(a) Subject to clause 6.13(b), the Contractor must apply for and obtain all:

(i) necessary amendments or modifications to any existing Authority Approval; and
(ii) new Authority Approvals that may be, required for the execution of a Variation.

(b) Where the amendment or modification to any Authority Approval required for the execution of the Variation relates to any Authority Approval specified in Schedule 15, the Contractor must:

(i) carry out and provide to the Principal all surveys, investigations, reports, studies:

(A) requested by the Principal's Representative;
(B) to the standard directed by the Principal's Representative; and
(C) within the time directed by the Principal's Representative; and

(ii) provide whatever other assistance and information the Principal's Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Authority Approval.

(c) The Contractor must implement the Variation once the Authority Approvals referred to in this clause 6.13 have been amended, modified, or granted to permit the Variation to be implemented.
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7. Construction

7.1 Construction

(a) The Contractor must construct and handover to the Principal the Works and construct the Temporary Works:

(i) in accordance with:

(A) subject to clause 7.1(b), the Works Brief, the Principal's Design, the Track Geometry Design, the 1500V Sectioning Diagram, the Signalling Design and any Design Documentation that has been prepared by the Contractor in accordance with the requirements of this Deed and, in respect of which:

(1) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(ii)(C); or

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

(B) any direction of the Principal's Representative given or purported to be given under a provision of this Deed; and

(C) the other requirements of this Deed; and

(ii) so that they are and will remain at all relevant times fit for their intended purposes.

The Contractor warrants that the Works and each Portion will:

(iii) upon Completion, be fit for their intended purposes; and

(iv) remain at all relevant times fit for their intended purposes.

(b) If there is any ambiguity, discrepancy or inconsistency between this Deed (including the Works Brief and the Principal's Design) and:

(i) any Design Documentation which has been prepared by the Contractor and not rejected by the Principal's Representative under clause 9.14;

(ii) the Signalling Design;

(iii) the Track Geometry Design; or
(iv) the 1500V Sectioning Diagram,

then, unless otherwise directed by the Principal's Representative, the requirements of this Deed will prevail.

(c) At monthly intervals during the construction work and at the Completion of the Works or each Portion, the Contractor must submit to the Principal's Representative:

(i) the Contractor's Certificate of Construction Compliance; and

(ii) Designers' Certificates of Construction Compliance,
identifying the work covered, with:

(iii) a register of management plans, method statements, and inspection and test plans;

(iv) a register of records of all compliance and other associated test records showing achievement of the acceptance criteria identified in the above inspection and test plans;

(v) a register of deficiency notices; and

(vi) a register of concessions granted for non-conforming work.

7.2 All Work Included

The Contractor:

(a) warrants it has allowed for the provision of;

(b) must undertake and provide; and

(c) will not be entitled to make, and the Principal will not be liable upon, any Claim except as otherwise provided for in this Deed, relating to the provision of,

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

7.3 Provisional Sum Work

(a) For each item of Provisional Sum Work, the Principal's Representative:

(i) may at any time:

(A) direct the Contractor to provide:
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(1) a reasonable estimate of the Contractor's costs of carrying out the Provisional Sum Work, including sufficient information to support the estimate; and

(2) details of the amount by which the Contractor proposes the Contract Sum be adjusted; and

(B) agree (or negotiate an agreement) with the Contractor in respect of its proposed adjustment to the Contract Sum under clause 7.3(a)(i)(A) for the item of Provisional Sum Work, but nothing in this clause 7.3(a)(i) obliges the Principal's Representative to agree on an adjustment to the Contract Sum with the Contractor prior to the Principal's Representative exercising its rights under clause 7.3(a)(ii); and

(ii) will give the Contractor a direction either:

(A) requiring the Contractor to proceed with the item of Provisional Sum Work; or

(B) deleting the item of Provisional Sum Work.

(b) Where the Principal's Representative gives the Contractor a notice requiring the Contractor to proceed with an item of Provisional Sum Work, the Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:

(i) the amount allowed for the item of Provisional Sum Work in Schedule 1; and

(ii) either:

(A) an amount agreed between the Contractor and the Principal's Representative under clause 7.3(a)(i) or otherwise; or

(B) if they fail to agree, an amount determined by the Principal's Representative:

(1) on the basis set out in clause 6.4(b); or

(2) if the Principal's Representative directs that the item of Provisional Sum Work is to be carried out as daywork, under clause 6.7, as if the item of Provisional Sum Work were a Variation, provided that the amount determined under this clause 7.3(b)(ii)(B) will not include the percentages referred to in clauses 6.4(b)(i)(C) or 6.4(b)(ii)(A) or the last paragraph.
of clause 6.7 but will include the relevant percentage in Schedule 1 for the off-site overheads described in clause 33.2 of Schedule 33 and profit of the Contractor.

(c) Where the Principal’s Representative gives the Contractor a direction deleting an item of Provisional Sum Work:

(i) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Schedule 1;

(ii) the Principal may thereafter either carry out the item of Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and

(iii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with the deletion of the item of Provisional Sum Work.

(d) The parties agree that Reimbursable Work:

(i) is an item of Provisional Sum Work;

(ii) is not required to be the subject of a direction by the Principal’s Representative under clause 7.3(a)(ii) as it forms part of the Contractor’s Activities and must be performed by it; and

(iii) will be valued in accordance with Schedule 9 and not in accordance with clauses 7.3(b) and 7.3(c).

7.4 Co-operation with Other Contractors

Without limiting or being limited by clause 2.13, the Contractor must:

(a) permit Other Contractors to carry out their work;

(b) fully co-operate with Other Contractors;

(c) carefully coordinate and interface the Contractor’s Activities with the work carried out or to be carried out by Other Contractors; and

(d) carry out the Contractor’s Activities so as to minimise any interfering with, disrupting or delaying the work of Other Contractors.

The Principal shall procure that each of its Other Contractors that undertakes work on part of the Site during any period in which the Contractor has been engaged as principal contractor in respect of that part of the Site executes a deed poll in favour of the Contractor, as principal contractor, and the Principal in the form set out in Schedule 35.

7.5 Setting Out

The Contractor must:
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(a) set out the Works in accordance with the requirements of this Deed, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the Contractor that are suitable for their purposes;

(b) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and

(c) for this purpose keep all survey marks in their true positions.

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

7.6 Survey

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

(a) for its review under clause 9.14 a Survey Plan for the Works or the relevant Portion that:

(i) has regard to the setback requirements in the Building Code of Australia;

(ii) has regard to any stratum lots whether above or below ground;

(iii) has regard to RailCorp's survey control requirements;

(iv) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;

(v) shows all internal title boundaries;

(vi) shows all easements; and

(vii) shows the location of the Works and all Services; and

(b) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the Surveying and Spatial Information Act 2002 (NSW) stating that:

(i) the whole of the Works or the Portion has been constructed within the boundaries of the Asset Lands;

(ii) the elements of the Works or the Portion are in the positions and within the tolerances required by Law;
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7.7 Cleaning Up
In carrying out the Contractor’s Activities, the Contractor must:
(a) keep the Site, Remote Sites, Extra Land and the Works clean and tidy and free of refuse;
(b) regularly remove rubbish, litter, graffiti and surplus material from the Site, Remote Sites, Extra Land; and
(c) as a condition precedent to Completion of the Works or a Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site, Remote Sites, Extra Land or the parts of the Site, Remote Sites, Extra Land relevant to the Works or the Portion.

7.8 Safety
(a) The Contractor must carry out the Contractor’s Activities:
   (i) safely and in a manner that does not put the health and safety of persons at risk; and
   (ii) in a manner that protects property.

   If the Principal’s Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor’s Activities, the Principal’s Representative may direct the Contractor to change its manner of working or to cease working.

(b) The Contractor must:
   (i) ensure that in carrying out the Contractor’s Activities:
       (A) it complies with all Law and other requirements of this Deed for work health, safety and rehabilitation management;
       (B) all Subcontractors comply with the requirements referred to in this clause 7.8 and their respective obligations under the WHS Legislation; and
       (C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
(ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;

(iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;

(iv) provide the Principal's Representative with the written assurances obtained pursuant to subparagraph (iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;

(v) provide the Principal's Representative with a written report at each meeting in accordance with clause 9.9, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.8), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;

(vi) cooperate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;

(vii) exercise a duty of the utmost good faith to the Principal in carrying out the Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;

(viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and

(ix) ensure its subcontracts include provisions equivalent to the obligations of this clause 7.8.

(c) Without limiting clause 16.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Works, the Environment, other property or the health or safety of people.

If the action taken by the Principal is action which the Contractor was required to take under this Deed but did not take, the amount of any penalty, fine, damage, expense, cost, loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:

(i) taking the action contemplated in this clause 7.8(c); or

(ii) the Contractor's failure to take that action,
The Contractor:  
(i) acknowledges and agrees that it is accredited under the OH&S Accreditation Scheme; and  
(ii) must comply with all the requirements of, and maintain accreditation under, the OH&S Accreditation Scheme while building work (as defined in section 5 of the *Fair Work (Building Industry) Act 2012* (Cth)) is carried out.

7.9 Construction Plant and Materials Removal

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

(a) significant materials or major items of Construction Plant; or  
(b) materials or Construction Plant specified in any written notice issued by the Principal's Representative, without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

7.10 Track Possessions and Power Isolations

(a) The table in Schedule 14 identifies the available Track Possessions.  
(b) The Principal will liaise with RailCorp to procure for the benefit of the Contractor the Track Possessions set out in Schedule 14.  
(c) The Contractor acknowledges that it will not have exclusive access to any track the subject of a Track Possession and must:

(i) without limiting clauses 2.13 or 7.4 coordinate its activities with whoever else is sharing the relevant Track Possession; and  
(ii) allow RailCorp and Other Contractors to pass through any track the subject of the relevant Track Possession.

(d) If the Contractor requires a Track Possession or power isolation in addition to the Track Possessions identified in subparagraph (a) for the performance of the Contractor's Activities (*Additional Track Possession or Power Isolation*) and requires the Principal to liaise with RailCorp in this regard, it must provide no less than:

(i) 26 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weekend; or
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(ii) 20 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weeknight or which requires a power isolation only, and identify whether a power isolation is required during the requested Additional Track Possession or Power Isolation.

(e) Following receipt of a request for an Additional Track Possession or Power Isolation under subclause (d), the Principal may assist the Contractor to obtain the requested Additional Track Possession or Power Isolation, but is under no obligation to do so and in no way guarantees that the requested Additional Track Possession or Power Isolation will be granted by RailCorp.

(f) If an Additional Track Possession or Power Isolation is granted by RailCorp, the Contractor must:

(i) make the necessary arrangements for the Additional Track Possession or Power Isolation in accordance with clause 5.4 of the TfNSW Standard Requirements Prelude; and

(ii) pay the Principal within 20 Business Days after the relevant Additional Track Possession or Power Isolation the relevant amount (in respect of each Additional Track Possession or Power Isolation) set out in the table in Schedule 14.

(g) The Contractor must effectively and efficiently utilise each Track Possession.

(h) The Contractor acknowledges and agrees that:

(i) the Principal or RailCorp may alter or cancel any Track Possession, power isolation or Additional Track Possession or Power Isolation at any time; and

(ii) its only remedy for:

(A) any failure by the Principal to procure a Track Possession or power isolation referred to in clause 7.10(a); or

(B) cancellation of Additional Track Possession or Power Isolation once it has been obtained,

is set out in clauses 10.7 and 10.13.

7.11 Principal Supplied Items

(a) The Principal must:

(i) make available the Principal Supplied Items:

(A) at its own cost;
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(B) at the respective places referred to in Schedule 34; and
(C) by the respective date referred to in Schedule 34; and

(ii) use its best endeavours to procure that the Contractor has the benefit of any warranty obtained by the Principal in respect of any Principal Supplied Item.

(b) The Contractor:

(i) agrees that, in respect of Principal Supplied Items, the:

(A) Contractor:

(1) warrants that it has reviewed the Works Brief and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Deed;

(2) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item except under clause 10 if a Principal Supplied Item is not made available by the relevant date set out in Schedule 34; and

(3) is not relieved from and remains liable for complying with, all of its obligations under this Deed, despite the Principal making available the Principal Supplied Items; and

(B) Sale of Goods Act 1923 (NSW) does not apply to the Principal's obligations under clause 7.11(b) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items; and

(ii) must:

(A) at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 34 to the Site, Remote Site or Extra Land (as applicable); and

(B) as part of the Contractor's Activities, incorporate each Principal Supplied Item into the Works.
8. Defects

8.1 Defects Liability

Subject to clause 8.2, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.

Without limiting the previous paragraph, the Contractor must rectify any Defects in the Works or any Portion existing at Completion of the Works or that Portion as soon as possible after Completion of the Works or that Portion.

When rectifying Defects which existed at Completion, the Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Works or Other Contractors as is reasonably possible.

8.2 Defect Notification

If at any time prior to the expiration of any Defects Rectification Period (including for the avoidance of doubt prior to Completion of the Works or any Portion), the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor a direction identifying the Defect and doing one or more of the following:

(a) requiring the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur; or

(b) requiring the Contractor to investigate and report on any Defect (or any part of it) with the Contractor's proposed methods and methodologies for rectification and specifying the form of the report and the time within which this must be carried out; or

(c) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or

(d) advising the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or

(e) in respect of any Defect:
   (i) to which clause 8.3(d) applies; or
   (ii) discovered during a Defect Rectification Period, whether or not a direction has first been given under clause 8.2(a) or 8.2(c), advising the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a Variation to overcome the Defect, or any part of it.
8.3 Rectification of Defect

(a) If:

(i) a direction is given under clauses 8.2(a), 8.2(b) or 8.2(c) (subject to clause 8.3(f)); and

(ii) the Contractor considers that the Defect referred to in the direction given under clauses 8.2(a), 8.2(b) or 8.2(c) is not a Defect,

then the Contractor must issue the notice referred to in clause 17.2 prior to complying with the direction.

(b) If the Contractor issues the notice referred to in clause 8.3(a), the Principal’s Representative may:

(i) confirm that the direction entitles the Contractor to make a Claim (other than an Excluded Claim) by the giving of a notice under this clause 8.3(b)(i), which notice will also confirm that clause 8.3(c) applies;

(ii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(ii), which notice will also confirm that clause 8.3(c) applies, and the Contractor may issue a notice of dispute under clause 15.2;

(iii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(iii), in which case the Contractor must:

(A) issue a notice of dispute under clause 15.2; and

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

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

(2) the Principal’s Representative subsequently gives notice to the Contractor that clause 8.3(c) applies; or

(iv) withdraw the direction by giving a notice under this clause 8.3(b)(iv).

(c) If the Principal’s Representative gives a notice under clause 8.2(a), 8.2(b) or 8.2(c) (where clause 8.3(a)(ii) is not applicable) or clause 8.3(b)(i), 8.3(b)(ii) or 8.3(b)(iii)(B)(2), the Contractor must rectify the Defect (or the part of it notified), investigate and report or carry out the Variation work (as the case may be):

(i) within the time specified in the Principal’s Representative’s direction which will generally be limited to the periods during which the
operational needs from time to time of RailCorp will allow for access to the Works; and

(ii) if after Completion of the Works or relevant Portion:

(A) at other times otherwise agreed with the Principal's Representative;

(B) in accordance with the requirements of RailCorp and any other relevant Authority;

(C) so as to minimise the impact on the use of the Works or the Portion; and

(D) in a manner which causes as little inconvenience as possible to users of the Works or the Portion or the public, any Service or any access to the Works or the Portion; and

(iii) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is in fact a Defect.

(d) If the Contractor does not comply with clause 8.3(c), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Deed or otherwise at Law, give the Contractor a direction under clause 8.2(e) and have the rectification or Variation work carried out at the Contractor's expense, and the cost of the rectification or Variation work incurred by the Principal will be a debt due from the Contractor to the Principal.

(e) The Contractor acknowledges and agrees that:

(i) it is responsible for liaising with, and obtaining from, RailCorp any Track Possession that is necessary for the Contractor to:

(A) rectify Defects; or

(B) investigate and report in relation to any Defects;

(ii) due to RailCorp's operational needs and/or other operational needs:

(A) the Contractor, in performing the activities set out in clause 8.3(e)(i), may be obliged to work in an electrified environment;

(B) access may be limited, delayed and rescheduled from time to time;

(C) the period of access may be compressed or limited to periods of line shutdown at night, on weekends or on public holidays; and
(D) the Principal’s Representative may direct the Contractor as to:

(1) the times and dates for; and

(2) the work method that must be employed in,

carrying out Defect rectification works;

(iii) its obligation to rectify Defects survives the expiry of the Defects Rectification Period where it has received a direction under clause 8.2 prior to the expiration of any Defects Rectification Period; and

(iv) it will not be relieved of its liabilities or responsibilities whether under this Deed or otherwise according to Law by reason of the matters set out in this clause 8.3(e).

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

(i) the Principal’s Representative has issued a notice under clause 8.3(b)(i); or

(ii) the Principal’s Representative has issued a notice under clause 8.3(b)(ii), in which case any entitlement which the Contractor has is not affected by proceeding as directed under clause 8.3(c) before the determination of any Dispute.

8.4 Claim for Variation

Where a Variation to overcome a Defect has been directed under clause 8.2(c):

(a) the Principal’s Representative will determine:

(i) the value of the Variation work in accordance with clause 6.4; and

(ii) the cost of rectifying the Defect (or the part notified), valued as if the work involved in the rectification of the Defect (or the part notified) were a Variation the subject of a direction by the Principal’s Representative and clause 6.4 applies;

(b) the Contract Sum will be adjusted by the difference between the valuations under sub-paragraphs (a)(i) and (a)(ii) as follows:

(i) if the value under sub-paragraph (a)(i) is greater than the cost under sub-paragraph (a)(ii), the Contract Sum will be increased by the difference; or
(ii) if the cost under sub-paragraph (a)(ii) is greater than the value under sub-paragraph (a)(i), the Contract Sum will be decreased by the difference, and

(c) the Contractor will not be entitled to an extension of time to any Date for Completion.

8.5 Acceptance of Work

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

(a) where the value to the Principal of the Works is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified), the Contract Sum will be reduced by the amount determined by the Principal's Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Works; or

(b) where the value to the Principal of the Works increases because of the acceptance of the Defect (or the part notified):

(i) the Principal's Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Works; and

(ii) the Contract Sum will:

(A) be reduced by the amount determined by the Principal's Representative, where that amount is negative; and

(B) not be changed where the amount determined by the Principal's Representative is positive.

8.6 Extension of Defects Rectification Period

(a) The Principal's Representative may give the Contractor a notice under clauses 8.2(a) or 8.2(c) at any time prior to the expiration of any Defects Rectification Period.

(b) If the Contractor:

(i) rectifies a Defect (or the part notified) following receipt of a notice under clause 8.2(a);

(ii) completes the Variation work following receipt of a notice under clause 8.2(c); or

(iii) rectifies a Defect or completes a Variation to overcome a Defect in the absence of any notice from the Principal's Representative under clause 8.2,
then the relevant Defects Rectification Period for the work required will be extended until the later of:

(iv) the date of expiry of the original Defects Rectification Period; and

(v) the date set out in Schedule 1.

8.7 Defect Rectification by Other Contractor

Where the Principal’s Representative advises the Contractor (under clause 8.2(e)) that an Other Contractor has or will be rectifying a Defect or any part of it, or has or will carry out a Variation to overcome the Defect or any part of it:

(a) without limiting or otherwise affecting clauses 2.13, 2.15 or 7.4, the Contractor must not impede the Other Contractor from having sufficient access to the Site, Remote Sites or Extra Land to rectify the Defect or carrying out the Variation;

(b) any costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with, the Other Contractor rectifying the Defect or carrying out the Variation, will be a debt due from the Contractor to the Principal; and

(c) the Contractor acknowledges and agrees that:

(i) no act or omission by such Other Contractor in rectifying a Defect or carrying out the Variation will, whether or not it causes any delay or disruption to the Contractor’s Activities, constitute an Act of Prevention;

(ii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:

(A) the Other Contractor rectifying the Defect or carrying out a Variation to overcome the Defect; or

(B) any other act or omission of the Other Contractor; and

(iii) rectification of a Defect by an Other Contractor does not relieve the Contractor or otherwise affect any of its obligations under this Deed.

8.8 Rights Not Affected

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

(a) the rights conferred upon the Principal or the Principal’s Representative by this clause 8 or any other provision of this Deed;
9. Administration

9.1 Principal’s Representative
The Principal must ensure that at all times until Final Completion there is a Principal’s Representative. The Contractor acknowledges and agrees that the Principal’s Representative will give directions and carry out all its other functions under this Deed as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

A discretion (including an absolute or sole discretion), or power or decision of the Principal’s Representative is validly and properly exercised or made for the purposes of this Deed if exercised or made (or if it is not exercised or made) by the Principal’s Representative:

(a) independently;
(b) after consultation with the Principal and its advisers; or
(c) as directed by the Principal.

Any control or influence exercised by the Principal over the Principal’s Representative does not:

(d) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal’s Representative; or
(e) entitle the Contractor to make any Claim against the Principal’s Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.

The Contractor must comply with any direction by the Principal’s Representative given or purported to be given under a provision of this Deed.

Except where this Deed otherwise provides, the Principal’s Representative may give a direction orally but will as soon as practicable confirm it in writing.

9.2 Replacement of the Principal’s Representative
The Principal may at any time replace the Principal’s Representative, in which event the Principal must appoint another person as the Principal’s Representative and notify the Contractor of that appointment.
Any substitute Principal’s Representative appointed under this clause 9.2 will be bound by anything done by the former Principal’s Representative to the same extent as the former Principal’s Representative would have been bound.

9.3 Delegation of Functions

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

(b) The Principal’s Representative may continue to exercise a function under this Deed despite appointing another person to exercise the function under clause 9.3(a)(i).

(c) All references in this Deed to the Principal’s Representative include a reference to an appointee appointed under clause 9.3(a)(i).

9.4 Environmental Representative

The Contractor acknowledges and agrees that:

(a) the Principal has appointed the Environmental Representative as required by an Authority Approval;

(b) the Environmental Representative:
   (i) is independent of the parties;
   (ii) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
   (iii) shall advise the Principal and the Principal’s Representative on the Contractor’s compliance with the Planning Approval; and
   (iv) shall have the authority and independence to:
       (A) direct the Contractor as to; or
       (B) advise the Principal’s Representative to direct the Contractor as to,

reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts;
it must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 9.4(b)(iv); and

(d) it bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 9.4(b)(iv) and none of the Principal, the Principal's Representative or the Environmental Representative will be liable upon any Claim arising out or in any way in connection with such directions.

9.5 Contractor's Personnel

(a) The Contractor must:

(i) notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Deed is the relevant person listed in Schedule 1) and of any subsequent changes;

(ii) ensure that the Contractor's Representative is appointed and available on a full-time basis and provides due and proper supervision of the performance of the Contractor's Activities at all places (whether on the Site or otherwise) at which the Contractor's Activities are taking place;

(iii) provide personnel suitably qualified, knowledgeable, experienced and skilled in their roles in performing its obligations under this Deed; and

(iv) ensure that its personnel (including those referred to in clause 9.5(b)) as a team carry out the Contractor's Activities in a manner that is professional and co-operative, and recognises the interests and needs of the public and other stakeholders in the delivery of the Works.

(b) The Contractor must:

(i) either:

(A) employ the individuals nominated by the Contractor and listed in Schedule 1 in the positions specified in Schedule 1 or equivalent positions; or

(B) where no individuals are specified in Schedule 1 for a position specified in Schedule 1, submit to the Principal's Representative the names of the persons which the Contractor proposes to employ for the roles specified in Schedule 1 for the Principal's Representative's approval, such approval not to be withheld unreasonably. The Contractor must ensure that the persons nominated are suitably qualified and experienced for the relevant position;
(ii) only replace the individuals referred to in clause 9.5(b)(i):

(A) if the individual:

(1) dies;
(2) becomes unable to continue in the positions due to illness;
(3) resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the Corporations Act 2001 (Cth)); or
(4) becomes the subject of a direction under clause 9.5(c);

(B) with personnel who are of at least equivalent experience, ability, knowledge and expertise; and

(C) with the Principal's Representative's prior written approval, which will not be unreasonably withheld; and

(iii) without limiting clauses 9.5(b)(i) and 9.5(b)(ii), ensure that in respect of the positions specified in Schedule 1 the individuals who occupy the positions specified in Schedule 1 apply themselves fully to the position to the exclusion of all other work, until Completion of the Works or the last Portion to achieve Completion or such earlier time as may be approved by the Principal's Representative.

(c) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.5(a) or clause 9.5(b)) from the Site and the Contractor's Activities. The Contractor must then cease to engage that person in the Contractor's Activities and must appoint a replacement.

(d) The Contractor must ensure that any person the subject of a direction under clause 9.5(c) is not again employed in the Contractor's Activities or on the Site.

(e) Any direction under clause 9.1 will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.
9.6 Site Meetings

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

(i) prior to the Date of Completion of the Works or the last Portion to reach Completion (including during the design of the Works):

(A) weekly or such longer intervals, and

(B) at such other times,

as may be directed in writing by the Principal's Representative; and

(ii) at monthly intervals after the Date of Completion of the Works or the last Portion to reach Completion until all Defects Rectification Periods (including any extension under clause 8.6), have expired or at such other intervals as may otherwise be agreed.

(b) The Contractor must ensure that the Site meetings are attended by:

(i) the Contractor's Representative (or his or her delegate); and

(ii) any other person (including any Subcontractor) required by the Principal's Representative.

The Principal's Representative (or its delegate) will attend all Site meetings. The Principal's Representative must appoint the chairperson for the Site meetings.

(c) The chairperson of the Site meetings must prepare and give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting. The minutes of the meeting shall not be relied on by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this Deed.

(d) The purpose of the Site meetings will include:

(i) the receipt of reports on, and the review and consideration of, the matters set out in clause 9.8;

(ii) the receipt of reports on, and the review of the status and implementation of, the Contract Management Plan, Design Documentation, the Signalling Design, the Track Geometry Design, the 1500V Sectioning Diagram and other plans and documents prepared by the Contractor under this Deed;

(iii) the consideration of corrective actions to prevent and rectify defective work;
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(iv) the consideration of any other matter that the Principal's Representative requires; and

(v) review of the design of the Works and review of the Design Documentation, the Signalling Design, the Track Geometry Design and the 1500V Sectioning Diagram.

9.7 Contract Control Group
The Contract Control Group will comprise:

(a) the Principal's Representative;

(b) the Contractor's Representative, a senior representative of the Contractor not involved in the day to day Contractor's Activities, and any of the Contractor's key personnel nominated by the Principal's Representative;

(c) representatives of any of the Contractor's Subcontractors that the Principal's Representative reasonably requires; and

(d) any other person the Principal's Representative reasonably requires from time to time.

9.8 Contract Control Group Functions
Contract Control Group functions will include the oversight and review of, and response to, reports on:

(a) the progress of the Contractor's Activities relative to the Contractor Program and Contractor's other programs, and the performance of the Contractor under this Deed;

(b) issues arising out of community liaison and community concerns;

(c) the Contractor's compliance or non-compliance with the Contract Management Plan and this Deed, and related and consequential issues;

(d) matters arising from the completion by the Contractor of the design of the Works and the Temporary Works and the Design Documentation, including any proposed design changes;

(e) value engineering opportunities and potential cost savings consistent with the maintaining of quality and minimising life cycle costs;

(f) environmental management issues;

(g) safety and safety management issues;

(h) disputes that have arisen, or are likely to arise, between the Principal and the Contractor or the Principal's Representative and the Contractor; and

(i) other matters as determined or directed by the Principal's Representative.
9.9 Contract Control Group Meetings

(a) The persons nominated in clauses 9.7(b), 9.7(c) and 9.7(d) must attend all Contract Control Group meetings.

(b) Contract Control Group meetings will be held on a:

(i) monthly basis prior to the Date of Completion of the Works or the last Portion to reach Completion; and

(ii) quarterly basis thereafter until Final Completion, or at such other intervals as the Principal and the Contractor agree in writing.

(c) The Principal's Representative (or his or her nominee) will attend and chair the Contract Control Group meetings.

9.10 Contractor's Reporting Obligations

The Contractor:

(a) must with each claim for payment under clause 11.2 or, where no claim for payment is made, at least 4 Business Days prior to the next monthly or quarterly (as the case may be) meeting of the Contract Control Group, give the Principal's Representative (in accordance with clause 9.10(b)) a written report containing the detailed information specified in the TfNSW Standard Requirements Prelude;

(b) must provide for the purposes of clause 9.10(a) (unless otherwise directed by the Principal's Representative), the number and form of copies of the written report specified in Schedule 1;

(c) acknowledges that it is not entitled to make, and the Principal will not be liable upon, any Claim in the written report referred to in clause 9.10(a);

(d) must provide and maintain a daily record of the status of the work and the conditions on the Site and other sites involved in the Contractor's Activities, including the resources employed on the Site and at other sites and the issues affecting the progress of the Contractor's Activities, and provide a copy of that record to the Principal's Representative for each week's Contractor's Activities;

(e) must provide a current projected cash flow, each three months or as required by the Principal's Representative, including a planned versus actual cash flow comparison (including the estimated versus actual value of work completed for each calendar month); and

(f) must promptly give the Principal's Representative, when requested to do so, any information that the Principal's Representative reasonably requires.
9.11 Complaints and Notification

(a) The Contractor must immediately notify the Principal in writing if any:

(i) complaint is made or any proceedings are instituted or threatened;

(ii) letter of demand is issued; or

(iii) order or direction is made,

by anyone (including any Authority or any landowner, lessee or licensee on
or near the Site, Remote Sites or Extra Land) against the Contractor or any
of its Subcontractors or their respective employees in respect of any aspect
of the carrying out of the Contractor's Activities, including:

(iv) Contamination arising out of, or in any way in connection with, the
Contractor's Activities;

(v) the Contractor's non-compliance with any Authority Approval (or any
condition or requirement thereunder), any Third Party Agreement, the
Contract Management Plan or any Law regarding the Environment;

(vi) the implementation of the Contract Management Plan, including the
Contractor's community liaison plan;

(vii) the Contractor's use or occupation of the Site, Remote Sites or Extra
Land; or

(viii) loss or damage of the kind referred to in clause 13.10.

(b) The Contractor must (at its own cost) respond to complaints and enquiries
received regarding the Contractor's Activities and that of its Subcontractors
in accordance with the TfNSW Standard Requirements.

9.12 Industrial Relations

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

(a) assume sole responsibility for and manage all aspects of industrial relations
for the Contractor's Activities;

(b) ensure all Subcontractors manage all aspects of the industrial relations with
their employees appropriately;

(c) ensure that the rates of pay and conditions of employment specified in all
relevant industrial, enterprise and project based agreements and awards,
and any relevant Law, for all employees engaged in any capacity by any
person in connection with the Contractor's Activities, are always observed
in full;
(d) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities and Other Contractors' activities;

(e) without limiting clause 2.3(b), comply with all the requirements of the NSW Government Code of Practice for Procurement (January 2005), and the NSW Government Industrial Relations Management Guidelines (December 1999);

(f) conduct its industrial relations affairs in accordance with the Industrial Relations Management Plan developed and submitted by the Contractor as part of the Contract Management Plan, in accordance with the TfNSW Standard Requirements and clause 9.14;

(g) not commence any work on the Site, Remote Sites or Extra Land until the Industrial Relations Management Plan has been submitted to the Principal's Representative and:

(i) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

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

(h) submit to the Principal's Representative, before beginning work on the Site, Remote Sites or Extra Land, a statement detailing:

(i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;

(ii) the names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and

(iii) the names of those responsible for coordinating industrial relations for the Contractor's Activities;

(i) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;

(j) before beginning work on the Site, Remote Sites or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
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(i) payment of remuneration to employees;
(ii) annual leave provisions;
(iii) obligations to register workers under the Building and Construction Industry Long Service Payments Act 1986 (NSW);
(iv) workers' compensation insurance, including self-insurance arrangements;
(v) superannuation fund membership and contributions; and
(vi) over-award payments such as redundancy fund contributions; and

(k) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.

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

The industrial relations requirements contained in this Deed and the NSW Government Industrial Relations Management Guidelines (December 1999):
(l) are in addition to, but are not in substitution for, any requirements of Law; and

(m) do not limit the powers of the Principal or the liabilities and responsibilities of the Contractor.

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

9.13 Document Management and Transmission

(a) The Contractor must manage and transmit documents, including using an electronic medium where required by the Principal's Representative, in accordance with the processes, procedures and systems in the Contract Management Plan.

(b) Documents supplied to the Contractor will remain the property of the Principal and must be returned by the Contractor to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Contractor's Activities.
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(c) The Contractor must keep all the Contractor's records relating to the Contractor's Activities in a secure and fire proof storage.

(d) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 9.13.

(e) The Contractor must ensure that any Contract Documentation that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:

(i) permit access to or use of a computer system by a third person not authorised by the Principal; or

(ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.
9.15 Work Method

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

(a) not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and

(b) not cause this Deed to be frustrated.

9.16 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any
information provided by the Contractor to the Principal and any information relating
to the Contractor's performance under this Deed.

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

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

9.17 National Greenhouse and Energy Reporting Act 2007 (Cth)

The Contractor acknowledges and agrees that:

(a) if any of the Contractor's Activities, or the activities of any of the
Contractor's personnel, in connection with the Contractor's Activities (the
Relevant Matters) constitute a "facility" within the meaning of the NGER
Legislation, then, for the purposes of the NGER Legislation, the Contractor
has operational control of that facility and will comply with any obligations
arising in respect of the Principal's activities under the NGER Legislation;

(b) if, despite the operation of clause 9.17(a), the Principal incurs, or (but for
this clause) would incur, a liability under or in connection with the NGER
Legislation as a result of or in connection with any of the Relevant Matters,
and the NGER Legislation provides that such liability can be transferred by
the Principal or the NSW Government or any of its agencies to the
Contractor, the Contractor must, on the written request of the Principal, do
all things reasonably necessary to ensure the liability is transferred to the
Contractor;

(c) if the Principal requests it, the Contractor must provide Greenhouse Data to
the Principal:

(i) to the extent that, in a manner and form that, and at times that, will
enable the Principal to comply with the NGER Legislation irrespective
of whether the Principal or the Contractor or any other person has an
obligation to comply with the NGER Legislation in connection with any
Relevant Matters; and

(ii) otherwise as requested by the Principal from time to time;

(d) the Contractor must also provide to the Principal all Greenhouse Data and
other information which the Contractor provides to any other person under
the NGER Legislation in connection with any Relevant Matters, at the same
time as the Contractor provides that Greenhouse Data or other information to that other person;

(e) the Contractor must:

(i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 9.17, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and

(ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);

(f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 9.17 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and

(g) nothing in this clause 9.17 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

9.18 Commonwealth Funding

(a) The Contractor:

(i) acknowledges that the Works will be partially funded by the Commonwealth in accordance with the NSFC MOU; and

(ii) must:

(A) comply with any reasonable request from the Principal’s Representative;

(B) provide the Principal with any information or assistance reasonably required; and

(C) prepare any reports reasonably required by the Principal’s Representative (including those referred in the Commonwealth Government’s document entitled “Notes on Administration for the Nation Building Program”),

to ensure that the Principal is able to comply with its obligations under the NSFC MOU, the Head MOU, the Nation Building Program Act and any other memorandum of understanding or arrangement between the State of
NSW and the Commonwealth Government that may apply to the Works from time to time.

(b) Assistance for the purposes of clause 9.18(a) includes permitting a person authorised by the Australian Government Minister administering the Nation Building Program Act, at all reasonable times, to:

(i) inspect any work involved in the carrying out of the Works; and

(ii) inspect and make copies of any documents relating to the Works.

(c) In all publications, promotional and advertising materials, public announcements and activities in relation to the Works, the Contractor must acknowledge the financial support that it has received from the Australian Government. Such acknowledgement must be in a manner approved by the Principal's Representative prior to its use.

9.19 NSFC Project Control Group

(a) Pursuant to the NSFC MOU, one or more NSFC Project Control Groups (NSFC PCG) may be formed by the NSFC Steering Committee to exercise week-to-week oversight over the Works.

(b) The membership, role and function of a particular NSFC PCG will be agreed and documented by the NSFC Steering Committee at the time of the NSFC PCG's formation.

(c) The Contractor must provide all reasonable assistance necessary to enable each NSFC PCG to carry out its role and functions in relation to the Works as agreed by the NSFC Steering Committee in accordance with clause 9.19(b).

10. Time and Progress

10.1 Rate of Progress

The Contractor must:

(a) regularly and diligently progress the Contractor's Activities;

(b) proceed with the Contractor's Activities with due expedition and without delay; and

(c) achieve Completion of the Works and each Portion by the relevant Date for Completion.

Without limiting clause 10.14(b) or the Contractor's rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of Contractor's Activities except where permitted or required under this Deed.
Without limiting the next paragraphs of this clause 10.1 or clause 10.3, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor's Activities in accordance with this Deed.

The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this Deed.

The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 10.1, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed. If the Contractor can reasonably comply with the direction, the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1.

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

10.2 The Contractor's Programming Obligations

The Contractor:

(a) acknowledges and agrees that:

(i) subject to clause 10.2(b), the Design Program and the First Hundred Day Program will form part of the Contractor Program;

(ii) it has made and will make adequate allowances in the Contractor Program for:

(A) the delays referred to in clause 10.6;

(B) all Hold Points and Witness Points;

(C) those parts of the Contractor's Activities that may only be performed during a Track Possession; and
(D) the high degree of interface, interaction, and integration of the Contractor's Activities with work being (or to be) performed by RailCorp during Commissioning and Operational Readiness;

(iii) provision of the Design Program and First Hundred Day Program does not affect the Contractor's other programming obligations under this clause 10.2;

(b) must prepare and provide a Contractor Program that complies with and includes the details required by this Deed, including the TfNSW Standard Requirements, and any requirements of the Principal's Representative;

(c) must submit the Contractor Program to the Principal's Representative for its review in accordance with clause 9.14 within the earlier of:

(i) 45 Business Days of the Commencement Date; or

(ii) any time required by the TfNSW Standard Requirements;

(d) must when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within 5 Business Days of receipt of such a direction;

(e) must update, revise and submit to the Principal's Representative an updated Contractor Program, Design Program and First Hundred Day Program to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Completion, the actual progress made by the Contractor, Variations and any other changes to the Contractor's Activities but excluding claims for extensions of time to any Date for Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative:

(i) on a monthly basis (which is limited, in the case of the Design Program and the First Hundred Day Program to the periods covered by those programs); or

(ii) whenever directed to do so by the Principal's Representative;

(f) must prepare and provide for the Principal's Representative's information only versions of all Contractor Programs prepared in accordance with clause 10.2(e) that also allow for those claims for an extension of time to any Date for Completion that have been made by the Contractor in accordance with clause 10.8 but to which the Principal's Representative has not yet responded in accordance with clause 10.10;
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(g) must comply with the requirements of the Principal’s Representative and its other obligations under this Deed in preparing and using programs, including the requirements in clause 9.14; and

(h) must not unreasonably depart from the current version of the Design Program and the First Hundred Day Program and the Contractor Program that have been submitted to the Principal’s Representative for review under clause 9.14 and, in respect of which:

(i) the Principal’s Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

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

Unless otherwise directed by the Principal’s Representative, for all programs and schedules provided in accordance with this clause, the Contractor must provide:

(iii) 1 colour printed A3 sized original;

(iv) 3 colour printed A3 copies; and

(v) an electronic version on CD in both pdf and unlocked native format (with all logic links intact and nothing hidden or protected) accompanied by all associated files so that they can be reproduced by the Principal’s Representative using Primavera P6.

10.3 Contractor Not Relieved

Without limiting clause 9.14, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Contractor Program) prepared by the Contractor, by the Principal’s Representative in connection with the program, will:

(a) relieve the Contractor from or alter its liabilities or obligations under this Deed, including the obligations under clause 10.1;

(b) evidence or constitute the notification of a delay or claiming of or the granting of an extension of time to any Date for Completion, or a direction by the Principal’s Representative to compress, disrupt, prolong or vary any, or all, of the Contractor’s Activities; or

(c) affect the time for the performance of the Principal’s or the Principal’s Representative’s obligations under this Deed.
10.4 Compression by Contractor

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

(a) neither the Principal nor the Principal’s Representative will be obliged to take any action to assist or enable the Contractor to achieve Completion before any Date for Completion;

(b) the time for carrying out the obligations of the Principal or the Principal’s Representative will not be affected; and

(c) the Contractor does so at its own cost and risk.

10.5 Importance of Completion on Time

The Contractor acknowledges:

(a) the importance of complying with its obligations under clause 10.1; and

(b) that a Date for Completion will only be extended in accordance with clause 10.10 or clause 10.12, or when so determined under clause 15.

10.6 Risk and Notice of Delay

(a) Except as expressly provided for in clause 10.10, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor’s Activities and performance of its obligations under this Deed both before and after any Date for Completion.

(b) The Contractor must within 5 days of the commencement of an occurrence causing any delay, or which is likely to cause delay, give the Principal’s Representative written notice of any delay or likely delay to the carrying out of the Contractor’s Activities, details of the cause and how any Date of Completion is likely to be affected (if at all).

10.7 Entitlement to Claim Extension of Time

(a) If the Contractor is or will be delayed on or prior to the Date for Completion of the Works or a Portion by reason of:

(i) an Act of Prevention;

(ii) a cause so described in Schedule 1; or

(iii) a direction to suspend that satisfies clause 10.14(a)(ii),

in a manner that will prevent it from achieving Completion of the Works or the Portion by the relevant Date for Completion, the Contractor may claim an extension of time to the relevant Date for Completion.

(b) If the Contractor is, or will be, delayed after the Date for Completion of the Works or a Portion by reason of an Act of Prevention in a manner which will
delay it in achieving Completion of the Works or a Portion, the Contractor may claim an extension of time to the relevant Date for Completion.

10.8 Claim for Extension of Time

To claim an extension of time the Contractor must:

(a) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Completion, which:

(i) gives detailed particulars of the:
   (A) delay and the occurrence causing the delay; and
   (B) activities that are critical to the maintenance of progress in the execution of the Contractor's Activities; and

(ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:
   (A) conditions precedent to an extension of time in clause 10.9 have been met; and
   (B) occurrence will delay it in achieving Completion in the manner described in clause 10.7; and

(b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:

(i) every 28 days after the first written claim, or such other period as may be approved by the Principal's Representative in writing, until after the end of the effects of the delay; and

(ii) containing the information required by paragraph (a).

The Principal's Representative may, within 14 days of receiving the Contractor's claim or further claim for an extension of time for Completion, by written notice to the Contractor, request additional information in relation to the claim or further claim. The Contractor must, within 14 days of receiving such request, provide the Principal's Representative with the information requested.

10.9 Conditions Precedent to Extension of Time

Subject to clauses 10.16 and 10.17, it is a condition precedent to the Contractor's entitlement to an extension of time to any relevant Date for Completion that:
(a) the Contractor gives the notices and claims required by clauses 10.6(b) and 10.8 as required by those clauses;

(b) the Contractor complies with any request for additional information under clause 10.8 within the time required;

(c) the cause of the delay is beyond the reasonable control of the Contractor;

(d) the Contractor is actually, or will be, delayed:
   (i) on or prior to the Date for Completion of the Works or the Portion, by reason of one or more of the causes set out in clause 10.7(a) in the manner described in clause 10.7(a); or
   (ii) after the Date for Completion of the Works or the Portion, by reason of an Act of Prevention in the manner described in clause 10.7(b); and

(e) the Contractor is not given a direction to compress under clause 10.15.

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

(f) the Principal will not be liable upon any Claim by the Contractor; and

(g) the Contractor will be absolutely barred from making any Claim against the Principal, arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

10.10 Extension of Time

(a) Subject to clauses 10.10(c), 10.16 and 10.17, if the conditions precedent in clause 10.9 have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Principal's Representative, and notified to the Principal and the Contractor within 28 days after:
   (i) the latest of the:
      (A) Contractor's written claim under clause 10.8; and
      (B) provision by the Contractor of any additional information regarding the claim required under clause 10.8; or
   (ii) where the Principal's Representative has given the Contractor a direction to compress under clause 10.15 and subsequently issued a notice under clause 10.16 withdrawing the direction to compress given under clause 10.15, the date of issue of the notice under clause 10.16.
(b) A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Completion, or to grant an extension of time to any Date for Completion within the relevant 28 day period, will not cause an affected Date for Completion to be set at large, but nothing in this paragraph will prejudice any right of the Contractor to damages.

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

(i) contributed to the delay; or

(ii) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.11 Reduction in Time

If the Principal's Representative directs a Variation that omits or deletes any part of the Works:

(a) the Contractor:

(i) may (no later than 10 Business Days after the direction) provide whatever information it considers may assist the Principal's Representative to determine; and

(ii) must provide whatever programming or other information the Principal's Representative directs (and within the time directed) so that the Principal's Representative can determine, what (if any) adjustment should be made to the Date for Completion of the Works or a Portion; and

(b) the relevant Dates for Completion of the Works or a Portion or Portions may be reduced by a reasonable period determined by the Principal's Representative having regard to the impact of the Variation and notified to the Principal and the Contractor within 20 Business Days of the date of the Variation.

10.12 Unilateral Extensions

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Completion under clause 10.10, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor and the Principal, unilaterally extend any Date for Completion by any period specified in a notice to the Contractor and the Principal.
The Principal’s Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the Contractor.

The discretion to grant an extension of time under this clause 10.12 may only be exercised by the Principal’s Representative, and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 15 or in any other way opened up, reviewed or exercised by any other person in any forum (including by the Dispute Resolution Board or in any expert, arbitration or litigation proceedings).

10.13 Delay Damages

(a) For each day by which the Date for Completion of the Works or a Portion is extended due to:

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

(ii) the cancellation of a Track Possession or power isolation listed in Schedule 14:

   (A) less than 12 weeks prior to the time at which it was planned to commence; or

   (B) with more than 12 weeks' notice, but without the provision of an alternative Track Possession or power isolation at a time the Contractor is reasonably able to utilise in substitution for the cancelled Track Possession or power isolation; or

(iii) a Variation that satisfies the requirements of paragraph (c) of the definition of Act of Prevention,

   the Contractor will be entitled to be paid the costs reasonably incurred by the Contractor as a direct result of the delay the subject of the extension of time, as determined by the Principal’s Representative who must, where they are applicable, use the rates and prices in Schedule 1.

(b) The amounts payable pursuant to this clause 10.13 will be a limitation upon the Principal’s liability to the Contractor for any delay or disruption that:

(i) the Contractor encounters in carrying out the Contractor’s Activities; or

(ii) arises out of, or in any way in connection with, the breach of this Deed by the Principal,

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

(a) The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Contractor's Activities.

If the suspension under this clause 10.14(a) arises as a result of:

(i) the Contractor's failure to carry out its obligations in accordance with this Deed (including where any process, procedure, test method, calculation, analysis or report required by this Deed has resulted in or will result in a non-conformance), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or

(ii) a cause other than the Contractor's failure to perform its obligations in accordance with this Deed:

(A) a direction to suspend under this clause 10.14(a) will entitle the Contractor to:

(1) be paid by the Principal the extra costs reasonably incurred by it as a direct result of the suspension as determined by the Principal's Representative, and

(2) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.10;

(B) the Contractor must take all reasonably practicable steps possible to mitigate the extra costs incurred by it and any delay in achieving Completion of the Works or any Portion as a result of the suspension; and

(C) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.14(a)(ii).

(b) The Contractor may suspend the carrying out of all or a part of the Contractor's Activities to avoid an Incident.

(c) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with a suspension by the Contractor under clause 10.14(b).

10.15 Direction to Compress

If the Contractor makes a claim under clause 10.8, the Principal's Representative may direct the Contractor to compress the Contractor's Activities by taking those
measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve Completion of the Works or a Portion by the relevant Date for Completion.

Prior to commencing any such compression the Contractor must give the Principal’s Representative an estimate of the costs of taking all such necessary measures.

The Principal’s Representative may give such a direction whether or not the cause of delay for which the Contractor has made its claim under clause 10.8 entitles the Contractor to an extension of time to any relevant Date for Completion.

10.16 Withdrawal of Compression Direction

The Principal’s Representative may at any time by notice in writing withdraw any direction given by it under clause 10.15, after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the Contractor made a claim under clause 10.8. Any such extension will be determined having regard to the effect which the compression of the Contractor’s Activities taken by the Contractor prior to the withdrawal of the direction has had on mitigating the delay which is the subject of the claim for an extension of time made by the Contractor under clause 10.8.

10.17 Partial Compression

If the Principal’s Representative gives the Contractor a direction to compress under clause 10.15 and it only applies to part of a delay, the Contractor’s entitlement to any extension of time to any relevant Date for Completion, which it otherwise would have had, will only be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome the delay.

10.18 Compression

If the Principal’s Representative gives a direction to the Contractor under clause 10.15:

(a) whether or not the Contractor provides a cost estimate under clause 10.15, the Contractor must comply with the direction;

(b) if the Contractor would, but for the direction, have been entitled to an extension of time to the relevant Date for Completion for the cause of delay in respect of which the Contractor made a claim under clause 10.8, the Contractor will, to the extent it would have been entitled to an extension of time, be entitled to be paid the lesser of:

(i) the sum of:
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(A) the extra costs reasonably incurred by the Contractor (which, if the Principal's Representative gives a notice to withdraw the direction under clause 10.16 will be those extra costs incurred prior to the giving of such notice) and directly attributable to compressing the Contractor's Activities, as determined by the Principal's Representative; and

(B) that percentage of the amount under sub-paragraph (A) stipulated in Schedule 1; and

(ii) the cost estimate (if any) provided by the Contractor pursuant to clause 10.15; and

(c) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the cause of delay and the direction, other than for the amount it is entitled to under this clause 10.18.

10.19 Principal's Right to Liquidated Damages not Affected

The Principal's rights to liquidated damages under clause 12.7 for a failure by the Contractor to achieve Completion of the Works or a Portion by any relevant Date for Completion will not be affected by the Principal's Representative giving the Contractor a direction to compress under clause 10.15.

10.20 Contractor's Entitlements

This clause 10 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any delay, disruption or Act of Prevention and the Contractor waives all rights at Law to claim any relief from its obligations under this Deed otherwise than in accordance with this clause 10.

11. Payment

11.1 Contractor's Payment Entitlements

(a) Subject to clause 16.12 and to any other right to set-off that the Principal may have, the Principal must pay the Contractor the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed, in accordance with the procedure in this clause 11.

(b) The Contract Sum is not subject to rise and fall.

(c) The Reimbursable Work Price is payable for the Reimbursable Work because of its inherently uncertain scope and sequencing.
(d) The Contractor:

(i) warrants that it has made full allowance for the risks that may arise during the performance of the Reimbursable Work or in connection with the performance of Reimbursable Work in setting the elements of the Contract Sum; and

(ii) acknowledges that:

(A) the risk allocation prescribed by this Deed does not change during the performance of the Reimbursable Work or in connection with the performance of Reimbursable Work; and

(B) it must not seek to recover, and is not entitled to recover:

(1) for Defect rectification as part of the Reimbursable Work Price; or

(2) any cost or expense as part of the Reimbursable Work Price that is the result of a risk which the Contractor bears under this Deed.

(e) The parties acknowledge and agree that:

(i) Reimbursable Work:

(A) will occur in parallel with the remainder of the Contractor's Activities; and

(B) is not confined to a discrete Portion;

(ii) it is critical to clearly delineate and separate the:

(A) cost of the work; and

(B) personnel and equipment involved,

in respect of Reimbursable Work from that used for the remainder of the Contractor's Activities; and

(iii) the Contractor will comply with any directions of the Principal's Representative in respect of documentation created (or which the Principal's Representative directs the Contractor to create) to support the delineation and separation between:

(A) Reimbursable Work; and

(B) the remainder of the Contractor's Activities.

11.2 Payment Claims

Subject to clause 11.7, the Contractor must give the Principal's Representative a claim for payment on account of the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed.
(a) prior to the time for the submission of the Completion Payment Claim, upon the 6th Business Day of each month;

(b) for the Completion Payment Claim, within the time required by clause 11.10; and

(c) for the Final Payment Claim, within the time required by clause 11.12.

Each claim for payment must:

(d) generally follow the form of the Payment Schedule and be as the Principal's Representative reasonably requires;

(e) include all the evidence reasonably required by the Principal's Representative of the amount of work completed in accordance with this Deed and the amount payable;

(f) delineate between:

   (i) that part of the amount claimed that relates to Reimbursable Work;

   (ii) the balance of the Contractor's Activities; and

(g) in respect of Reimbursable Work, provide full detail of the Reimbursable Work which correlates with the Reimbursable Work Breakdown Plan;

(h) for each monthly claim pursuant to clause 11.2(a) (a Progress Claim), set out the amount claimed for work completed to the end of the previous month and details of how the amount has been calculated, using the following methodology:

   (i) for each part of the Contractor's Activities described in the Payment Schedule which has been completed (subject to any minor Defects) the sum of the amounts in the Payment Schedule (adjusted to allow for any additions and deductions to the Contract Sum) for all such completed parts of the Contractor's Activities;

   (ii) to which is added, for each part of the Contractor's Activities described in the Payment Schedule which has not been completed (with the exception of activities associated with items in the Payment Schedule titled "As-built data and asset management documentation" for which payment claims must be made only once complete under clause 11.2(h)(i)) the completed proportion of that part of the Contractor's Activities multiplied by the amount set out for that part in the Payment Schedule;

   (iii) to which is added the value of unfixed plant and materials (in accordance with clause 11.8) multiplied by a factor of 85%;
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(iv) to which is added any other amounts that may be payable by the Principal to the Contractor pursuant to a provision of this Deed; and

(v) which is reduced, where work is defective or omitted, by the estimated cost of rectifying the Defect or carrying out the omitted work; and

(i) be accompanied by:

(i) a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 20, made out not earlier than the date of the payment claim;

(ii) the Contractor’s Certificate of Design Compliance and the Designers’ Certificates of Design Compliance;

(iii) the Contractor’s Certificate of Construction Compliance and Designers’ Certificates of Construction Compliance;

(iv) certification by the Contractor that all of the Contractor’s Activities and parts of the Works for which payment has been claimed are in accordance with:

(A) the requirements of the Planning Approval; and
(B) all other Authority Approvals;

(v) in relation to the unfixed plant and materials claimed in the Progress Claim:

(A) evidence of:

(1) ownership of the plant or materials;
(2) identification and labelling of the plant and materials as the property of the Principal;
(3) adequate and secure storage and protection; and
(4) insurance for the full replacement value of the plant and materials;

(B) security acceptable to the Principal in the form of the unconditional undertaking in Schedule 16 issued by an Institution approved by the Principal in an amount equal to the payment claimed for the unfixed plant and materials; and

(C) if the PPS Law applies, evidence (in a form satisfactory to the Principal) that the Contractor has registered a Security Interest in favour of the Principal in the unfixed plant or materials;
(vi) the programs and other information required to be prepared and submitted by the Contractor under clause 10.2;

(vii) (where the Progress Claim is lodged after the period of time referred to in clause 11.20(a)), an updated form of the Reimbursable Work Breakdown Plan referred to in clause 11.20 in respect of the Reimbursable Work;

(viii) evidence of the Contractor's expenditure in respect of the Reimbursable Work referred to in clause 11.2(g); and

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

The Contractor may not include in any payment claim under this clause 11 any amount for a Claim which is barred by clause 17.6 or any other provision of this Deed.

11.3 Payment Statements

(a) The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 11.2, a Completion Payment Claim under clause 11.10 or a Final Payment Claim under clause 11.12, issue to the Contractor and the Principal a payment statement which identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and which sets out:

(i) its determination of the value of the Contractor's Activities carried out in accordance with this Deed, using the methodology in clause 11.2(h) where the payment statement relates to a Progress Claim;

(ii) the amount already paid to the Contractor;

(iii) the amount (if any) the Principal directs the Principal's Representative that the Principal is entitled to retain, deduct, withhold or set-off under this Deed;

(iv) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Sum and which the Principal proposes to pay to the Contractor or the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal; and
(v) if the amount in clause 11.3(a)(iv) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim:
   (A) the reason why the amount in clause 11.3(a)(iv) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim; and
   (B) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

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

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

(d) The Contractor agrees that the amount referred to in the payment statement in respect of clause 11.3(a)(iv), for the purposes of sections 9 and 10 of the SOP Act, is the amount of the "progress payment" (as defined in that SOP Act) calculated in accordance with the terms of this Deed to which the Contractor is entitled in respect of this Deed.

(e) The Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative under clause 11.3(a) give the Principal's Representative a tax invoice (which complies with the GST Legislation) for the amount of the payment statement.

11.4 Performance and Compliance Incentive Payment Scheme

(a) The Principal aims to achieve a high standard of performance and full compliance by the Contractor for the duration of the project in respect of:
   (i) safety;
   (ii) rail safety and reliability;
   (iii) environmental management;
   (iv) communications;
(v) compliance audits;
(vi) quality; and
(vii) time.

(b) Without in any way affecting the obligations of the Contractor under any Law, under any Authority Approval or under this Deed, the Principal agrees to pay the Contractor with each payment by the Principal to the Contractor under clause 11.5(a) an amount (if any) determined under this clause 11.4 as an incentive to the Contractor’s continuing level of performance and full compliance.

(c) The amount payable under clause 11.4(b) will be determined by the Principal’s Representative in its absolute discretion on a monthly basis in accordance with the Performance and Compliance Incentive Payment Table.

(d) The maximum amount payable under clause 11.4(b) is set out in Schedule 1. This amount has been calculated taking into account that not all Performance Categories are payable for the same number of months and the maximum amount payable for each Performance Category varies. When payment for the Performance Category commences and the number of months the maximum amount is payable is set out in the Performance and Compliance Incentive Payment Table.

(e) The Principal’s Representative must, at the same time as it issues the payment statement under clause 11.3, issue a supplementary payment statement setting out the amount which it has determined as payable under clause 11.4(b). The determination by the Principal’s Representative of the amount payable under clause 11.4(b) will be final and binding and not capable of review in any forum.

11.5 Payment

(a) Where, pursuant to clause 11.3(a)(iv), the Principal’s Representative sets out in a payment statement an amount payable by the Principal to the Contractor, subject to clauses 11.1, 11.2, 11.7, 11.10, 11.12, 14.3, 14.7(a)(i) and 16.12, the Principal must, within 15 Business Days of the last to occur of:

(i) the Principal’s Representative issuing the payment statement under clause 11.3;
(ii) the Contractor complying with clause 11.7; or
(iii) the Principal’s Representative receiving the tax invoice referred to in clause 11.3(e),
pay the Contractor the amount set out in the payment statement referred to in clause 11.3(a).

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

11.6 Payment on Account
A payment of moneys under clause 11.5(a) is not:

(a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Deed;

(b) an admission of liability; or

(c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with this Deed,

but is only to be taken as payment on account.

11.7 Conditions Precedent
The Contractor is not entitled to make a payment claim under clause 11.2, and the Principal is not obliged to make a payment under clause 11.5(a), unless the Contractor has:

(a) complied with clauses 1.6, 2.2(f)(i), 2.2(f)(ii) and 10.2(e);

(b) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.8;

(c) submitted the initial and updated parts of the Contract Management Plan as required by clauses 4 and 9.14 of this Deed and the TfNSW Standard Requirements;

(d) provided any report and programs required under clause 9.10;

(e) provided the documents required by clause 11.2(i);

(f) effected or procured to be effected the insurances required by clauses 2.2(c) and 13.5 and (if requested) provided evidence of this to the Principal's Representative;

(g) provided such evidence as the Principal's Representative may require that this Deed has been properly executed by or on behalf of the Contractor and that the Contractor is bound under this Deed;
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(h) after the period of time specified in clause 11.20, submitted the Contractor’s Reimbursable Work Breakdown Plan, under clause 11.20; and

(i) done everything else that it is required to do under this Deed before being entitled to make a payment claim or receive payment.

The Principal is not obliged to make a payment under clause 11.5(a), unless the Contractor has submitted a claim for payment in accordance with clause 11.2 and provided any accompanying document or other information required by that clause.

11.8 Unfixed Plant and Materials

If the Contractor claims payment for plant or materials intended for incorporation in the Works but not yet incorporated, the Principal is not obliged to make payment for such plant or materials in accordance with clause 11.5(a), unless:

(a) the Contractor provides the evidence required in clause 11.2(i)(v);

(b) the plant and materials are on the Site or are available for immediate delivery to the Site;

(c) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal’s Representative;

(d) the condition of the unfixed plant and materials has (if required by the Principal’s Representative) been confirmed in an Inspection by the Principal’s Representative; and

(e) if the PPS Law applies, the Contractor has registered a Security Interest in the unfixed plant or materials in favour of the Principal in accordance with clause 16.29.

The only such unfixed plant or materials to be allowed for in a payment statement are those that have become or (on payment) will become the property of the Principal. Upon a payment against a payment statement that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest progressively in the Principal.

The security provided in accordance with clause 11.2(i)(v)(B) will be released once the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose.

11.9 Payment of Employees and Subcontractors

(a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal’s Representative a statutory declaration in accordance with clause 11.2(i)(i).
(b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.2(i)(i), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.

(c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the employee or Subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.

(d) If the Principal receives notice of any Insolvency Event in relation to the Contractor, the Principal will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.

(e) Nothing in this clause 11.9 limits or otherwise affects the Principal's rights under section 1758(7) of the Workers Compensation Act 1987 (NSW), section 18(6) of schedule 2 of the Payroll Tax Act 2007 (NSW) or section 127(5) of the Industrial Relations Act 1996 (NSW).

11.10 Completion Payment Claim

(a) No later than 28 days after the issue of the Notice of Completion for the Works or the last Portion to reach Completion, the Contractor must lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating:

(i) the Contract Sum;

(ii) all payments received on account of the Contract Sum; and

(iii) the balance (if any) due to the Contractor, being the Contract Sum less the payments referred to in clause 11.10(a)(ii).

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

(b) With the Completion Payment Claim, the Contractor must lodge with the Principal's Representative a First Statement of Outstanding Claims. The First Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the
Contractor's Activities, the Works or this Deed which occurred prior to the date of submission of the Completion Payment Claim.

(c) The Completion Payment Claim and First Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Deed up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and First Statement of Outstanding Claims.

(d) Without limiting clause 11.11, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Deed which occurred prior to the date of submission of the Completion Payment Claim which:

(i) has been made;
(ii) could have been made; or
(iii) should have been made,

that is not included in the Completion Payment Claim or First Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred.

(e) The First Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the First Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the First Statement of Outstanding Claims or the Completion Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor except as provided in clause 11.12.

(f) Despite clause 11.10(e), if subsequent to the lodgement by the Contractor of the Completion Payment Claim, a final determination is made under clause 15 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Completion Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Principal's Representative within 28 days after the final determination is made. If it is not lodged within that time, it is barred.

(g) The claims and statements required under this clause 11.10 are in addition to the other notices which the Contractor must give to the Principal's
Representative under this Deed in order to preserve its entitlements to make any such Claims.

(h) Without limiting clause 11.10(g), the Contractor cannot include in any claim or statement under this clause 11.10 any Claims that are barred under this Deed including by clause 17.6.

11.11 Release after Completion Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor’s Activities, the Works or this Deed that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:

(a) has been included in the Completion Payment Claim or First Statement of Outstanding Claims which is given to the Principal’s Representative within the time required by, and in accordance with clause 11.10; and

(b) has not been barred under another provision of this Deed.

11.12 Final Payment Claim

(a) No later than 28 days after the expiration of the last Defects Rectification Period, the Contractor must lodge with the Principal’s Representative a payment claim marked “Final Payment Claim” stating the Contract Sum, all payments received on account of the Contract Sum and the balance, if any, due to the Contractor. The Final Payment Claim must be accompanied by such information as the Principal’s Representative may reasonably require.

(b) With the Final Payment Claim the Contractor must lodge with the Principal’s Representative a Second Statement of Outstanding Claims. The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor’s Activities, the Works or this Deed which occurred prior to the date of submission of the Final Payment Claim.

(c) The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Contractor’s Activities, the Works or this Deed up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.

(d) Without limiting clause 11.13, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way
in connection with, the Contractor's Activities, the Works or this Deed which occurred prior to the date of the Final Payment Claim which:

(i) has been made;
(ii) could have been made; or
(iii) should have been made under the paragraph above,

that is not included in the Final Payment Claim or Second Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred.

(e) The Second Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the Second Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the Second Statement of Outstanding Claims or the Final Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor.

(f) Despite clause 11.2(e), if subsequent to the lodgement by the Contractor of the Final Payment Claim, a final determination is made under clause 15 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Final Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Principal's Representative within 28 days after the final determination is made. If it is not lodged within that time, it is barred.

(g) The claims and statements required under this clause 11.12 are in addition to the other notices that the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.

(h) Without limiting clause 11.12(g), the Contractor cannot include in any claim or statement under this clause 11.12 any Claims that are barred under this Deed including by clause 17.6.

11.13 Release after Final Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Deed that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:
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(a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.12; and

(b) has not been barred under another provision of this Deed.

11.14 Interest

If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable thereon from, but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.

The rate of interest will be the rate from time to time prescribed for judgement debts under the *Uniform Civil Procedure Rules 2005 (NSW)*. Interest will be compounded at six monthly intervals.

This will be the party’s sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

11.15 Correction of Payment Statements

The Principal’s Representative may, in any payment statement:

(a) correct any error; and

(b) modify any assumptions or allowances made,

in any previous payment statement issued by the Principal’s Representative.

11.16 Costs Allowed by Contractor

Unless otherwise provided in this Deed, it is agreed that the Contractor has, and will be deemed to have, allowed in the Original Contract Price for and will be wholly responsible for the payment of:

(a) without limiting clause 18, all customs duties, tariffs and similar taxes (other than GST) and charges paid or payable on all items that are:

(i) intended to be used for, or that are to be incorporated into, the Works; or

(ii) otherwise used for the Contractor’s Activities;

(b) any long service leave levy which may be payable in respect of the Contractor’s Activities or the Works;

(c) all royalties, licence fees and similar payments for Intellectual Property in respect of:

(i) the items that are intended to be used for, or that are to be incorporated into, the Works; and
(ii) all Contract Documentation; and

d) all fluctuations in the value of the Australian dollar against other currencies.

The Contractor will have no entitlement to any increase in the Contract Sum or otherwise to make any Claim against the Principal in respect of any of those amounts, whatever they may actually be.

11.17 Security of Payment Act

(a) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:

(i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 11.3;

(ii) if it is subsequently determined pursuant to this Deed that the Contractor was not entitled under this Deed to payment of some or all of the adjudicated amount that was paid by the Principal (overpayment), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;

(iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;

(iv) the Principal's Representative:

(A) is not bound by the adjudication determination;

(B) may reassess the value of the work that was valued by the adjudicator; and

(C) may, if it disagrees with the adjudication determination, express its own valuation in any payment statement; and

(v) the payment statement referred to in clause 11.17(a)(iv)(C) will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 15.

(b) Nothing in this Deed will affect, restrict or limit the Contractor's right to:

(i) refer for adjudication any dispute falling with section 17 of the SOP Act; or
(ii) suspend the Contractor's Activities under section 15, 16 or 24 of the SOP Act.

(c) For the purposes of section 17(3) of the SOP Act the Contractor irrevocably chooses the Institute of Arbitrators & Mediators, Australia, as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Deed.

11.18 Payment Withholding Request under Division 2A of Part 3 of the SOP Act

(a) Without limiting clause 11.9 or 16.12, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act.

(b) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act, then:

(i) the Principal may plead and rely upon Division 2A of Part 3 of the SOP Act as a defence to any claim for the money by the Contractor from the Principal; and

(ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of Part 3 of the SOP Act will not be taken into account for the purpose of determining:

(A) any period for which money owed by the Principal to the Contractor has been unpaid; and

(B) the date by which payment of money owed by the Principal to the Contractor must be made.

(c) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of Part 3 of the SOP Act.

(d) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due and payable from the Contractor to the Principal.

(e) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act and the Contractor:

(i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
(ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn, then the Contractor must so notify the Principal and the Principal’s Representative within 5 days after the occurrence of the event in subparagraph (e)(i) or (ii) (as applicable) by providing to the Principal and the Principal’s Representative a statement in writing in the form of a statutory declaration together with such other evidence as the Principal or Principal’s Representative may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

11.19 Title

Title in all items forming part of the Works will pass progressively to the Principal (or, in respect of Remote Works constructed on Remote Sites, to the Principal’s nominee being the relevant entity who is to take the benefit of the Remote Works) on the earlier of payment for or incorporation of such items into the Works or Remote Works (as applicable). Risk in all such items remains with the Contractor until Completion.

11.20 Reimbursable Work Breakdown Plan

The Contractor must, in respect of Reimbursable Work:

(a) submit a draft Reimbursable Work breakdown plan no later than 3 months prior to undertaking any Reimbursable Work for the review of the Principal’s Representative under clause 9.14. The draft Reimbursable Work breakdown plan must include details of:

(i) the scope of the Reimbursable Work and how it differs (if it differs) from the Contractor’s scope of Reimbursable Work in Schedule 9;

(ii) how the anticipated Reimbursable Work Price:

(A) has been calculated; and

(B) differs from the Provisional Sum amount for such work in Schedule 1;

(iii) the anticipated cost of the work to be performed by the personnel described in Part A of Schedule 9; and

(iv) the anticipated costs of the plant and equipment described in Part B of Schedule 9;

(b) not carry out any Reimbursable Work until a Reimbursable Work Breakdown Plan exists; and
(c) update the Reimbursable Work Breakdown Plan on a monthly basis, or as otherwise directed by the Principal's Representative, comparing the actual costs incurred in that month as against each of the anticipated costs referred to in clauses 11.20(a)(iii) and 11.20(a)(iv).

12. Completion

12.1 Progressive Inspection and Testing

At any time prior to Completion of the Works or any Portion, the Principal's Representative may direct that any materials or work forming part of the Contractor's Activities in respect of the Works or that Portion be tested. The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Contractor's Activities or Works as may be required. On completion of any test the Contractor must make good the Contractor's Activities or Works so that they fully comply with this Deed.

The Principal's Representative may direct that any part of the Contractor's Activities or the Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.

The tests prescribed in this Deed must be conducted by the Contractor as and when provided for in this Deed, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.

Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.

Unless otherwise stated in this Deed, before conducting a test under this Deed the Principal's Representative or the Contractor must give not less than two Business Days notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.

Without prejudice to any other rights or remedies under this Deed, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

Each party must promptly make the results of tests available to the other and to the Principal's Representative.

Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the Contractor unless:
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(a) this Deed provides that the Contractor must bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under clause 12.1;

(b) the test shows that the material or work is not in accordance with this Deed;

(c) the test is in respect of a part of the Contractor's Activities or the Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or

(d) the test is consequent upon a failure of the Contractor to comply with a requirement of this Deed.

Where the extra costs are not to be borne by the Principal, they will be borne by the Contractor and will be a debt due from the Contractor to the Principal or paid by the Contractor to the Principal on demand.

12.2 Contractor to Notify

(a) The Contractor must give the Principal's Representative written notice 21 days before it anticipates achieving Completion of the Works or a Portion.

(b) Following the issue by the Contractor of a notice under clause 12.2(a), the Contractor must:

(i) prepare a detailed procedure for the progressive Inspection by the Principal's Representative of the Works or that Portion; and

(ii) provide a draft defects management plan (without identifying any Defects) in respect of the Works or that Portion.

(c) The procedure and draft defects management plan referred to in clause 12.2(b) must be submitted to the Principal's Representative and, prior to the Inspection under clause 12.3(a) must, if required by the Principal's Representative, be amended to ensure that the:

(i) procedure provides the Principal's Representative with sufficient time to properly carry out the progressive Inspection and the final Inspection which the Principal's Representative is required to undertake under clause 12.3 to determine whether Completion of the Works or the Portion (as the case may be) has occurred; and

(ii) draft defects management plan fully addresses the matters the Principal's Representative directs.

12.3 Inspection before Completion of the Works

(a) The Principal's Representative and the Contractor's Representative must, within 7 days of receipt by the Principal's Representative of the notice
referred to in clause 12.2(a), jointly inspect the Works or the Portion at a mutually convenient time.

(b) Following the joint Inspection under clause 12.3(a), the Principal's Representative must issue a notice to the Principal and the Contractor either:
   (i) containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or
   (ii) stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated in clause 12.3(b)(i).

(c) When the Principal's Representative issues a notice under either clause 12.3(b)(i) or clause 12.3(b)(ii), the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when the Contractor considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative in writing by means of:
   (i) where there are Portions:
      (A) in respect of a particular Portion (other than the last Portion to reach Completion), copies of the Contractor's Certificate of Portion Completion in respect of the relevant Portion and the Designers' Certificates of Portion Completion in respect of the relevant Portion; and
      (B) in respect of the last Portion to reach Completion, copies of all Contractor's Certificates of Portion Completion and the Designers' Certificates of Portion Completion for all Portions; or
   (ii) where there are not any Portions, copies of the Contractor's Certificate of Works Completion and the Designers' Certificates of Works Completion.

The Contractor's Certificate of Works Completion, and each Contractor's Certificate of Portion Completion, must attach:
   (iii) a register of all records of verification of design, construction, commissioning and handover (including procurement, testing, and Hold Points and Witness Points). All records are to be satisfactorily completed and signed;
(iv) the final form of the defects management plan referred to in clause 12.2, which incorporates a register of any outstanding minor Defects and proposals for their rectification;

(v) a register of Asset Management Information provided in accordance with the TfNSW Standard Requirements;

(vi) a register of deficiency notices issued, all of which are required to have been satisfactorily completed and closed out;

(vii) a register of concessions granted for non-conforming work; and

(viii) all Authority Approvals including any required for the Principal to occupy and use the Works or Portion (as the case may be) for its intended purposes, in accordance with clause 2.3(c)(vi).

Thereafter the Principal's Representative and the Contractor's Representative must jointly inspect the Contractor's Activities at a mutually convenient time.

(d) Following the joint Inspection under clause 12.3(c), the Principal's Representative must within 21 days of receipt of a notice under clause 12.3(c), or of receipt of a notice under clause 12.3(e), issue a notice to the Principal and the Contractor:

(i) if satisfied that Completion of the Works or the Portion has been achieved:

   (A) stating the date on which the Principal's Representative determines Completion of the Works or the Portion was achieved; and

   (B) where relevant to the test for Completion of the Works or that Portion, containing a list of any minor Defects, of the type described in paragraph (a) of the definition of Completion in clause 1.1, that are apparent; or

(ii) if not satisfied that Completion of the Works or the Portion has been achieved:

   (A) containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or

   (B) stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated by clause 12.3(d)(ii)(A).
(e) If the Principal's Representative issues a notice under either clause 12.3(d)(ii)(A) or clause 12.3(d)(ii)(B), the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when it considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative by notice in writing by means of:

(i) where there are Portions:

(A) in respect of a particular Portion (other than the last Portion to reach Completion), a Contractor's Certificate of Portion Completion in respect of the relevant Portion and the Designers' Certificates of Portion Completion in respect of the relevant Portion; and

(B) in respect of the last Portion to reach Completion, copies of all Contractor's Certificates of Portion Completion and the Designers' Certificates of Portion Completion for all Portions; or

(ii) where there are not any Portions, copies of the Contractor's Certificate of Works Completion and the Designers' Certificates of Works Completion,

to which are attached the documents referred to in the second paragraph of clause 12.3(c), and after which the third paragraph of clause 12.3(c), clause 12.3(d) and this clause 12.3(e) will reapply.

(f) Where there are Portions, for the purposes of this Deed and without affecting the Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion:

(i) no separate Date for Completion of the Works is specified in this Deed;

(ii) Completion of the Works is achieved by achieving Completion of all Portions;

(iii) Completion of the Works will be taken to have occurred once Completion of all Portions has occurred; and

(iv) the Date of Completion of the Works will be taken to be the Date of Completion of the last Portion to reach Completion.

12.4 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Contractor to the Principal's Representative under either of clauses 12.3(c) or 12.3(e) is not given by the Contractor yet the Principal's Representative is of the opinion that Completion of...
12.5 **Handover upon Completion**

The Contractor acknowledges that the Principal will require (in part) a progressive handover of the Works and that this handover will take place by the Contractor handing over each of Portion 3 and Portion 4 once that Portion has reached Completion. The Principal’s obligations under clause 3.1(b) in respect of the Site will then cease in respect of so much of the Site, access to which was provided for that Portion which is handed over to the Principal.

12.6 **Part of the Works or a Portion**

If a part of the Works or a Portion has reached a stage equivalent to Completion but another part of the Works or a Portion has not reached Completion and the parties cannot agree upon the creation of new Portions, the Principal’s Representative may determine that the respective parts will be Portions. The Principal may, after the Contractor is given written notice by the Principal’s Representative, occupy or use any part of the Works or a Portion although the whole of the Works or the Portion has not reached Completion.

If the Principal’s Representative gives any such notice:

(a) the Principal must allow the Contractor reasonable access to the part of the Works or the Portion referred to in the notice and being occupied or used by the Principal, to enable the Contractor to bring the Works or the relevant Portion of which the area being occupied or used forms part to Completion; and

(b) this will not otherwise limit or affect the obligations of the parties under this Deed, including the obligation of the Contractor to achieve Completion of the Works or the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Completion.

12.7 **Liquidated Damages for Delay in Reaching Completion**

(a) Subject to clause 12.7(b) and 12.7(f), if Completion of the Works or a Portion has not occurred by the Date for Completion for the Works or the Portion, the Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1 for every day after the Date for Completion of the Works or a Portion up to and including:

(i) the Date of Completion of the Works or the relevant Portion; or

(ii) the date that this Deed is terminated under clause 14,
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whichever is first.

(b) The Contractor acknowledges and agrees that the Completion of Portion 1 and Portion 2 by the relevant Date for Completion of those Portions is critical to ensure that the Contractor is able to achieve Completion of Portion 3 and Portion 4 by their respective Dates for Completion. In view of this all payments made by the Contractor, or amounts deducted by the Principal, in respect of any liquidated damages payable under clause 12.7(a) in respect of Portion 1 and Portion 2 will be held by the Principal on account pending Completion of Portion 3 and Portion 4 and:

(i) the event that liquidated damages are payable under clause 12.7(a) in respect of Portion 3 and Portion 4, such payments and deductions in respect of Portions 1 and 2, will be deducted from the amount for which the Contractor is liable under clause 12.7(a) in respect of Portion 3 and Portion 4; or

(ii) will be refunded to the Contractor to the extent to which such payments and deductions in respect of Portion 1 and Portion 2 exceed the amount for which the Contractor is liable under clause 12.7(a) in respect of Portion 3 and Portion 4.

Without limiting the previous part of this clause 12.7(b) where, on any single day, liquidated damages are payable in respect of the failure to achieve Completion of more than one Portion, then the liquidated damages for each Portion will be aggregated and the total payable for that day.

(c) The parties:

(i) agree that the amount of liquidated damages provided for in Schedule 1 constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Principal as a result of Completion of the Works or a Portion not occurring on or before the relevant Date for Completion (except for amounts referred to in clause 12.7(d));

(ii) desire to avoid the difficulties of proving damages in connection with such failure and agree that the liquidated damages payable by the Contractor in accordance with clause 12.7(a) are reasonable and do not constitute nor are they intended to be a penalty; and

(iii) agree that the amount of liquidated damages payable by the Contractor under clause 12.7(a) will be recoverable from the Contractor as a debt immediately due and payable to the Principal.

(d) The Contractor:
(i) acknowledges that the liquidated damages referred to in clause 12.7(a) do not include any allowances for any liability of the Principal to Other Contractors; and

(ii) must indemnify the Principal against any Claim that the Principal must pay to any Other Contractor as a result of a breach of clause 10.1 by the Contractor.

(dd) Notwithstanding clause 12.7(d)(ii), in relation to any Claim made by any Other Contractor against the Principal in respect of which the Principal is entitled to be indemnified pursuant to clause 12.7(d)(ii), the Principal must:

(i) take all reasonable measures to mitigate the effects of the Claim and any liability in connection with the Claim; and

(ii) give the Contractor prompt notification of the Claim and all information reasonably required by the Contractor.

(e) If clause 12.7(a) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages as a result of the Contractor failing to achieve Completion of the Works or a Portion by the relevant Date for Completion, but the Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the Contractor would have had if clause 12.7(a) had not been void, invalid or otherwise inoperative.

(f) The Contractor's aggregate liability under clauses 12.7(a), 12.7(d)(ii), 12.7(e) and under clause 3 of Schedule 26 is limited to the amount set out in Schedule 1.

12.8 Final Completion

(a) The Contractor must give the Principal's Representative written notice two months before it anticipates completing all the work to be completed prior to achieving Final Completion.

(b) The Principal's Representative and the Contractor's Representative must, within 28 days before the date the Principal's Representative expects Final Completion to occur, but no earlier than 28 days before the end of the latest Defect Rectification Period, jointly inspect the Works at a mutually convenient time.

(c) Following the joint Inspection under clause 12.8(b), the Principal's Representative must issue a notice to the Principal and the Contractor containing a list of the items that are apparent and it believes must be completed before Final Completion is achieved.
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(d) If the Principal's Representative issues a notice under clause 12.8(c), the Contractor must continue to bring the Works to Final Completion and thereafter when the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Final Completion in accordance with Schedule 8. Thereafter, the Principal's Representative and the Contractor's Representative must jointly inspect the Works at a mutually convenient time.

(e) Following the joint inspection under clause 12.8(d), the Principal's Representative must within 21 days of receipt of a notice under clause 12.8(d), or of receipt of a notice under clause 12.8(f), issue a notice to the Principal and the Contractor:

(i) if satisfied that Final Completion has been achieved, stating the date on which the Principal's Representative determines Final Completion was achieved; or

(ii) if not satisfied that Final Completion has been achieved:
   (A) containing a list of the items which it believes must be completed before Final Completion is achieved; or
   (B) stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 12.8(e)(ii)(A).

(f) If the Principal's Representative issues a notice under clause 12.8(e)(ii)(A) or clause 12.8(e)(ii)(B), the Contractor must continue to proceed to bring the Works to Final Completion and thereafter when it considers it has achieved Final Completion of the Works the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 12.8(d), clause 12.8(e) and this clause 12.8(f) will reapply.

12.9 Effect of Notice of Completion or Final Completion

A notice issued under clauses 12.3(d)(i) or 12.8(e)(i) will not:

(a) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this Deed;

(b) be taken as an admission or evidence that the Works or the Portion complies with the requirements of this Deed; or

(c) prejudice any rights or powers of the Principal or the Principal's Representative.
12.10 Deferral of Completion Requirement

The Principal's Representative may, in its sole discretion, defer the need for the Contractor to satisfy any specified elements of the requirements of Completion and issue a Notice of Completion of the Works or a Portion. In that event, the Principal's Representative will expressly endorse the Notice of Completion with details of the specific elements deferred and the Contractor must satisfy or achieve those elements within the time directed by the Principal's Representative.

12.11 Completion of Stage 10 of Operational Readiness

When the Principal's Representative is satisfied that the Contractor has completed stage 10 of Operational Readiness, the Principal's Representative must issue a notice to the Principal and the Contractor stating that stage 10 of Operational Readiness has been completed.

13. Care of the Work, Risks and Insurance

13.1 Care of the Works

Except where it arises from an Excepted Risk, and without limiting the generality of the Contractor's obligations, the Contractor:

(a) from and including the earlier of the date of commencement of work and the date on which the Contractor is given access to the Site, or a part of the Site, until 4:00pm on the Date of Completion of the Works or the last Portion to reach Completion will:

(i) be responsible for the care of and will bear the risk of, and indemnify the Principal against any loss of, or damage to:

(A) the Contractor's Activities;
(B) the Works;
(C) Temporary Works;
(D) Construction Plant;
(E) unfixed plant and materials (whether on or off the Site) the value of which has been included in a payment statement under clause 11.3; and
(F) things entrusted to the Contractor by the Principal or brought onto the Site by a Subcontractor for the purpose of carrying out the Contractor's Activities; and

(ii) provide the storage and protection necessary to preserve these things;
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(b) (after the time after which the Contractor ceases to be responsible under paragraph (a) for the care of a part of the Works or any other thing referred to in sub-paragraph (a)(i)) will bear the risk of, and indemnify the Principal against, any loss of or damage to that part of the Works or other thing, arising from:

(i) any act or omission of the Contractor during the Defects Rectification Period (including any extension under clause 8.6) or any other Contractor's Activities (including the Contractor's obligations under clause 2.18(c)); or

(ii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Works or other thing under paragraph (a) in connection with the Contractor's Activities; and

(c) will be responsible for the care of or for loss or damage to any item under this clause 13.1 unaffected by:

(i) the fact that under Schedule 22 the place in which the item is located is subject to the Control of the Contractor or an Other Contractor; or

(ii) any other provision of Schedule 22.

13.2 Other Risks

The Contractor must indemnify the Principal against:

(a) any loss of or damage to property of the Principal caused by, arising out of, or in any way in connection with, the Contractor's Activities;

(b) any liability to or claims by a third party in respect of loss of or damage to property, the loss of use of or access to property, or injury to or death of persons caused by, arising out of, or in any way in connection with, the Contractor's Activities; and

(c) (without limiting or otherwise affecting paragraphs (a) or (b)) any loss or damage to existing property in or upon which the Contractor's Activities are being carried out, caused by, or arising out of, or in any way in connection with, the Contractor's Activities,

but the Contractor's responsibility to indemnify the Principal will be reduced proportionally to the extent that an act or omission by the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor contributed to the loss, damage, injury or death, provided that the Contractor has complied with its obligations under clause 2.13(b)(ii).

The indemnity in this clause 13.2 will not:

(d) exclude any other right of the Principal to be indemnified by the Contractor; or
(e) apply to the extent to which the Contractor must indemnify the Principal under clause 13.1.

13.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage, and while the Contractor is responsible for its care, if loss or damage occurs to anything for which the Contractor is responsible under clause 13.1, the Contractor must:

(a) subject to paragraph (b), promptly replace or otherwise make good the loss or repair the damage; and

(b) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the Contractor, only comply with paragraph (a) to the extent directed by the Principal's Representative.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk (but subject to paragraph (b)), be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applied.

13.4 Works and Public Liability Insurance

Upon entering into this Deed, the policies of insurance, a summary of which is included in Exhibit D, will come into effect and will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted on the policies and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that it was provided with a copy of terms of the insurance policies in Exhibit D prior to the date of this Deed and it reviewed and examined the terms of those insurance policies and:

(a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;

(b) acknowledges that the policies of insurance included in Exhibit D do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit D; and

(c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the
insurance policies in Exhibit D or any insurance taken out under clause 13.4.

13.5 Contractor's Insurance Obligations

The effecting of insurance will not limit the liabilities or obligations of a party under any other provision of this Deed.

The Contractor must, or in the case of asbestos liability insurance, either the Contractor or its specialist asbestos removal Subcontractor must (if required by clause 13.5(a)(iii) below), before the Contractor commences the Contractor's Activities or as otherwise required by this Deed:

(a) effect and have in place the following insurance with insurers of the Required Rating:

(i) workers compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Contractor's Activities are being performed;

(ii) an insurance policy covering loss or damage to the Construction Plant;

(iii) if the Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, asbestos liability insurance;

(iv) professional indemnity insurance;

(v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Contractor's Activities, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances, and including:

(A) insurance against personal injury or death, as required under all applicable Laws; and

(B) in addition to the coverage provided under clause 13.4, insurance for third party property damage and personal injury or death;

(vi) if the things the care of which the Contractor is responsible for under clause 13.1 are in transit (including storage and transhipment) from any place outside of Australia, marine transit insurance on an "all risks" basis, including war, riots, strikes and civil commotion coverage covering those things until they are delivered to the Site, unpacked, inspected and confirmed as in sound condition;
(vii) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law; and

(viii) appropriate insurance (for replacement value) in respect of all materials being or to be fabricated overseas for the Works and any other insurance that the Principal may reasonably require the Contractor to obtain,

for amounts not less than the amounts (if any) referred to in Schedule 1;

(b) ensure the Construction Plant insurance, motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the Law), asbestos liability insurance and any insurance required by subparagraph (a)(vii):

(i) are policies that cover the Principal, the Principal’s Representative (including any appointee under clauses 9.2 or 9.3), the Contractor and all its Subcontractors as separate insureds, for their respective rights and interests, and their liabilities to third parties and liability to each other arising from the use of Construction Plant or Contractor's motor vehicles or from the disposal of asbestos;

(ii) cover loss or damage to property (other than property described in clause 13.1) and the death of or injury to any person (other than liability which the Law requires to be covered under a workers compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Contractor’s Activities;

(iii) includes a cross-liability clause in accordance with clause 13.9; and

(iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1;

(c) ensure the asbestos liability insurance is in place before any work involving asbestos or asbestos decontamination work commences;

(d) ensure that any insurance policy required by sub-paragraph (a)(vii) is in place before the Contractor’s Activities covered by such policies commence;

(e) ensure the professional indemnity insurance:

(i) covers claims for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its Subcontractors in carrying out the Contractor's Activities;

(ii) covers the Contractor for liability to the Principal arising from errors or omissions in:
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(A) design or documentation of the Works or the Temporary Works; or
(B) other professional services,
carried out by the Contractor or any of its Subcontractors; and

(iii) provide:
(A) cover for any amount in respect of any one claim of not less than; and
(B) cover for an amount in the aggregate of not less than,
the amount stated in Schedule 1;

(f) in relation to the workers compensation insurance or similar insurance:
(i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the Contractor's employees;
(ii) ensure that each of its Subcontractors has such workers compensation insurance or similar insurance covering the Subcontractor's employees; and
(iii) ensure it insures against liability for death of or injury to persons employed by the Contractor or its Subcontractors as required by any Law for an amount not less than the amount stated in Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law; and

(g) in relation to marine transit insurance, ensure that the policy:
(i) is in the name of the Contractor, and covers the Principal, the Principal's Representative, the Contractor and all its Subcontractors as separate insureds, for their respective rights and interests;
(ii) includes a cross-liability clause in accordance with clause 13.9;
(iii) includes a delayed unpacking clause and a 50:50 clause; and
(iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1.

13.6 General Insurance Policies

The Contractor must:

(a) in respect of any insurance policy (including an insurance policy which clause 2.2(c) of this Deed requires the Contractor to procure to be effected by a Subcontractor) which it is required to effect, or procure to be effected, pursuant to this Deed and where required by the Principal's Representative,
provide the Principal's Representative (or other person nominated for this purpose by the Principal's Representative) within 5 days of a request with:

(i) a certificate of currency to the Principal's Representative demonstrating that the policy is current and in compliance with the Contractor's obligation to insure (or procure insurance), or (where relevant) a licence as a self-insurer or other proof of being a self-insurer under the Workers Compensation Act 1987 (Cth); and

(ii) a certified copy of the insurance policy and any other evidence which may be reasonably necessary to satisfy the Principal's Representative that the policy is current and complies with the requirements of this Deed which shall be made available to the Principal or the Principal's Representative for viewing at the Contractor's offices or the office of the Contractor's insurance broker and the Contractor shall not be obliged to provide the Principal with a copy of the same;

(b) ensure that except for workers compensation or similar insurance:

(i) the Principal receives at least 30 days notice of any cancellation or material change of any insurance policy effected under clauses 13.4 or 13.5;

(ii) a notice of claim given to the insurer by the Principal, the Contractor or a Subcontractor will be accepted by the insurer as a notice of claim by the Principal, the Contractor and the Subcontractor; and

(iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice in writing to the Principal about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and

(c) ensure that it:

(i) does not do anything which prejudices any insurance;

(ii) where required, rectifies anything which might prejudice any insurance;

(iii) reinstates an insurance policy if it lapses;

(iv) does not cancel, materially vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;

(v) immediately notifies the Principal's Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and
(vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

If the Contractor fails to:

(d) provide copies of any insurance policy or make copies of any insurance policy available as required by clause 13.6(a)(ii) (including an insurance policy which clause 2.2(c) of this Deed requires the Contractor to procure a Subcontractor to effect) which the Contractor is required to effect together with evidence satisfactory to the Principal's Representative that the policy is current; or

(e) effect or procure to be effected insurance which is with insurers of the Required Rating, as required by clauses 2.2(c), 13.5 or 13.6, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Contractor to the Principal.

The Principal may refuse payment until the Contractor produces evidence of compliance with its insurance obligations under clauses 2.2(c) and 13.5 to the satisfaction of the Principal. The rights given by this clause 13.6 are in addition to any other right.

13.7 Period of Insurance

The insurance the parties are required to have in place under this clause 13 must be maintained:

(a) in the case of the works and public liability insurance policy required by clause 13.4, so as to provide cover until the later to occur of:

(i) the Contractor ceasing to be responsible under clause 13.1 for the care of anything; and

(ii) the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;

(b) in the case of the Construction Plant insurance:

(i) until the Contractor ceases to bear the risk of loss of or damage to anything under clause 13.1; and

(ii) at any time it is being used in connection with the Contractor's Activities;

(c) in the case of the workers compensation insurance and motor vehicle insurances, until the latest to occur of:
13.8 Notice of Potential Claim

The Contractor must:

(a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by this Deed (except for the professional indemnity insurance policy);

(b) keep the Principal informed of subsequent developments concerning the claim; and

(c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences that may give rise to a claim.

13.9 Cross Liability

Where this Deed requires insurance to be effected in joint names, or in the case of clauses 13.5(b)(i) and 13.5(g)(i), the party effecting the insurance must ensure that the insurance policy provides that:

(a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;

(b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;

(c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
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13.10 Loss or Damage to Third Party Property

(a) Without limiting clauses 13.1 and 13.2, where any loss of or damage to real or personal property (other than the Works, Temporary Works or Construction Plant) occurs arising out of, or in any way in connection with, the carrying out by the Contractor of the Contractor's Activities or a failure by the Contractor to comply with its obligations under this Deed, the Contractor must, at its cost, promptly repair any such loss or damage.

(b) Without limiting clause 16.14, if the Contractor fails to carry out any repair work under clause 13.10(a), the Principal may carry out such work and all costs, losses and damages so suffered or incurred by the Principal will be a debt due and payable from the Contractor to the Principal.

(c) The Contractor must immediately notify the Principal's Representative upon receipt of any letter of demand or notice of claim from or on behalf of any third party or any writ, summons, proceedings, impending prosecution or inquest and immediately forward a copy of any such documents to the Principal's Representative.

13.11 Risk of Deductibles

The Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 13.

14. Default or Insolvency

14.1 Default

(a) If the Contractor commits a breach of this Deed referred to below, the Principal may give the Contractor a written notice.

The breaches by the Contractor to which this clause applies are:

(i) not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this Deed, in breach of clause 10.1;

(ii) suspension of work, or failing to proceed with the Contractor's Activities with due expedition and without delay, in breach of clause 10.1;

(iii) failing to provide the security, in breach of clause 2.8;
(iv) failing to ensure that the Principal is promptly notified if the Contractor causes or contributes to the occurrence of an Incident in accordance with clause 2.16(d);

(v) failing to provide evidence of insurance, in breach of clause 13;

(vi) failing to use the materials or standards of workmanship required by this Deed, in breach of clause 4.1;

(vii) not complying with any direction of the Principal’s Representative made in accordance with this Deed, in breach of clause 9.1;

(viii) not complying with the requirements of this Deed regarding the Contract Management Plan in a material respect;

(ix) not complying with its obligations under clause A7 of Annexure A to the TfNSW Standard Requirements Prelude or the TfNSW Standard Requirements TSR T1 - Technical Management;

(x) not complying with its environmental obligations under this Deed or the TfNSW Standard Requirements;

(xi) not complying with its obligations under this Deed or the TfNSW Standard Requirements regarding work health and safety;

(xii) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 2.3; or

(xiii) any other failure to comply with a material obligation under this Deed.

(b) If the Principal fails to make a payment to the Contractor in breach of clause 11.5 of an amount greater than $10,000,000 (excluding any amount the Principal may set off under clause 16.12), the Contractor may give the Principal a written notice.

14.2 Contents of Notice

A written notice under clause 14.1 or clause 14.3(c) must:

(a) state that it is a notice under clause 14.1 or clause 14.3(c) (as the case may be);

(b) specify the alleged breach;

(c) require the party in breach to remedy the breach or, in the case of a notice by the Principal where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and

(d) specify the time and date by which the party in breach must remedy the breach or make other arrangements satisfactory to the non-breaching party (which time must not be less than 21 clear days after the notice is given).
14.3 Rights following Notice

(a) Upon giving a notice under clause 14.1(a), the Principal may suspend payments to the Contractor until the date upon which the Contractor remedies the breach or makes arrangements satisfactory to the Principal.

(b) If, by the time specified in a notice under clause 14.1(a), the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor:

(i) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or

(ii) terminate this Deed.

(c) If, by the time specified in a notice under clause 14.1(b), the Principal fails to remedy the breach or make arrangements satisfactory to the Contractor, the Contractor may give the Principal a second written notice.

(d) If, by the time specified in the notice under clause 14.3(c), the Principal fails to remedy the breach or make arrangements satisfactory to the Contractor, the Contractor may, by notice in writing to the Principal, terminate this Deed and clause 14.10 will apply.

14.4 Immediate Termination or Immediate Take Out

If:

(a) an Insolvency Event occurs:

(i) to the Contractor;

(ii) where the Contractor comprises more than one person, any one of those persons; or

(iii) to a person specified in Schedule 1;

(b) the Contractor is in fundamental breach of this Deed as set out in clause 2.9(b)(i);

(c) the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 2.16(d); or

(d) the Contractor’s aggregate liability under clauses 12.7(a), 12.7(d)(ii) and 12.7(e) reaches or exceeds the amount to which its aggregate liability is limited under clause 12.7(f),

then, whether or not the Contractor is then in breach of this Deed, the Principal may, without giving a notice under clause 14.1(a), exercise the right under clauses 14.3(b)(i) or 14.3(b)(ii).
14.5 Principal’s Common Rights After Take-Out or Termination

If:

(a) the Principal:
   (i) exercises its rights under clause 14.3(b)(i); or
   (ii) terminates this Deed under clauses 14.3(b)(ii), 14.4 or 14.9;

(b) the Contractor repudiates this Deed and the Principal otherwise terminates this Deed; or

(c) this Deed is frustrated under the Law,
then:

(d) the Contractor:
   (i) must novate to the Principal or the Principal’s nominee those Subcontracts between the Contractor and its Subcontractors that the Principal directs;
   (ii) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor’s attorney to:
      (A) execute, sign, seal and deliver all notices, deeds and documents; and
      (B) undertake actions in the name of the Contractor, for the purposes referred to in clause 14.5(d)(i); and
   (iii) must immediately hand over to the Principal’s Representative all copies of:
      (A) any documents provided by the Principal to the Contractor;
      (B) all Contract Documentation prepared by the Contractor to the date on which the Principal exercises its rights under clauses 14.3(b)(i) or 14.3(b)(ii) (whether complete or not); and
      (C) any other documents or information in existence that is to be provided to the Principal under the terms of this Deed; and

(e) the Principal:
   (i) will be entitled to require the Contractor to remove from the Site or any area affected by the Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Works;
   (ii) may complete that work;
(iii) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site, Remote Sites or Extra Land as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work; and

(iv) must, if it takes possession of the items referred to in clause 14.5(e)(iii):
   
   (A) for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 15; and

   (B) maintain the Construction Plant, Temporary Works or other things and, subject to clause 14.6, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 14.5(e)(iii) which are surplus.

This clause 14.5 will survive the termination or frustration of this Deed.

14.6 Principal’s Entitlements after Take-Out

(a) If the Principal exercises the right under clause 14.3(b)(i), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under this clause 14.6.

(b) When work taken out of the hands of the Contractor under clause 14.3(b)(i) is completed, the Principal’s Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate certifying the amount.

(c) If the cost incurred by the Principal is greater than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due to the Contractor from the Principal.

(d) Without limiting clause 14.6(c), if the Principal exercises the right under clause 14.3(b)(i), the Principal will be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
If the Contractor is indebted to the Principal, the Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 14.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the Contractor.

14.7 Parties' Rights after Termination

Subject to clause 14.11, if the Principal terminates this Deed under clauses 14.3 or 14.4, or if the Contractor repudiates this Deed and the Principal otherwise terminates this Deed:

(a) the Principal will:

   (i) subject to clause 14.7(b), not be obliged to make any further payments to the Contractor, including any money that is the subject of a payment claim under clause 11.2 or a payment statement under clause 11.3;

   (ii) be absolutely entitled to call, convert and have recourse to any unconditional undertaking held under clause 2.8; and

   (iii) be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and

(b) the Contractor will:

   (i) for work carried out prior to the date of termination, be entitled to an amount (determined by the Principal's Representative when the Principal has completed the work) that would have been payable if:

       (A) this Deed had not been terminated; and

       (B) the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination; and

   (ii) not be entitled to claim for any further payment of money (including for damages) in respect of the termination or for any other reason.

This clause 14.7 will survive the termination of this Deed.

14.8 Contractor's Rights after Repudiation or Wrongful Termination

(a) If the Principal:

   (i) repudiates this Deed and the Contractor terminates this Deed; or

   (ii) wrongfully:
(A) exercises or attempts to exercise any right or power conferred on it by clauses 14.3, 14.4 or 14.9; or

(B) determines or purports to determine this Deed at common law,

then the:

(iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 14.9 and the Contractor's sole rights in such circumstances will be those set out in clause 14.10; and

(iv) Contractor:

(A) will not be entitled to the payment of damages;
(B) will not be entitled to any payment on a quantum meruit basis; and
(C) waives all other rights it has to make a Claim in such circumstances.

(b) This clause 14.8 will survive the termination of this Deed.

14.9 Termination for Convenience

Without prejudice to any of the Principal's other rights or entitlements or powers under this Deed, the Principal may:

(a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor, and

(b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the Contractor's Activities or the Works either itself or by engaging Other Contractors.

14.10 Payment with Termination under Clause 14.9 or 14.3(d)

If the Principal terminates this Deed under clause 14.9 or the Contractor terminates this Deed under clause 14.3(d), the Contractor:

(a) will be entitled to payment of the following amounts as determined by the Principal's Representative:

(i) for work carried out prior to the date of termination, the amount which would have been payable if this Deed had not been terminated and the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination;
(ii) the cost of plant and materials reasonably ordered by the Contractor for the Works and for which it is legally bound to pay provided that:

(A) the value of the plant or materials have not been previously paid or included in the amount payable under sub-paragraph (a)(i); and

(B) title in the plant and materials vests in the Principal upon payment;

(iii) the reasonable cost of removing from the Site all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the Contractor's Activities that are not part of, or to be part of, the Works;

(iv) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the Contractor's Activities and not included in any other payment by the Principal; and

(v) the amount specified in Schedule 1, for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs (a)(ii), (a)(iii) and (a)(iv); and

(b) must take all steps possible to mitigate the costs referred to in sub-paragraphs (a)(ii) and (a)(iii).

To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 2.8 when the Contractor has complied with all its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.10 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Deed other than for the amount payable under this clause 14.10.

This clause 14.10 will survive the termination of this Deed by the Principal under clause 14.9 or the Contractor under clause 14.3(d).

14.11 Preservation of Rights

Subject to clause 14.8, nothing in this clause 14 or that the Principal does or fails to do pursuant to this clause 14 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 16.12) which it may have where the Contractor breaches (including repudiates) this Deed.
14.12 Termination by Frustration

If under the Law this Deed is frustrated the Principal will:

(a) pay the Contractor the following amounts as determined by the Principal's Representative:
   (i) an amount calculated in accordance with clause 14.10(a)(i) for work carried out prior to the date of frustration;
   (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 14.10(a)(ii); and
   (iii) the costs calculated in accordance with the terms of clauses 14.10(a)(iii) and 14.10(a)(iv); and

(b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 2.8 when the Contractor has complied with its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.12 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the frustration of this Deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Deed other than for the amount payable under this clause 14.12.

Without limiting any other provision of this Deed, this clause 14.12 will survive the frustration of this Deed.

14.13 Codification of Contractor's Entitlements

This clause 14 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

(a) cannot otherwise terminate, rescind or treat this Deed as repudiated; and

(b) waives all rights at Law to terminate, rescind or treat this Deed as repudiated,

otherwise than in accordance with this clause 14.

15. Disputes

15.1 Dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Deed, or either party's conduct before the date of this
Deed (Dispute), the Dispute must be determined in accordance with the procedure in this clause 15.

15.2 Notice of Dispute

Where such a Dispute arises, either party may give a notice in writing to the Principal’s Representative and the other party (Notice of Dispute). The Notice of Dispute must:

(a) specify the Dispute;

(b) provide particulars of the party’s reasons for being dissatisfied;

(c) set out the position which the party believes is correct; and

(d) in the case of a Dispute in respect of a direction of the Principal’s Representative under one of the clauses referred to in Schedule 1 (a Schedule 1 Dispute), be given in accordance with clause 15.4.

15.3 Request for further particulars

Where a Notice of Dispute is given by the Contractor, if the Contractor fails to provide sufficient particulars of the Dispute to enable the Principal’s Representative to properly consider the matter, then within 21 days after receipt of the Notice of Dispute the Principal’s Representative may request the Contractor to provide further particulars of the Dispute.

If within 14 days after the request the Contractor has not furnished the particulars sought, and where the Dispute relates to a Schedule 1 Dispute, then, whether the direction is by the Principal’s Representative or by a person appointed pursuant to clause 9.3(a)(i):

(a) the Contractor will be deemed to have accepted the Principal’s Representative’s direction as final and binding and the direction will not be capable of being challenged, opened up or reviewed in any forum; and

(b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.

15.4 Time for Submitting Notice of Dispute Concerning Principal’s Representative’s Direction

The parties acknowledge that any direction by the Principal’s Representative under one of the clauses referred to in Schedule 1 is an interim position only and that, without limiting the rights of the Principal’s Representative under clauses 11.3 or 11.15, either party may seek to have any such direction opened up, reviewed, decided and substituted pursuant to this clause 15 by giving a Notice of Dispute to the other party and the Principal’s Representative.
The Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any such direction by the Principal’s Representative in circumstances where it is incorrect, subsequently overturned pursuant to clause 15 or is unreasonable (other than in accordance with the corrected determination). The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal’s Representative is by giving a Notice of Dispute.

If the Contractor wishes to have a direction by the Principal’s Representative under one of the clauses referred to in Schedule 1 opened up, reviewed, decided and substituted, then, whether the direction is by the Principal’s Representative or by a person appointed pursuant to clause 9.3(a)(i), the Contractor must give a Notice of Dispute in respect of the Dispute to the Principal and the Principal’s Representative within 14 days of the date of the direction after which the Principal’s Representative may review the Dispute and make a determination in accordance with clause 15.5.

If the Contractor fails to give such a notice to the Principal and the Principal’s Representative within the time period required:

(a) the direction will be final and binding and will not be capable of being challenged, opened up or reviewed in any forum; and

(b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.

15.5 Determination of Schedule 1 Disputes by the Principal’s Representative

Upon receipt of a Notice of Dispute in respect of a Schedule 1 Dispute which is given in accordance with clause 15.4, the Principal’s Representative may review and make a determination in respect of the Dispute. The determination of the Principal’s Representative in respect of any such Notice of Dispute:

(a) must be in writing;

(b) must be given within 21 days after the Notice of Dispute is given or where further particulars have been requested under clause 15.1, within 21 days after the further particulars have been provided to the Principal’s Representative;

(c) will be substituted for the relevant direction the subject of the Notice of Dispute; and

(d) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.
If the Principal's Representative fails to make a determination as required by this clause 15.5 the direction the subject of the Notice of Dispute will be deemed to be confirmed by the Principal's Representative.

15.6 Referral to Dispute Resolution Board

(a) If a party wishes to refer a Dispute to the Dispute Resolution Board it must give notice in writing to the Principal's Representative and the other party (Notice of Intention to Refer Dispute):

(i) where the Dispute relates to a Schedule 1 Dispute:
   (A) within 14 days of the date of receipt of the Principal's Representative's determination under clause 15.5; or
   (B) where the Principal's Representative does not make a determination under clause 15.5, within 35 days after the Notice of Dispute is given, or where further particulars have been requested under clause 15.3, within 35 days after the further particulars have been provided to the Principal's Representative; or

(ii) where the Dispute for which a Notice of Dispute has been given does not relate to a Schedule 1 Dispute, within 14 days after the Notice of Dispute is given (for the avoidance of doubt, the making of a request for further particulars by the Principal's Representative pursuant to clause 15.3 will not extend this 14 day period where the Dispute for which a Notice of Dispute has been given does not relate to a Schedule 1 Dispute).

If a party gives a Notice of Intention to Refer Dispute as required by this clause 15.6(a), then unless the Dispute the subject of the Notice of Intention to Refer Dispute is resolved within 14 days after the Notice of Intention to Refer Dispute is given, either party may, by giving notice in writing to the other party and the Dispute Resolution Board in accordance with clause 15.6(b), require that those parts of the Dispute which remain unresolved be referred to the Dispute Resolution Board (Notice of Referral to DRB).

(b) A Notice of Referral to DRB must:

(i) be given within 21 days after the expiry of the:
   (A) 14 day period referred to in clause 15.6(a)(i)(A); or
   (B) 35 day period referred to in clause 15.6(a)(i)(B); or
   (C) 14 day period referred to in clause 15.6(a)(ii), as the case may be;
15.6 If a Notice of Dispute is served under this clause 15.5, the person served shall:

(ii) state that it is a Notice of Referral to DRB under this clause 15.6; and

(iii) include or be accompanied by reasonable particulars of those parts of the Dispute which remain unresolved.

15.7 Obtaining Dispute Resolution Board’s Decision

(a) The parties acknowledge and agree that:

(i) the person nominated in Schedule 1 is the Contractor’s nominated member of the Dispute Resolution Board;

(ii) the Principal will, after the date of this Deed, nominate a person as its nominated member of the Dispute Resolution Board and will notify the Contractor of that nomination;

(iii) following the nomination referred to in clause 15.7(a)(ii), the Principal and the Contractor authorise their nominated members to select the 3rd member of the Dispute Resolution Board (subject to the approval of the Principal and the Contractor (acting reasonably)) and insert all information into the DRB Agreement to make it ready for signing;

(iv) as soon as practicable following the approval by the Principal and the Contractor of the 3rd member of the Dispute Resolution Board under clause 15.7(a)(iii), the Dispute Resolution Board must be constituted and each member of the Dispute Resolution Board, the Principal and the Contractor must sign the DRB Agreement;

(v) the Principal and the Contractor must do anything necessary or desirable to ready the DRB Agreement for signing and have it signed by them and each member of the Dispute Resolution Board; and

(vi) if the Contractor fails to take a step contemplated by clauses 15.7(a)(iii) to 15.7(a)(v), the Contractor irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor’s attorney to:

(A) execute, sign, seal and deliver all notices, deeds and documents; and

(B) undertake actions in the name of the Contractor, for the purposes referred to in this clause 15.7.

(b) In performing its functions the Dispute Resolution Board must comply with this Deed and the DRB Agreement. If a Dispute is referred to the Dispute
Resolution Board under clause 15.6, the Dispute Resolution Board will be deemed to have received such reference on the date when the Notice of Referral to DRB is received by the chairperson of the Dispute Resolution Board. The decision of a Dispute by the Dispute Resolution Board under clause 15.7 must be made in accordance with the rules in Appendix 2 of Schedule 28 or such other rules that may otherwise be agreed between the parties.

(c) Both parties must promptly make available to the Dispute Resolution Board all such additional information, access to the Site, and appropriate facilities, as the Dispute Resolution Board may require for the purposes of making a decision on the Dispute.

(d) The Dispute Resolution Board will be deemed to be not acting as arbitrators.

(e) Notwithstanding anything else, to the extent permitted by Law, the Dispute Resolution Board will have no power to apply or have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

(f) Within 35 days after receiving a Notice of Referral to DRB under clause 15.6, or within such other period as may be proposed by the Dispute Resolution Board and approved by both parties, the Dispute Resolution Board must give its decision in writing, which will be reasoned and must state that it is given under this clause 15.7(f). The decision will be binding on both parties, who must give effect to it unless and until it is revised in an amicable settlement or an arbitral award made in an arbitration following a referral to arbitration pursuant to clause 15.8 which arises as a result of the issue of a notice of dissatisfaction in accordance with clause 15.7(g).

(g) If either party is dissatisfied with the Dispute Resolution Board's decision then either party may, within 14 days after receiving the decision, give notice to the other party of its dissatisfaction. If the Dispute Resolution Board fails to give its decision within the period of 35 days (or as otherwise approved) after receiving a Notice of Referral to DRB under clause 15.6, then either party may, within 14 days after this period has expired, give notice to the other party of its dissatisfaction. In either event, this notice of dissatisfaction must state that it is given under this clause 15.7(g), and must set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in clause 15.9 and clause 15.10, neither party will be entitled to commence arbitration of a Dispute unless a notice of dissatisfaction has been given in accordance with this clause 15.7(g).
(h) If the Dispute Resolution Board has given its decision as to a Dispute, and no notice of dissatisfaction has been given by either party under clause 15.7(g) within 14 days after it received the Dispute Resolution Board's decision, then the decision will become final and binding upon both parties.

(i) Once a decision of the Dispute Resolution Board has become final and binding under clause 15.7(h), neither party will be entitled to challenge the decision on the basis that a member of the Dispute Resolution Board did not, at the time of making the decision, meet the criteria referred to in clause 15.11(c).

15.8 Amicable Settlement
Where a notice of dissatisfaction has been given under clause 15.7(g), the parties may attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise, if no amicable settlement has been reached by the 14th day after the day on which notice of dissatisfaction was given, the Dispute will be taken to have been referred to arbitration under clause 15.13.

15.9 Failure to Comply with Dispute Resolution Board’s Decision
If in respect of any binding or final and binding decision of the Dispute Resolution Board a party fails to comply with the decision, then the other party may, without prejudice to any other rights it may have, refer the failure itself as a Dispute to arbitration under clause 15.13. In these circumstances clauses 15.1-15.7 will not apply to this reference and in making an award the arbitrator will not be entitled to open up and review the decision of the Dispute Resolution Board, including any decision in respect of which a notice of dissatisfaction was given in accordance with clause 15.7(g).

15.10 Expiry of Dispute Resolution Board’s Appointment
If a Dispute arises and there is no Dispute Resolution Board in place, whether by reason of the expiry of the Dispute Resolution Board's appointment or otherwise:

(a) clause 15.6 will still apply, but if the Dispute is not resolved within the relevant period referred to in clause 15.6(a), the Dispute will not be referred to the Dispute Resolution Board;

(b) clauses 15.7, 15.8 and 15.9 will not apply; and

(c) the Dispute may be referred directly to arbitration under clause 15.13.
15.11 Replacement of Dispute Resolution Board Member

(a) If a member of the Dispute Resolution Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:

(i) if that member is the chairperson, the remaining two members will appoint a replacement member; and

(ii) if that member is not the chairperson:

(A) if the parties have previously agreed upon one or more reserve members for the Dispute Resolution Board, and one or more such members are willing and able to act on the Dispute Resolution Board, the party that nominated the member to be replaced will appoint one of the reserve members to the Dispute Resolution Board; or

(B) if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Resolution Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.

(b) If, within 42 days of a member declining to act or being unable to act on the Dispute Resolution Board, the member has not been replaced by a person appointed in accordance with clause 15.11(a), either party may request the President of The Institute of Arbitrators and Mediators Australia to appoint a replacement member. This appointment will be final and conclusive.

(c) Any appointment or nomination made under clause 15.11(a) or 15.11(b) must be made in accordance with the criteria set out in Schedule 29.

15.12 Termination of Dispute Resolution Board

The appointment of any member of the Dispute Resolution Board may be terminated by mutual agreement of both parties, but not by the Principal or the Contractor acting alone. Unless otherwise agreed by both parties, the Dispute Resolution Board will terminate upon the later of:

(a) the Dispute Resolution Board having made a decision in accordance with clause 15.7 in respect of all Disputes that were referred to it; or

(b) the expiration of the last Defects Rectification Period.

15.13 Arbitration

Any Dispute which is referred to arbitration will be conducted before a person to be:
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(a) agreed between the parties; or
(b) failing agreement within 21 days after the Dispute has been referred to arbitration, appointed by the President for the time being of The Institute of Arbitrators and Mediators Australia.

To the extent that they are not inconsistent with this Deed, the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators and Mediators Australia will apply to the arbitration.

The seat of the arbitration will be Sydney, Australia.

The arbitrator will have power to grant all legal, equitable and statutory remedies and, subject to clause 15.9, to open up, review and substitute any decision of the Dispute Resolution Board under clause 15.7 that is not final and binding on the parties pursuant to clause 15.7(h).

Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

15.14 Survive Termination
This clause 15 will survive the termination of this Deed.

15.15 Continuation of Work
Despite the existence of a Dispute between the parties this Deed, the Contractor must:
(a) continue to carry out the Contractor’s Activities; and
(b) otherwise comply with its obligations under this Deed.

15.16 Urgent Relief
Nothing in this clause 15 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

15.17 Disputes under Third Party Agreements
(a) A Dispute under this Deed may be concerned with matters that also arise in respect of the respective rights and obligations of the Principal and a Third Party to one of the Third Party Agreements referred to in Schedule 1 (a Common Dispute) including where the:
   (i) Principal is in breach of a provision of this Deed to the extent such a breach is caused by a Third Party under its respective Third Party Agreement;
   (ii) Principal is entitled to obtain remedies or benefits under a Third Party Agreement referenced to a Claim by the Contractor under this Deed;
(iii) Contractor has rights against the Principal under a warranty or indemnity or specific right of reimbursement or recovery in this Deed, and there is a corresponding warranty or indemnity or specific right of reimbursement or recovery in a Third Party Agreement; or

(iv) Contractor has a Claim against the Principal and the Principal has a Claim against a Third Party based on the same or similar events or circumstances.

(b) In the event that there is a Common Dispute then:

(i) clauses 15.1 to 15.13 will not apply to the resolution of that Common Dispute; and

(ii) the Contractor acknowledges and agrees that the purpose of this clause 15.17 is:

(A) to provide the Contractor with comparable remedies and entitlements in respect of Common Disputes, and to limit the Contractor's rights against the Principal in respect of Common Disputes by reference to the Principal's rights and entitlements under or in connection with Third Party Agreements; and

(B) not to reduce or disentitle or otherwise affect the validity of any Claim by the Principal against a Third Party under, arising out of, or in any way in connection with the respective Third Party Agreement.

(c) In respect of all Common Disputes:

(i) the Contractor's entitlement to receive compensation from the Principal, and the Principal's liability to pay compensation to the Contractor, will only arise at the time the relevant Common Dispute is resolved or determined;

(ii) if any compensation is payable by the Principal to the Contractor under this Deed in respect of a Common Dispute, the Contractor will have the same entitlement to recover compensation under this Deed as the Principal has to recover that compensation from a Third Party under the respective Third Party Agreement;

(iii) any rights the Contractor has against the Principal will not exceed the equivalent relief, benefit or payment to which the Principal is entitled under the relevant Third Party Agreement; and

(iv) the Principal will pass through to the Contractor the proportion of the damages or other form or relief to which the Principal is entitled:
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(A) to the extent referable to the Contractor, including any liability, Claim or loss of the Contractor; and

(B) determined by reference to what is actually compensated or allowed by a Third Party under the respective Third Party Agreement.

(d) The Principal agrees to:

(i) request of the relevant Third Party that the Contractor be permitted to directly make representations in respect of the Common Dispute;

(ii) if it is unable to obtain the Third Party's consent as contemplated under clause 15.17(d)(i), make on behalf of the Contractor whatever representations in respect of the Common Dispute that the Contractor reasonably requests; and

(iii) provide:

(A) regular updates to the Contractor; and

(B) whatever information and documents the Contractor reasonably requests,

as to the progress of the Common Dispute.

(e) The Principal's liability to pay the Contractor:

(i) is satisfied by payment to the Contractor in accordance with this clause 15.17; or

(ii) if the Third Party is not liable to the Principal, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the respective Third Party Agreement or otherwise), provided that:

(A) the Principal has complied with its obligations under this clause 15.17 with respect to recovery of the Principal’s and the Contractor’s entitlements from the Third Party; and

(B) all appeals from such determination have been exhausted.

(f) The Contractor agrees:

(i) to provide all documents, assistance, and cooperation reasonably requested by the Principal (and in the time requested by the Principal) in connection with the Common Dispute;

(ii) that where a Third Party Agreement contemplates:

(A) alternative dispute resolution (including arbitration and expert determination):
(1) a like process will apply to the Common Dispute between the parties; and

(2) the Contractor consents to the Common Dispute being heard together with (or consolidated with) that alternative dispute resolution process, and

(B) litigation, the Contractor consents to the Common Dispute being consolidated with (or heard together with) that litigation; and

(iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects the Contractor's rights and obligations under this Deed.

(g) The Contractor's entitlement to a remedy will not be reduced to the extent to which the Principal's entitlements under a Third Party Agreement are reduced or extinguished due to the Principal's breach or failure to comply with the Third Party Agreement or other act or omission (to the extent not caused by the Contractor).

(h) To the extent the Contractor has recovered compensation in respect of a Common Dispute under another provision of this Deed, then the Contractor is not entitled to the same compensation under this clause 15.17.

(i) Any payment to which the Contractor is entitled under this clause 15.17 shall be paid by the Principal to the Contractor within 20 Business Days from the date of the settlement or determination of such entitlement under or in connection with the Third Party Agreement.

16. General

16.1 Notices

(a) Any notices contemplated by this Deed must be in writing and delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number that a party notifies to the others).

(b) A notice sent by post will be taken to have been received:

(i) in the case of international post, 7 Business Days after the date of posting; and

(ii) in the case of posting within Australia, 2 Business Days after the date of posting.

(c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of
the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

16.2 Law and Jurisdiction

(a) This Deed is governed by and will be construed according to the Laws of New South Wales.

(b) Where clause 15.16 applies:

(i) the parties irrevocably submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State of New South Wales with respect to any proceedings that are permitted to be brought at any time under clause 15.16; and

(ii) in respect of the jurisdiction referred to in clause 16.2(b)(i) the parties irrevocably waive any objection they may now or in the future have to the venue of any action or proceeding, and any claim they may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

16.3 No Waiver

(a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Deed.

(b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.

(c) No waiver by the Principal of:

(i) a breach of any term of this Deed; or

(ii) any other failure by the Contractor to comply with a requirement of this Deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.
16.4 Assignment
The Contractor cannot assign its rights or liabilities under this Deed without the prior written consent of the Principal and except on such terms and conditions as are determined in writing by the Principal.

16.5 Entire Agreement
This Deed and the Deed of Disclaimer constitute the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

(a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed and the Deed of Disclaimer; and

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

16.6 Joint and Several Liability
The obligations of the Contractor, if more than one person, under this Deed, are joint and several. Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

16.7 Severability
If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or

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

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

Nothing in this clause 16.8 prevents any other provision of this Deed, as a matter of interpretation also surviving the termination of this Deed.
It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed.

16.9 Stamp Duty and Other Fees

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Deed and the performance of its obligations in respect of this Deed.

16.10 Taxes

Without limiting clause 2.3 but subject to clause 18, the Contractor must pay all Taxes that may be payable in respect of the Contractor’s Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the Contractor’s Activities.

16.11 Confidentiality

(a) Subject to clause 16.11(b), the Contractor must:

(i) keep confidential this Deed and any information relating to the Contractor’s Activities and any discussions concerning this Deed;

(ii) not use the information referred to in sub-paragraph (a)(i) except as necessary for the performance of the Contractor’s Activities; and

(iii) ensure that each of its officers, employees and Subcontractors complies with the terms of sub-paragraphs (a)(i) and (a)(ii).

(b) The Contractor is not obliged to keep confidential any information:

(i) which is in the public domain through no default of the Contractor; or

(ii) the disclosure of which is:

(A) required by Law;

(B) consented to in writing by the Principal; or

(C) given to a court in the course of proceedings to which the Contractor is a party or to an expert or other person appointed under this Deed or an agreed arbitrator.

(c) The Contractor must:

(i) execute and submit to the Principal within 14 days of this Deed a Confidentiality Undertaking;

(ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
(iii) ensure that each Subcontractor, including suppliers and consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.

(d) The Contractor acknowledges that the Principal may disclose this Deed (and information concerning the terms of this Deed) under or in accordance with any one or more of the following:

(i) the Government Information (Public Access) Act 2009 (NSW); and

(ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability.

(e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under clause 16.11(d).

16.12 Right of Set-Off

The Principal may deduct from moneys otherwise due to the Contractor:

(a) any debt or other moneys due from the Contractor to the Principal (including any debt due from the Contractor to the Principal pursuant to section 26C of the SOP Act);

(b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act; or

(c) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise, whether under this Deed or otherwise at Law.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 2.8.

16.13 Entire Contract

Despite any progress payments that may be made to the Contractor under clause 11.5(a), this Deed is an entire contract.

16.14 Principal May Act

(a) The Principal may, either itself or by a third party, perform an obligation under this Deed that the Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.
(b) Where the Principal or the Principal's Representative is entitled under this Deed to exercise any right or power to:

(i) direct or instruct the Contractor to, or

(ii) itself step in to,

take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.

Where the Principal or the Principal's Representative does exercise any such right or power, the Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Works.

16.15 Unlimited Discretion

(a) Except as expressly provided in this Deed (including in clause 16.15(c)) no procedural or substantive limitation (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this Deed.

(b) Without limiting clause 16.15(a):

(i) except as expressly provided in this Deed (including in clause 16.15(c)) neither the Principal nor the Principal's Representative will be:

(A) constrained in the manner in which it exercises, or

(B) under any obligation to exercise,

any discretion, power or entitlement conferred by this Deed because of the operation of any legal doctrine which in any way limits or otherwise affects the express words used in the provision of this Deed conferring the discretion, power or entitlement; and

(ii) any approval or consent referred to in, or required under, this Deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) think fit, unless this Deed expressly provides otherwise.

(c) Nothing in this clause 16.15 will prevent the implication of a term into this Deed where the implication of the term is required to ensure that this Deed (or a part of this Deed) is not void or voidable due to uncertainty or any other legal principle.
16.16 No Partnership, Joint Venture or Other Fiduciary Relationship

Nothing in this Deed will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

16.17 Process Agent

If the Contractor is a foreign company (as defined in the Corporations Act 2001 (Cth)), the Contractor must:

(a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this Deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and

(b) obtain the process agent's consent to the appointment.

16.18 Indemnity

The Contractor must indemnify the Principal against:

(a) any liability to or claim by any other person (including any Third Party); and

(b) all costs, expenses, losses, damages, fines and penalties suffered or incurred by the Principal,

arising out of, or in any way connected with:

(c) the Contractor's breach of a term of this Deed;

(d) any obligation under any Third Party Agreement (including Draft Third Party Agreements and executed Third Party Agreements) which the Contractor is obliged to perform under clause 2.12(a)(ii);

(e) the Contractor’s Activities during a Track Possession or power isolation; or

(f) any Defect or the consequences of a Defect,

provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the liability claim, costs losses or damages.

16.19 Variations

Subject to clauses 2.12(b) and 6.3, this Deed may only be varied by a document signed by or on behalf of both the Principal and the Contractor.
16.20 Provisions Limiting or Excluding Liability

Any provision of this Deed which seeks to limit or exclude a liability of the Principal or the Contractor is to be construed as doing so only to the extent permitted by Law.
16.24 No Circularity

(a) In determining:

(i) whether an insurance policy extends to cover this Deed in respect of any matters referred to in clauses 16.21 or 16.22 and the liability (if any) of the Contractor arising out of or in connection with the matter; or

(ii) the amount recovered or recoverable by the Contractor under an insurance policy in connection with a matter referred to in clauses 16.21 or 16.22,

(together the Determinable Matters), the limitation on the Contractor's liability pursuant to clauses 16.21 or 16.22 will be disregarded and it must be assumed that the Contractor has paid in full the amount of its liability to the Principal (unlimited by clauses 16.21 or 16.22) in a manner which entitles the Contractor to claim under the relevant insurance policy.

(b) The Contractor waives and disclaims any right or entitlement it may now or in the future have, but for this clause 16.24(b), to:

(i) not disregard clauses 16.21 or 16.22, in connection with any determination of the Determinable Matters; or

(ii) do any of the following:

(A) claim or assert (including by way of defence, counter-claim or third party proceeding); or

(B) instigate, participate in, consent to, or lend its name to, any action or proceedings of any kind under which it is claimed or
asserted (including by way of defence, counter-claim or third party proceeding),

that clauses 16.21 or 16.22 are not to be disregarding in connection with the determination of the Determinable Matters.

(c) The parties agree that clauses 16.24(a) and 16.24(b) may be pleaded in bar to any claim or assertion by:

(i) the Contractor; or

(ii) any insurer;

in any Claim to the effect that clauses 16.21 or 16.22 are not to be disregarded as provided in clause 16.24(a).

(d) If for any reason in relation to a matter referred to in clauses 16.21 or 16.22:

(i) clauses 16.24(a) to 16.24(c) (or any of them) are unenforceable, void, voidable or illegal, clauses 16.21 and 16.22 will be of no force or effect and will be treated as if they were severed from, and had never been terms of, this Deed; and

(ii) the Contractor, or an insurer is for any reason not obliged to disregard, or is for any reason entitled to have regard to, clauses 16.21 and 16.22 in determining the Determinable Matters, then clauses 16.21 and 16.22 will treated as if they were severed from and had never been terms of, this Deed and as of no force or effect whatsoever against the person(s) who is so not obliged, or who is so entitled.

16.25 Proportionate Liability

(a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Principal and the Contractor under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

(b) To the extent permitted by Law:
the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and

(ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

(c) The Contractor must:

(i) in each Subcontract into which it enters for the carrying out of the work under this Deed or for the supply of materials or services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and

(ii) require each Subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the carrying out of the work under this Deed, a term that (to the extent permitted by Law) excludes the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

(d) The Contractor must ensure that all policies of insurance covering third party liability it is required by this Deed to effect or maintain (including the professional indemnity policy referred to in clause 13.5(a)(iv)):

(i) cover the Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the Civil Liability Act 2002 (NSW); and

(ii) do not exclude any potential liability the Contractor may have to the Principal under or by reason of this Deed.

(e) The powers conferred and restrictions imposed on a court by Part 4 of the Civil Liability Act 2002 (NSW) are not conferred on the Dispute Resolution
Board or any arbitrator appointed in accordance with the provisions of this Deed.

The Dispute Resolution Board or arbitrator (as the case may be) has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the Dispute Resolution Board or arbitration.

16.26 Prior Work

The Contractor agrees that the work in connection with the Contractor's Activities carried out by the Contractor prior to the date of this Deed will be deemed to be governed by the provisions of this Deed and will be deemed to be part of the Contractor's Activities and any payments made to the Contractor by the Principal prior to the date of this Deed in respect of the Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this Deed.

16.27 Design Life

(a) The Contractor waives any and all rights it may have under section 14 of the *Limitation Act 1969* (NSW) and section 109ZK of the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the design lives of the asset elements referred to in clause 2.8 of the Works Brief where those design lives are for periods longer than those provided for in those Acts.

(b) If the waiver referred to in clause 16.27(a) is held to be without effect or otherwise unenforceable, or if it is severed from this Deed, the Contractor shall indemnify and keep the Principal indemnified at all times from and against all costs that the Principal may suffer or incur out of the Principal's loss of the benefit of the waiver.

(c) The indemnity in clause 16.27(b) is to continue and remain in full force and effect until the expiration of the last of the design lives referred to in clause 2.8 of the Works Brief.

(d) The parties agree that any action by the Principal on the indemnity in clause 16.27(b) is not a "building action" for the purposes of section 109ZI of the *Environmental Planning and Assessment Act 1979* (NSW).

16.28 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
16.29 Personal Property Securities Act

(a) By signing this Deed, the Contractor acknowledges and agrees that if this Deed and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (Security Interest), the Contractor shall do anything (including amending this Deed or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal reasonably considers necessary under or as a result of the PPS Law for the purposes of:

(i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;

(ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or

(iii) enabling the Principal to exercise rights in connection with the Security Interest and this Deed.

(b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.

(c) The Contractor:

(i) acknowledges that the Security Interests created under or pursuant to this Deed relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);

(ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and

(iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.

(d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.

(e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
16.30 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

16.31 Australian Government Requirements

(a) The National Code of Practice for the Construction Industry (Code of Practice) is applicable to the Works. The Contractor must comply, and ensure that its Subcontractors comply, in the performance of this Deed, with the requirements of the Code of Practice and the Implementation Guidelines. Copies of the Code of Practice and Implementation Guidelines are available at www.deewr.gov.au/building.

(b) Compliance with the Code of Practice or the Implementation Guidelines will not relieve the Contractor from its responsibility to perform this Deed, or from liability for any Defect in the Works arising from compliance with the Code of Practice or the Implementation Guidelines.

(c) Where a change in this Deed is proposed and that change would affect compliance with the Code of Practice or the Implementation Guidelines, the Contractor must submit a report to the Commonwealth specifying the extent to which our compliance with the Code of Practice or the Implementation Guidelines will be affected.

(d) The Contractor must maintain adequate records of the compliance with the Code of Practice and Implementation Guidelines by the Contractor and its Subcontractors.

(e) The Contractor must permit the Commonwealth or any person authorised by the Commonwealth, including the Office of the Australian Building and Construction Commissioner or any successor of it, to have access to:

(i) inspect any work, material, machinery, appliance, article or facility;

(ii) inspect and copy any record relevant to the Works and the Contractor's Activities; and

(iii) interview any person,

as is necessary to allow validation of the Contractor's process in complying with the Code of Practice and the Implementation Guidelines. The Contractor will require Subcontractors and Related Parties to maintain and provide access as described in this clause 16.31(e) for the Commonwealth.
or any person authorised by the Commonwealth to the same extent as required from the Contractor by this clause.

(f) The Contractor agrees that it and its Related Parties will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

(g) If the Contractor does not comply with the requirements of the Code of Practice or the Implementation Guidelines in the performance of this Deed such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related corporation in respect of work funded by the Commonwealth or its agencies.

(h) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Contractor may give preference to Subcontractors that have a demonstrated commitment to:

(i) adding and/or retaining trainees and apprentices;

(ii) increasing the participation of women in all aspects of the industry; or

(iii) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.

(i) The Contractor must not appoint a Subcontractor in relation to the Works where:

(i) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or

(ii) the Subcontractor has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.

(j) The Contractor must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the requirements of this clause.
17. Notification of Claims

17.1 Notice of Variation

If a direction by the Principal's Representative, other than a Variation Order under clause 6.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

(a) within the time specified in Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Variation;

(b) within the time specified in Schedule 1 of giving the notice under paragraph (a), submit a written Claim to the Principal's Representative, which includes the details required by clause 17.3(b); and

(c) continue to carry out the Contractor's Activities in accordance with this Deed and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 17.1.

17.2 Notice of Other Claims

If the Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this Deed by the Principal) under, arising out of, or in any way in connection with, this Deed, the Contractor's Activities or the Works, including anything in respect of which:

(a) it is otherwise given an express entitlement under this Deed; or

(b) this Deed expressly provides that:

(i) specified costs are to be added to the Contract Sum; or

(ii) the Contract Sum will be otherwise increased or adjusted,

as determined by the Principal's Representative, the Contractor must give the Principal's Representative the notice required by clause 17.3(a) and a Claim in accordance with clause 17.3(c).

17.3 Prescribed Notices

(a) Any written notice referred to in clauses 17.1 and 17.2 must:

(i) be provided not later than the time specified in Schedule 1 after the first occurrence of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
(ii) expressly specify:

(A) that the Contractor proposes to make a Claim; and

(B) the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.

(b) Any written Claim referred to in clause 17.1(b) must include:

(i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;

(ii) the provisions of this Deed or other legal basis upon which the Claim is based; and

(iii) details of the amount claimed and how it has been calculated.

(c) Any written Claim referred to in clause 17.2 must:

(i) be provided not later than the time specified in Schedule 1 of giving the written notice under clause 17.3(a); and

(ii) include:

(A) detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;

(B) the legal basis for the Claim, whether based on a term of this Deed or otherwise, and if based on a term of this Deed, clearly identifying the specific term;

(C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and

(D) details of the amount claimed and how it has been calculated.

17.4 Submission of Claims

Claims submitted by the Contractor under clauses 17.1(b) and 17.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.

If within 28 days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 28th day.
17.5 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 17.3(b) or 17.3(c) every 28 days after the written Claim under clause 17.1(b) or 17.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

17.6 Bar

If the Contractor fails to comply with clauses 2.3(g), 15.1, 15.2, 15.3, 15.4, 17.1, 17.2, 17.3 or 17.5:

(a) the Principal will not be liable upon any Claim by the Contractor; and

(b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

17.7 Other Provisions Unaffected

Nothing in clauses 17.1 to 17.6 will limit the operation or effect of any other provision of this Deed that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

18. General Provisions Relating to GST

(a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Deed are exclusive of GST.

(b) If GST is or becomes payable on a supply made by a party (Supplier) under or in connection with this Deed, including the Contractor's Activities or the Works, the party providing consideration for the supply must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.

(c) Subject to clause 18(e), any amount payable under clause 18(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
(d) If any party is required under this Deed to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.

(e) Notwithstanding any other provision of this Deed, a party will not be obliged to pay any amount in respect of GST to the other party (whether under this clause 18 or otherwise) unless and until a tax invoice that complies with the GST Legislation has been issued by the Supplier in respect of that taxable supply.

(f) Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to:

(i) enable or assist the other party to claim input tax credits to the maximum extent possible; or

(ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Deed.

(g) If the GST payable in relation to a supply made by the Supplier under this Deed varies from the additional amount paid by the other party under this clause 18 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

(h) In this clause 18:

(i) terms defined in GST Legislation have the meaning given to them in GST Legislation; and

(ii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.
Schedules

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<td>36</td>
<td>Form of Interface Agreement Deed Poll</td>
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</table>
1. Contract Particulars

Commencement Date: The date of execution by the last party to execute the Deed.
(Clauses 1.1 and 1.7)

Conditions Precedent to Completion: Nil in addition to those expressed elsewhere in the Deed.
(Clause 1.1)

Date for Completion:
 Portion 1 - 9 December 2013
 Portion 2 - 3 February 2014
 Portion 3 - 2 March 2015
 Portion 4 - 31 May 2015

Defects Rectification Period: The Defect Rectification Period will be, for
(Clause 1.1)

| Portion 1 | the period commencing on the Date of Completion of Portion 1 and expiring 12 months after the Date of Completion of Portion 3. |
| Portion 2 | the period commencing on the Date of Completion of Portion 2 and expiring 12 months after the Date of Completion of Portion 3. |
| Portion 3 | the period commencing on the Date of Completion of Portion 3 and expiring 12 months after the Date of Completion of Portion 3. |
| Portion 4 | the period commencing on the Date of Completion of Portion 4 and expiring 12 months after the Date of Completion of Portion 4. |

Is a Design Program required? Yes
(Clause 1.1)
Northern Sydney Freight Corridor
Gosford Passing Loops Project

Environmental Representative:
(Clause 1.1)

Other Excepted Risk:
(Clause 1.1)
Nil in addition to those expressed elsewhere in the Deed.

Is a First Hundred Day Program required?
(Clause 1.1)
Yes

Interface Contractors:
(Clause 1.1)
(a) RailCorp;
(b) Worksite protection contractor;
(c) Gosford City Council;
(d) Telstra Corporation;
(e) Jemena Corporation;
(f) Optus; and
(g) Ausgrid.
Northern Sydney Freight Corridor
Gosford Passing Loops Project

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

<table>
<thead>
<tr>
<th>Nominated Subcontract Works</th>
<th>Nominated Subcontractor</th>
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| Signalling works set out in Appendix J of the Works Brief | • Downer EDI Works
• O'Donnell Griffin |

<table>
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<tr>
<th>Equipment Group Supplied</th>
<th>Equipment Items Supplied</th>
<th>RailCorp Specific Requirements (additional to Australian Standards and RailCorp Standards)</th>
<th>Nominated Subcontractor</th>
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| Turnout Steel Components | Standard Crossing | Policy Number APP 2010/11 - 1 ESC 250 Turnouts and Special Trackwork | • Bathurst RailFabrication Centre
• VAE(VOESTALPINE VAE RAILWAY SYSTEMS)
• PRE (PACIFIC RAIL ENGINEERING)
• Flowserve (VOSSLOH COGIFER AUSTRALIA P/L) |
| | CV or Manganese Crossings | Policy Number APP 2010/11 - 1 ESC 250 Turnouts and Special Trackwork | |
| | Monobloc In Bearer | Policy Number APP 2010/11 - 1 ESC 250 Turnouts and Special Trackwork | |
| | Turnouts | Policy Number APP 2010/11 - 1 ESC 250 Turnouts and Special Trackwork | |
| | Catchpoints | Policy Number APP 2010/11 - 1 ESC 250 Turnouts and Special Trackwork | |
| Overhead Wiring | Catenary | - | • Olex |
| | Contact | - | • Metal Manufactures |
| | Droppers (sets) and Inspan Feeders | - | • RailCorp (Mfg by RailCorp REC) |
| Signalling Equipment | Track Circuits | - | • UGL (Alstom)
• Bombardier
• Ansaldo (Union Switch) |
| | Signal Cupboards | Jeumont Schneider Track Circuits - SC07420000EQ (June 1999) | • Garard |
| | Relays | - | • INVENSYS |
| | Signals | - | • INVENSYS/UGL/Aldridge |
| | Train stops | - | • INVENSYS |
| | Points | - | • INVENSYS/VAE |
| | Microlock | - | • Ansaldo(Union Switch) |
## Northern Sydney Freight Corridor

### Gosford Passing Loops Project

<table>
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<tr>
<th>Cables</th>
<th>Low Smoke Halogen Free Cables</th>
<th>33kv</th>
<th>Testing of HV Cables - EP20 00 00 20SP</th>
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<td>Metal Manufactures - Olex</td>
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<td>Metal Manufactures - Olex</td>
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<td>11kv Indoor Switchgear</td>
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<td>schneider sm6</td>
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<td>Substation Fencing</td>
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<td>D&amp;C to Advice</td>
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<th>Transformers/ Switchgear/ Electrical</th>
<th>11kv/415v Padmount Substations</th>
<th>Correspondence DI-CP-00565 (24/1/07): Electrical Engineering Standards - EP 97 00 00 01 SP; EP 16 00 00 02 SP; EP 01 00 00 03 SP.</th>
<th>Schneider</th>
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<td>1500V DC Isolator</td>
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<td>Australian Rail Technology</td>
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<td>Common Equipment Panel</td>
<td>-</td>
<td>United Group</td>
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<tr>
<td>Harmonic Filter - Truck Mounted</td>
<td>-</td>
<td>UGL</td>
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<tr>
<td>Trackside Isolator</td>
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<td>Edward Keller - Australian Rail Technology</td>
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<td>SCADA RTU</td>
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<td>Foxboro (invensys) - Logica CMG - Kingfisher</td>
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<td>Auxiliary Transformer</td>
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<td>Elf Electronics</td>
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<td>Cordex by Complete power solutions</td>
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<td>Hoppecke - Battery Energy - Sonnenschein</td>
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<th>HV Transmission Lines</th>
<th>High Voltage Poles</th>
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<th>60kg Head Hardened Rail (meters)</th>
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<td>60kg Plain Carbon</td>
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<td>Glued Insulated Joints</td>
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<td>Bathurst Rail Fab. Centre</td>
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## Northern Sydney Freight Corridor
### Gosford Passing Loops Project

**Original Contract Price:** $91,929,187  
(Clause 1.1)

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<th>Portions:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(Clause 1.1)</td>
<td></td>
</tr>
</tbody>
</table>

| Portion 1 | Design, construct and commission the new CSR to incorporate:  
(1) the relocation of communication cables on the Up and Down side of the Rail Corridor (to enable cutover from Gosford Signal Box to the Splice Pit at Narrara Station);  
(2) the relocation of 50.9B Loc, 50.9C Loc and 51.9 Loc; and  
(3) the cutover and commissioning of signal cables between 50.9 Loc and 51.9B Loc. |
| Portion 2 | Relocate 50.9 Loc; and cutover and commission signal cables between Frame D, 50.8 Loc and 50.9 Loc into the new CSR. |
| Portion 3 | Design, construct, commission and handover of the Works to enable operation of the Up and Down Main and Relieve Lines, including the completion of Stage 9 of Operational Readiness. |
| Portion 4 | All remaining Contractor’s Activities including rectification of defects identified at the Completion of Portions 1, 2 and 3; and reinstatement works to enable handover of Worksites. |
Northern Sydney Freight Corridor
Gosford Passing Loops Project

Principal's Representative:
(Clause 1.1)
Northern Sydney Freight Corridor Program Director
Transport for New South Wales
Level 5, Tower A, Zenith Centre, 821 Pacific Highway,
Chatswood NSW, 2067

Project Safety Management Plan:
Nil
(Clause 1.1)

Provisional Sum Work:
(Clauses 1.1, 7.3 and 11.20(a))

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<tr>
<th>No</th>
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<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Reimbursable Work in accordance with Schedule 9</td>
<td>Provision of personnel and equipment that will be required for the Reimbursable Signalling Works</td>
</tr>
<tr>
<td>2</td>
<td>Reimbursable Work in accordance with Schedule 9</td>
<td>Stage 10 of Operational Readiness undertaken by Contractor’s personnel specified in Schedule 9.</td>
</tr>
<tr>
<td>3</td>
<td>CSR route construction between Ch84.000km to Ch84.793km</td>
<td>Provision of personnel, plant and materials (i.e. cable route, signalling cables, communication cables, ULX, location boxes and signal building etc) and associated</td>
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TfNSW
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<tbody>
<tr>
<td></td>
<td></td>
<td>works that will be required for the construction of CSR route between Ch84.000km to Ch84.793km.</td>
</tr>
<tr>
<td>4</td>
<td>Telstra Services</td>
<td>Provision of the design and works for protection and/or relocation of the Telstra Services items 13, 15, 17, 19, 21 and 22 tabled in Clause 4.3.1(d) of the Works Brief. Provision of Optus ducts where Telstra Services are relocated. For the avoidance of doubt the Provisional Sum Work excludes interface with Telstra and the project management in relation to the Telstra works.</td>
</tr>
<tr>
<td>5</td>
<td>Optus Services</td>
<td>Provision of the design and works for relocating the Optus Service Item 12, tabled in Clause 4.3.1(e) of the Works Brief. The Provisional Sum Work includes relocation of the Optus Fibre Optic Services:</td>
</tr>
</tbody>
</table>
Third Party Agreements:
(Clauses 1.1 and 2.12(b))

(a) Interface Agreement between Transport for NSW (Transport Projects Division) and Rail Corporation New South Wales; and

(b) Road Rail Interface Agreement between Transport for New South Wales (Transport Project division) and Gosford City Council.

Working days:
(Clause 1.2(m))

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

Order of Precedence:
(a) General Conditions and the Schedules; then
(Clause 1.4(b))

(b) the TfNSW Standard Requirements; then

(c) the Works Brief; then

(d) the Exhibits not specifically stated in (b) or (c).

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

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

SMEC and all other Subcontractors carrying out design.

Subcontractors minimum amount of professional indemnity insurance required:
(Clauses 2.2(c)(i)(B))

Subcontractors minimum period prior to expiry of professional indemnity insurance
(Clauses 2.2(c)(i)(D))

6 years

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

Subcontracts with an initial price of $[redacted] or greater.

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

Subcontracts with an initial price of $[redacted] or greater.
(Clause 2.2(f)(iv)(B)) All subcontracts and consultant engagements which include an element of design.
<table>
<thead>
<tr>
<th>Item</th>
<th>Scope of Warranty</th>
<th>Warranty Period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BUILDING WORKS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paint finishes and coatings to metals</td>
<td>Adhesion, film integrity and colour retention</td>
<td></td>
</tr>
<tr>
<td>Clear coatings and graffiti resistant coatings on timber, concrete and paving</td>
<td>Against corrosion / perforation and delamination of finish</td>
<td></td>
</tr>
<tr>
<td>Metal louvers</td>
<td>Against corrosion/perforation of the sheeting and delamination of the finish from substrate</td>
<td></td>
</tr>
<tr>
<td>Concrete finishes</td>
<td>Integrity and colour fastness</td>
<td></td>
</tr>
<tr>
<td>Concrete Pavers</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td><strong>CIVIL WORKS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sealants, expansion joints</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Waterproof membranes</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td><strong>SIGNALLING</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cables</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Signals, Main Line Signals, LED type</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Subsidiary Signals - dwarf colour light, LED type</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Warning Lights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Train Stops (2 years from supply, 1 year from service)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Points (2 years from supply, 1 year from service)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Northern Sydney Freight Corridor
#### Gosford Passing Loops Project

<table>
<thead>
<tr>
<th>Component</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interlockings</td>
<td>-</td>
</tr>
<tr>
<td>Impedance Bond</td>
<td>-</td>
</tr>
<tr>
<td>Relays</td>
<td>-</td>
</tr>
<tr>
<td>Ethernet Switches</td>
<td>-</td>
</tr>
<tr>
<td>Signalling Power supplies, Transformers, UPS</td>
<td>-</td>
</tr>
<tr>
<td>Other signalling components and compressed air components</td>
<td>-</td>
</tr>
<tr>
<td><strong>ELECTRICAL</strong></td>
<td></td>
</tr>
<tr>
<td>Uninterruptable power supply including batteries</td>
<td>-</td>
</tr>
<tr>
<td><strong>FIRE PROTECTION</strong></td>
<td></td>
</tr>
<tr>
<td>Smoke and thermal detectors</td>
<td>-</td>
</tr>
<tr>
<td><strong>OHW STRUCTURES</strong></td>
<td></td>
</tr>
<tr>
<td>Hot dip galvanisation of OHW structures</td>
<td>-</td>
</tr>
</tbody>
</table>

**Parent Company Guarantor:**

Downer EDI Limited (ABN 97 003 872 848)
Triniti Business Campus, 39 Delhi Road, North Ryde
NSW 2113

**Period after notice for inspection of Contemporaneous Work:**

14 days

(Clause 2.11(a))
### Working hours and working days:

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:

Nil

### Rates for determining increase in Contract Sum for failure to give access:

Not used

### Number of copies of documentation and Design Documentation:

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

---

(Clause 2.17)

(Clause 3.1(c)(ii)(E))

(Clause 3.1(e)(ii))

(Clauses 2.13(b)(vii), 3.9(d)(ii), 5.5 and 9.14(p))
Percentages to be applied to Variation and daywork costs: (Clause 6.4 and 6.7)

<table>
<thead>
<tr>
<th>Clause No</th>
<th>Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.4(b)(i)(C), 6.4(b)(ii)(A)</td>
<td>For Overhead Costs and profit where there is an increase in the Contract Sum due to a Variation</td>
<td></td>
</tr>
<tr>
<td>6.4(b)(i)(D), 6.4(b)(ii)(B)</td>
<td>For off-site overheads described in clause 33.2 of Schedule 33 and profit where there is a decrease in the Contract Sum due to a Variation</td>
<td></td>
</tr>
<tr>
<td>6.7</td>
<td>For Overhead Costs and profit where works are to be carried out as dayworks</td>
<td></td>
</tr>
</tbody>
</table>

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 expiry date: (Clause 8.6(b)(v))

The date that is 12 months following completion of the rectification of the Defect (or the part) or completion of the Variation work (as the case may be).
Contractor's Personnel:
(Clauses 9.5(a)(i) and 9.5(b)(i))
- Contractor's Representative
- Project Director
- Project Manager
- Design Manager
- Engineering Manager
- Construction Manager
- Commissioning Manager
- Interface Manager
- OHS Manager
- Rail Safety Manager
- Safety Assurance Manager
- Environmental Manager
- Communications Manager
- Civil Superintendent
- Rail System Superintendent
- Quality Manager
- Signalling Manager

Number of copies of report:
(Clauses 9.10(b))
- 1 printed original
- 3 printed copies
- Electronic version on CD (in both pdf and native formats)

Causes of delay entitling Contractor to claim extension of time:
(Clauses 10.7(a)(ii))
- 
- 
- 
- 
- 
- 
- 
-
Rates to be used in determining delay damages:
( Clause 10.13)
Northern Sydney Freight Corridor
Gosford Passing Loops Project

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))

Amount of Contractor's insurance: 
(Clause 13.5)

- Workers compensation insurance as required by Law
- Construction Plant insurance current market 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
- 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
Period for Professional Indemnity Insurance: 6 years (Clause 13.7(d))

Person in Insolvency Event: Downer EDI Limited (ABN 97 003 872 848) (Clause 14.4(a)(iii))
Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113

Amount for termination for convenience: (Clause 14.10(a)(v))
of the cost determined under clauses 14.10(a)(ii), 14.10(a)(iii) and 14.10(a)(iv).

Clauses in respect of which directions of a Principal's Representative are subject of a Dispute (Clauses 15.2, 15.4, 15.5 and 15.6(a))
2.3(g)(ii)(C), 2.11(e), 3.1(e)(ii), 3.9 (h), 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

Contractor's nominated member of the Dispute Resolution Board (Clause 15.7(a)(i))

Third Party Agreements to which Clause 15.17 applies: Nil (Clause 15.17(a))
<table>
<thead>
<tr>
<th>Addresses:</th>
<th>Principal:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Clause 16.1(a))</td>
<td>Level 5, Tower A, Zenith Centre,</td>
</tr>
<tr>
<td></td>
<td>821 Pacific Highway,</td>
</tr>
<tr>
<td></td>
<td>Chatswood NSW 2067;</td>
</tr>
<tr>
<td></td>
<td>Fax: 02 9200-0290</td>
</tr>
<tr>
<td>Principal's Representative:</td>
<td>Level 5, Tower A, Zenith Centre,</td>
</tr>
<tr>
<td></td>
<td>821 Pacific Highway,</td>
</tr>
<tr>
<td></td>
<td>Chatswood NSW 2067;</td>
</tr>
<tr>
<td></td>
<td>Fax: 02 9200-0290</td>
</tr>
<tr>
<td>Contractor:</td>
<td>Triniti 3, Triniti Business Campus,</td>
</tr>
<tr>
<td></td>
<td>Level 2, 39 Delhi Road, North</td>
</tr>
<tr>
<td></td>
<td>Ryde NSW 2113</td>
</tr>
</tbody>
</table>

| Time for giving notices: | 14 days |
| (Clauses 17.1(a) and 17.3(a)) |

| Time for written Claims: | 28 days |
| (Clauses 17.1(b) and 17.3(c)) |
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.

<table>
<thead>
<tr>
<th>Purposes</th>
<th>Description of Part of Temporary Works</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Compound Establishment</td>
<td>Establishment of the Site, site compounds, perimeter and other fencing as required by this Schedule 3 including:</td>
<td>Within the Site.</td>
</tr>
<tr>
<td></td>
<td>(a) provision of all amenities for the Contractor’s employees and Subcontractors:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) provision of all site office facilities for the Principal in accordance with clause 3.3 of this Schedule 3; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) connection of all required Services (including utilities, water, power, sewer, telephone and all utility permits).</td>
<td></td>
</tr>
<tr>
<td>Erosion Control</td>
<td>Soil and erosion control measures during the construction and landscape establishment phases;</td>
<td>Within the Site.</td>
</tr>
<tr>
<td>Fencing Type BB</td>
<td>Temporary fences with height and construction sufficient to prevent unauthorised access and provide security that complies with AS4687-2007. In addition, a minimum of two (2) layers of blue shade cloth (Pantons/PMS 281) (as approved by the Principal’s Representative) is to provide a solid visual screen.</td>
<td>As identified on the Site Drawings in Exhibit H of the Deed where the Contractor is required to install temporary fencing as per statutory requirements. In addition, approval and confirmation from RailCorp is required for installation of such fencing.</td>
</tr>
<tr>
<td>Fencing Type CC</td>
<td>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</td>
<td>As identified on the Site Drawings in Exhibit H of the Deed where the Contractor is required to install permanent fencing in accordance with the Principal’s Design.</td>
</tr>
<tr>
<td>Purposes</td>
<td>Description of Part of Temporary Works</td>
<td>Location</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Fencing Type DD</td>
<td>Temporary fence with height and construction sufficient to prevent unauthorised access and provide security that complies with AS4687-2007. Note: At this point no areas are identified. The Contractor is to assess such areas.</td>
<td>In addition, approval and confirmation from RailCorp is required for installation of such fencing. As required within the corridor where the Contractor is required to install temporary fencing. Approval and confirmation from RailCorp is required for any such changes.</td>
</tr>
<tr>
<td>Fencing Type EF</td>
<td>All fencing existing on the Site at the Commencement Date altered as required by the Contractor to ensure security of the Site. Note: the purpose of existing fence alteration is to be identified by the Contractor. At this point, no areas are identified for changes.</td>
<td>As required on the Site where the Contractor alters any existing permanent fencing. Approval and confirmation from RailCorp is required for any such changes.</td>
</tr>
<tr>
<td>General Site Access</td>
<td>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.</td>
<td>All parts of the Site where vehicle and other access is required, including for Other Contractors.</td>
</tr>
<tr>
<td>Traffic Management</td>
<td>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</td>
<td>All places near Site access points and where the Contractor’s Activities and Other Contractor’s work affect normal traffic and pedestrian movements.</td>
</tr>
<tr>
<td>Purposes</td>
<td>Description of Part of Temporary Works</td>
<td>Location</td>
</tr>
<tr>
<td>------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Service Diversions</td>
<td>Temporary protection and support of, or adjustments to. Services affected by, or at reasonable risk of being affected by the Contractor’s Activities.</td>
<td>All locations where Services are affected by, or at reasonable risk of being affected by, the Contractor’s Activities.</td>
</tr>
<tr>
<td>Wash Bays</td>
<td>Installation and operation of wheel wash bays.</td>
<td>All vehicle access points to and from the Site.</td>
</tr>
<tr>
<td>Site Management</td>
<td>Site management provisions during construction including:</td>
<td>The Site and Remote Sites.</td>
</tr>
<tr>
<td></td>
<td>(a) areas for storage of site materials and plant within the site compound area;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) areas for component preparation within the site compound areas;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) stockpile areas;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(d) areas for disposal of rubbish and site debris;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(e) maintenance of temporary fencing around the site compound;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(f) general site maintenance; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(g) lockable purpose-designed storage cages for flammable items with appropriate safety signage.</td>
<td></td>
</tr>
<tr>
<td>Site Security</td>
<td>All temporary measures to:</td>
<td>The Site and Remote Sites.</td>
</tr>
<tr>
<td></td>
<td>(a) prevent unauthorised people entering the Site and Remote Sites, to ensure public safety and prevent access by trespassers;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) protect against theft and vandalism; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) prevent unlawful or accidental access to the Site and Remote Sites.</td>
<td></td>
</tr>
<tr>
<td>Site Safety</td>
<td>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.</td>
<td>All places involved in or affected by or at reasonable risk of being affected by the Contractor’s Activities.</td>
</tr>
<tr>
<td>Signage</td>
<td>Installation and maintenance of signage during construction including:</td>
<td>All places affected by the Contractor’s Activities, and required for Other Contractors.</td>
</tr>
<tr>
<td></td>
<td>(a) Safety signage as required for the Contractor’s Activities, Other Contractors’ and as required by the Principal’s Representative; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Information and communication signage as required by the Principal’s Representative.</td>
<td></td>
</tr>
<tr>
<td>Purposes</td>
<td>Description of Part of Temporary Works</td>
<td>Location</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Environmental Management</td>
<td>Installation and maintenance of: (a) appropriate environmental safety measures to minimise environmental impacts, including erosion and 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.</td>
<td></td>
</tr>
<tr>
<td>Pedestrian Access</td>
<td>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.</td>
<td>All places affected by the Contractor's Activities and required for Other Contractors and the public.</td>
</tr>
<tr>
<td>Surface Treatment</td>
<td>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.</td>
<td>All places affected by the Contractor's Activities.</td>
</tr>
<tr>
<td>Site Disestablishment and Reinstatement</td>
<td>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.</td>
<td>The Site and Remote Sites.</td>
</tr>
<tr>
<td>RailCorp access to project site</td>
<td>Undisrupted access for RailCorp personnel / maintenance persons to access the Rail Corridor and its assets.</td>
<td>Within the Site</td>
</tr>
<tr>
<td>Temporary stage works</td>
<td>Undertake designs and construction works for all temporary works associated with track removal, booking tracks out of use, signalling, overhead and rail communication works for certain periods, All such temporary works and connections are to be allowed for the project.</td>
<td>As part of Contractor temporary designs</td>
</tr>
<tr>
<td>Additional site area</td>
<td>Any additional temporary site that is required by the Contractor to establish a works site to</td>
<td>Remote site</td>
</tr>
</tbody>
</table>
## Northern Sydney Freight Corridor
### Gosford Passing Loops Project

### Purposes

<table>
<thead>
<tr>
<th>Purposes</th>
<th>Description of Part of Temporary Works</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support for the project. The Principal is not responsible for providing such establishment areas.</td>
<td>Provision of:</td>
<td>All parts of the Site where pedestrian, cycle or vehicle access is required.</td>
</tr>
<tr>
<td>Alterations to roads adjacent to the Site.</td>
<td>(a) all temporary road and footway alterations at access locations; (b) all temporary fencing, drainage (surface and sub-soil) erosion and sediment control, 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.</td>
<td>All places affected by the Contractor's Activities.</td>
</tr>
<tr>
<td>Work impact mitigation</td>
<td>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.</td>
<td>All places affected by the Contractor's Activities.</td>
</tr>
</tbody>
</table>

### 3.2 Hoardings and Fencing

Any Temporary Works, including hoardings and fencing, must be designed, installed and maintained in accordance with all applicable standards (including RailCorp Standards), guidelines and to withstand the various loads (including wind loads) to which the relevant Temporary Works may be subjected.

All hoardings and fencing must be electrically non-conductive where reasonably possible and their 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.
Northern Sydney Freight Corridor
Gosford Passing Loops Project

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.
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.
4. Form of Confidentiality Undertaking

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

To: [ ]

We 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.

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

<table>
<thead>
<tr>
<th>CONTRACTOR’S CERTIFICATE OF DESIGN COMPLIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTRACTOR:</td>
</tr>
<tr>
<td>DESIGN PACKAGE (limit of 1 per certificate)</td>
</tr>
<tr>
<td>DESCRIPTION:</td>
</tr>
</tbody>
</table>

I certify that the Design Documentation 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 TfNSW 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.

I further certify that the attached compliance records as required by the Deed reflect the true status of the design package.

NAME: ___________________ SIGNATURE: ___________________ DATE: / /

(Contractor's Representative)
**DESIGNER’S CERTIFICATE OF DESIGN COMPLIANCE**

<table>
<thead>
<tr>
<th>DESIGNER:</th>
<th>DESCRIPTION:</th>
</tr>
</thead>
</table>

I certify that the [(delete one)] Design Documentation for the package / Design Documentation 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 [_________] (including as required by the TfNSW Standard Requirements where applicable), and complies with the requirements of the Deed and the Planning Approval, and deals adequately with safety (subject to the register of outstanding minor design non-conformances and unresolved issues attached).

I further certify that the attached compliance records as required by the Deed reflect the true status of the design package.

NAME: ___________________ SIGNATURE: ___________________ DATE: / /

(Design Team Member)
6. Certificates of Construction Compliance

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

6.1 Contractor's Certificate of Construction Compliance

<table>
<thead>
<tr>
<th>CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTRACTOR:</td>
</tr>
<tr>
<td>PORTION:</td>
</tr>
<tr>
<td>WORK PACKAGE (limit of 1 per certificate)</td>
</tr>
<tr>
<td>DESCRIPTION:</td>
</tr>
</tbody>
</table>

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.

I further certify that the attached compliance records as required by the Deed reflect the true status of the work package.

NAME: ___________________ SIGNATURE: ___________________ DATE: / /

(Contractor’s Representative)
### 6.2 Designer's Certificate of Construction Compliance

**DESIGNER'S CERTIFICATE OF CONSTRUCTION COMPLIANCE**

<table>
<thead>
<tr>
<th>DESIGNER:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>PORTION:</td>
<td></td>
</tr>
<tr>
<td>WORK PACKAGE (limit of 1 per certificate)</td>
<td>DESCRIPTION:</td>
</tr>
</tbody>
</table>

I certify that the procurement and construction of [(delete one) 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 and deal adequately with safety (subject to the register of outstanding minor design non-conformances and unresolved issues attached).

I further certify that the attached compliance records as required by the Deed reflect the true status of the work package.

NAME: ___________________________ SIGNATURE: ___________________________ DATE: / /  

*(Design Team member)*
7. Certificates of Completion

(Definition of "Completion" in clause 1.1 and clause 12.3)

7.1 Contractor's Certificate of Portion Completion

<table>
<thead>
<tr>
<th>CONTRACTOR'S CERTIFICATE OF PORTION COMPLETION</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTRACTOR:</td>
</tr>
<tr>
<td>Description of Portion (limit of 1 per certificate):</td>
</tr>
</tbody>
</table>

I certify that Completion of the Portion 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.

I further certify that:

(a) All Variation Orders (including concessions) are listed in the attached compliance register.

(b) All identified Defects (including any non-conformities but excluding Defects accepted as minor by the Principal) have been satisfactorily rectified and their documentation closed out.

(c) All required documentation has been submitted.

(d) All 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: ________________________

(Contractor's Representative)

DATE: ________________
7.2 Contractor's Certificate of Works Completion

<table>
<thead>
<tr>
<th>CONTRACTOR'S CERTIFICATE OF WORKS COMPLETION</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTRACTOR:</td>
</tr>
<tr>
<td>Description of Works:</td>
</tr>
<tr>
<td>I certify that Completion of the Works 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.</td>
</tr>
<tr>
<td>I further certify that:</td>
</tr>
<tr>
<td>(a) All Variation Orders (including concessions) are listed in the attached compliance register.</td>
</tr>
<tr>
<td>(b) All identified Defects (including any non-conformities but excluding Defects accepted as minor by the Principal) have been satisfactorily rectified and their documentation closed out.</td>
</tr>
<tr>
<td>(c) All required documentation has been submitted.</td>
</tr>
<tr>
<td>(d) All notices regarding system deficiencies have been satisfactorily closed out.</td>
</tr>
<tr>
<td>I further certify that the attached compliance records as required by the Deed reflect the true status of the Works.</td>
</tr>
<tr>
<td>SIGNATURE: ____________________________</td>
</tr>
<tr>
<td>(Contractor’s Representative)</td>
</tr>
<tr>
<td>DATE: ____________________________</td>
</tr>
</tbody>
</table>
7.3 Designer's Certificate of Portion Completion

<table>
<thead>
<tr>
<th>DESIGNER'S CERTIFICATE OF PORTION COMPLETION</th>
</tr>
</thead>
<tbody>
<tr>
<td>DESIGNER:</td>
</tr>
<tr>
<td>Description of Portion (limit of 1 per certificate):</td>
</tr>
</tbody>
</table>

I certify that the Completion of [(delete one) the above Portion 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.

I further certify that the attached compliance records as required by the Deed reflect the true status of the Portion.

SIGNATURE:__________________________

(Design Team member)

DATE:__________________________
7.4 Designer's Certificate of Works Completion

<table>
<thead>
<tr>
<th>DESIGNER'S CERTIFICATE OF WORKS COMPLETION</th>
</tr>
</thead>
<tbody>
<tr>
<td>DESIGNER:</td>
</tr>
<tr>
<td>Description of Works:</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>I certify that the Completion of [(delete one)] the 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.</td>
</tr>
<tr>
<td>I further certify that the attached compliance records as required by the Deed reflect the true status of the Works.</td>
</tr>
<tr>
<td>SIGNATURE: ______________________________</td>
</tr>
<tr>
<td>(Design Team member)</td>
</tr>
<tr>
<td>DATE: ____________________________________</td>
</tr>
</tbody>
</table>
8. Contractor's Certificate of Final Completion

(Clause 12.8(d))

<table>
<thead>
<tr>
<th>CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTRACTOR:</td>
</tr>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

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 and 11.20)

Reimbursable Work will be valued:

(a) for Reimbursable Signalling Works undertaken by the Contractor's identified personnel, on the basis of the rates set out in Part A of this Schedule 9;

(b) for stage 10 of Operational Readiness undertaken by the Contractor's identified personnel, on the basis of the rates set out in Part A of this Schedule 9; and

(c) for any plant and equipment set out in Part B, on the basis of actual reasonable costs incurred by the Contractor for the plant and equipment, to which will be added 10% for the Contractor's off-site overheads and profit.

All rates set out in Part A of this Schedule 9 are inclusive of all taxes and direct and indirect costs (excluding GST) 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.

Part A

<table>
<thead>
<tr>
<th>Personnel for Reimbursable Signalling Works</th>
<th>Rate or Cost (ex GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signal Supervisor</td>
<td></td>
</tr>
<tr>
<td>Signal Electrician</td>
<td></td>
</tr>
<tr>
<td>Signal Mechanical</td>
<td></td>
</tr>
<tr>
<td>Tester-in-charge</td>
<td></td>
</tr>
<tr>
<td>Signal Tester</td>
<td></td>
</tr>
<tr>
<td>Assistant Signal Tester</td>
<td></td>
</tr>
<tr>
<td>Signal Engineer</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Personnel for Stage 10 of Operational Readiness</th>
<th>Rate or Cost (ex GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical Commissioning Engineer, HV/Traction Power Supply</td>
<td></td>
</tr>
<tr>
<td>Signalling Lead Commissioning Engineer</td>
<td></td>
</tr>
<tr>
<td>Communication Systems Commissioning Engineer</td>
<td></td>
</tr>
<tr>
<td>Station Systems Engineer: Fire Detection/EWIS/PA</td>
<td></td>
</tr>
<tr>
<td>Security Systems Engineer: Intruder Alarm/Access Control</td>
<td></td>
</tr>
<tr>
<td>Trackwork Engineering</td>
<td></td>
</tr>
</tbody>
</table>
### Part B

Plant and equipment:

(a) used solely by the personnel in Part A of this Schedule 9 for; and

(b) necessary for the carrying out of,

the Reimbursable Work.
10. Not Used
11. Action in Complying with Planning Approval and Third Party Agreements

(Clauses 2.3(c) and 2.12)

Part A – Planning Approval

In relation to this Schedule 11, the Contractor is advised as follows:

(a) A Review of Environmental Factors (REF) was prepared for the GPL Project and public exhibition of that REF was completed in July 2012.

(b) Planning Approval was received in October 2012.

(c) Final mitigation measures and conditions of approval are included in Exhibit E to the Deed.

(d) The Contractor will be responsible for complying with any conditions resulting from the Planning Approval process except to the extent that such responsibility is explicitly assigned otherwise in this Schedule 11.

Final Conditions of Approval

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

Nothing specified 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. The Contractor may apply to have any part of any of the Approvals listed below modified. The Contractor acknowledges and agrees that it is solely responsible for any such modification.

<table>
<thead>
<tr>
<th>Final Conditions Number</th>
<th>Extent of Principal’s responsibility for the Conditions specified and additional Contractor obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>The Principal will fulfil the requirements of condition 8. The Contractor must provide all information and documentation as required by the Principal’s Representative to enable it to fulfil this condition.</td>
</tr>
<tr>
<td>9</td>
<td>The Principal is responsible for condition 9 except that the Contractor must develop and implement appropriate procedures for the resolution of complaints. The Contractor is to provide all requested information as requested by the Principal to assist in the handling and management of complaints.</td>
</tr>
<tr>
<td>13</td>
<td>The Principal will fulfil the requirements of this condition.</td>
</tr>
<tr>
<td>Final Conditions Number</td>
<td>Extent of Principal’s responsibility for the Conditions specified and additional Contractor obligations</td>
</tr>
<tr>
<td>-------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>22</td>
<td>The Principal will fulfil the requirements of this condition. The Contractor must assist with and provide all information and documentation as required by the Principal’s representative to enable it to fulfil this condition.</td>
</tr>
<tr>
<td>23</td>
<td>The Principal will fulfil the requirements of this condition. The Contractor must assist with and provide all information and documentation as required by the Principal’s representative to enable it to fulfil this condition.</td>
</tr>
<tr>
<td>41</td>
<td>The Principal is responsible for consulting with Gosford City Council regarding the review of flooding impacts. The Contractor will be responsible for all other requirements of this condition, including providing information for the Principal to consult with Gosford City Council.</td>
</tr>
</tbody>
</table>

Part B – Additional Environmental Requirements
The Contractor must comply with or undertake all of the mitigation measures identified in the Planning Approval.

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) does not affect the Contractor’s obligations under clauses 2 and 13 of the General Conditions.

Interface Agreement between Transport for NSW Transport Projects Division and Rail Corporation New South Wales
(a) The Principal is responsible for complying with the conditions and requirements of this agreement only to the extent identified in the following table.
(b) The Contractor:
   (i) is responsible for complying with;
   (ii) must perform on behalf of the Principal; and
(iii) must do nothing to hinder the Principal from complying with or cause the Principal to breach,

all of the Principal's obligations under the Interface Agreement as may be amended from time to time, except to the extent identified in the following table.

<table>
<thead>
<tr>
<th>Clause No.</th>
<th>Extent of Principal's responsibility for the Conditions specified and additional Contractor obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 3.2</td>
<td>The Principal is to be responsible for clause 3.2.</td>
</tr>
<tr>
<td>Clause 3.3</td>
<td>The Principal is to be responsible for clause 3.3.</td>
</tr>
<tr>
<td>Clause 18</td>
<td>The Principal is to be responsible for clause 18.</td>
</tr>
<tr>
<td>Clause 30</td>
<td>The Principal is to be responsible for clause 30 only to the extent such dispute has not arisen out of or in any way in connection with any breach by the Contractor of its obligations under the Interface Agreement or under this Deed. The Contractor must provide all required assistance to the Principal in relation to clause 30.</td>
</tr>
</tbody>
</table>

Road Rail Interface Agreement between Transport for NSW Transport Projects Division and Gosford City Council

(a) The Principal is responsible for complying with the conditions and requirements of this agreement only to the extent identified in the following table.

(b) The Contractor:

(i) is responsible for complying with;

(ii) must perform on behalf of the Principal; and

(iii) must do nothing to hinder the Principal from complying or cause the Principal to breach,

all the Principal's obligations under the Road Rail Interface Agreement as may be amended from time to time, except to the extent identified in the following table.

<table>
<thead>
<tr>
<th>Clause No.</th>
<th>Extent of Principal's responsibility for the Conditions specified and additional Contractor obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 2.2</td>
<td>The Principal is to be responsible for clause 2.2.</td>
</tr>
<tr>
<td>Clause 2.3</td>
<td>The Principal is to be responsible for clause 2.3.</td>
</tr>
<tr>
<td>Clause No.</td>
<td>Extent of Principal's responsibility for the Conditions specified and additional Contractor obligations</td>
</tr>
<tr>
<td>-----------</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Clause 3.2</td>
<td>The Principal is to be responsible for clause 3.2.</td>
</tr>
<tr>
<td>Clause 3.5</td>
<td>The Principal is to be responsible for clause 3.5.</td>
</tr>
<tr>
<td>Clause 4.1</td>
<td>In relation to clause 4.1(a), the Contractor is responsible to identify and assess risks to safety only during the period between the Commencement Date and the Date of Completion of the Works, but without limiting or otherwise affecting the Contractor's obligations and liability under this Deed.</td>
</tr>
<tr>
<td>Clause 6</td>
<td>The Principal is to be responsible for clause 6, except that the Contractor must provide all required assistance to the Principal, including the provision of all documentation requested by the Principal in relation to clause 6.</td>
</tr>
<tr>
<td>Clause 7.3</td>
<td>The Principal is to be responsible for clause 7.3, except that the Contractor must provide all required assistance to the Principal.</td>
</tr>
<tr>
<td>Clause 7.4</td>
<td>The Principal is to be responsible for clause 7.4.</td>
</tr>
<tr>
<td>Clause 8</td>
<td>The Principal is to be responsible for clause 8 only to the extent such dispute has not arisen out of or in any way in connection with any breach by the Contractor of its obligations under the Road Rail Interface Agreement or under this Deed. The Contractor must provide all required assistance to the Principal in relation to clause 8.</td>
</tr>
</tbody>
</table>
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.

(a) 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.

(b) 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.

(c) 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 11.14 of the General Conditions.

(d) 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.

(e) 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 for New South Wales (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 (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,

(iii) 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(a), 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.
Northern Sydney Freight Corridor
Gosford Passing Loops Project

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)
14. Track Possessions
(Clauses 1.1 and 7.10)

The following 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.

Table 1

<table>
<thead>
<tr>
<th>Start Date</th>
<th>Finish Date</th>
<th>Weekend No.</th>
<th>Possession Configuration</th>
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<td>02-Feb-14</td>
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<td>Woy Woy to Wyong</td>
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<td>29-Mar-14</td>
<td>30-Mar-14</td>
<td>WE 39</td>
<td>Configuration 9</td>
</tr>
<tr>
<td>17-May-14</td>
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<td>WE 46</td>
<td>Configuration 9</td>
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</tr>
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<td>08-Nov-14</td>
<td>09-Nov-14</td>
<td>WE 19</td>
<td>Configuration 9</td>
</tr>
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<td>31-Jan-15</td>
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<td>POAT – PSW for Freight</td>
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<td>POAT – PSW for Freight</td>
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<tr>
<td>28-Feb-15</td>
<td>01-Mar-15</td>
<td>WE 35</td>
<td>Configuration 9</td>
</tr>
</tbody>
</table>
In this Schedule 14,

**POAT** means Power Out All Tracks.

**PSW** means Pilot Staff Working – Bi-directional on one track.

**Woy Woy to Wyong** means non-standard Track Possession in WE 31 which will be made available with POAT. The possession boundaries are defined as follows.

- Up and Down Main from country end of Woy Woy Station to 100 pts at Wyong Station (excludes section of Bi-directional running for freight through the Gosford area);
- All tracks within Gosford Yard country end; and
- All tracks within Gosford Yard city end.

**Gosford to Wyong** means non-standard Track Possessions in WE 31, WE 32, WE 33 and WE 34, which will be made available with POAT. Only one Mainline track (either Up or Down) will be utilised for bi-directional freight and diesel traffic, working under the use of Pilot Staff Working. The other Mainline track will be under possession. The possession configuration and boundaries for Gosford to Wyong non-standard Track Possessions are defined as follows:

1. For Gosford to Wyong non-standard Track Possession with Up Main Bi-Directional PSW and POAT:
   - Down Main 56A pts Gosford to 100 pts at Wyong;
   - Down Refuge Loop, 55A pts at Gosford to 88B pts at Gosford;
   - 86 pts;
   - Up Main 56B pts to 100 pts at Wyong, Bi-directional working (via Pilot Staff Working) for freight and country link services;
   - 1500V power outage;
   - Down Gosford Storage Sidings excluded from possession;
   - Up Weighbridge Siding excluded from possession; and
   - Up Refuge Loop excluded from possession.

2. For Gosford to Wyong non-standard Track Possession with Down Main Bi-Directional PSW and POAT:
   - Up Main from 45A pts Gosford to 100 pts at Wyong;
   - Up Refuge from 43A pts Gosford to 85 pts (or termination) Gosford;
   - Weighbridge Siding from 58 pts at Gosford to termination;
   - 86 pts;
• Down Main from 45B pts to 100 pts at Wyong, Bi-Directional working (via Pilot Staff Working) for freight and country link services.

• 1500V power outage; and

• Down Gosford Yard Storage Sidings excluded from possession.

All Woy Woy to Wyong and Gosford to Wyong non-standard Track Possessions identified in Table 1 of this Schedule 14 are indicative at this stage and are subject to RailCorp's approval. The possession configuration and boundaries defined for these non-standard Track Possessions are to be confirmed by RailCorp.

(a) For each of the non-standard Track Possessions identified in Table 1, the Contractor is required to nominate one Mainline track (either Up or Down) to be blocked for rail traffic.

(b) In the case of the Track Possessions set out in Table 1 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 2 below in respect of each Additional Track Possession or Power Isolations and in accordance with clause 7.10 of the Contract.

<table>
<thead>
<tr>
<th>Type of additional Track Possession</th>
<th>Approximate Period</th>
<th>Amount to be Paid to the Principal (to cover cost incurred by RailCorp)</th>
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<td>Weeknight Track Possession with Power Isolation</td>
<td>22:30 to 02:30 on the following day</td>
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<td>Power isolations</td>
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<td>Nil</td>
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</table>
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.
16. **Form of Unconditional Undertaking**

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

This deed poll (*Undertaking*) made the day of **20**

In favour of: *Transport for New South Wales* (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 (*Principal*)

Given by: [ ] (*Institution*)

**RECITALS**

A. By a deed dated [*] (*Deed*) between [*] (*Contractor*) and the Principal the Contractor agreed to carry out the Contractor’s Activities (as defined in the Deed).

B. Under the provisions of the Deed, the Contractor is required to provide this Undertaking to the Principal.

**OPERATIVE**

1. The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # ($ ).

2. 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.

**Executed as a deed poll.**
Signed Sealed and Delivered

by [ ]

being signed sealed and

delivered by its duly constituted Attorney [ ]

under Power of Attorney

No. in the presence of:

(Signature of Witness)

(Name of Witness in Full)
### 17. Information Documents and Materials

(Clause 1.1 and 3.6(a))

<table>
<thead>
<tr>
<th>Information Document No.</th>
<th>Description</th>
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<th>Filename</th>
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<tr>
<td>C</td>
<td>Geotechnical and Contamination Information</td>
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## Northern Sydney Freight Corridor
### Gosford Passing Loops Project

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### New or Amended Information Documents and Materials issued via Addendum

<p>| L1                       | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-BR-1 dwg |
| L2                       | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-BR-2 dwg |
| L3                       | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-BR-3 dwg |
| L4                       | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-BR-PLAN-ALL dwg |
| L5                       | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-CONSTRUCTION_ZONE-BOUNDARY dwg |
| L6                       | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-CONSTRUCTION_ZONE-LEGEND dwg |
| L7                       | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-CONSTRUCTION_ZONE-LEGEND dwg |
| L8                       | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-GN-CADASTRE dwg |
| L9                       | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-GN-FRAMES dwg |
| L10                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.               | -               | X-NSFC1B-GPL-GN-SITE_FEATURES dwg |</p>
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| L60                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   |                | S11_0073/GPL_LA_SOFT_NSFC        | bak               |
| L61                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |
| L62                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   |                | S11_0073/GPL_LA_SOFT_NSFC        | bak               |
| L63                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |
| L64                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   |                | S11_0073/GPL_LA_SOFT_NSFC        | bak               |
| L65                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |
| L66                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |
| L67                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |
| L68                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |
| L69                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |
| L70                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |
| L71                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |
| L72                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   |                | S11_0073/GPL_LA_SOFT_NSFC        | bak               |
| L73                      | GPL-01-D&amp;C Addendum 1 CAD Drawings.   | F              | S11_0073/GPL_LA_SOFT_NSFC        | dwg               |</p>
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## Northern Sydney Freight Corridor
### Gosford Passing Loops Project

**Design and Construction Contract**
(GLP-01-D&C)

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## Northern Sydney Freight Corridor
### Gosford Passing Loops Project

### Design and Construction Contract
(GPL-01-D&C)

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**Gosford Passing Loops Project**

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### Gosford Passing Loops Project

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**T43**
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  - Date: 01/04/12
  - Filename: water_discharge_and_reuse_guideline_7tp-st-146

**T44**
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  - Revision: 3
  - Date: 01/04/12
  - Filename: cad_protocols_4tp-st-084

**T45**
- **Engineering Authority Application** EAA 4TP-FT-143
  - Revision: -
  - Date: -
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  - Revision: 2
  - Date: 01/04/12
  - Filename: inspection_and_test_plans_minimum_requirements_4tp-st-068

**T47**
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  - Date: 01/06/12
  - Filename: nsw_sustainable_design_guidelines_7tp-st-114

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- **Safety and Environmental Incident Report Form** 90-FT-002
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  - Date: -
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  - Date: 11/01/11
  - Filename: tfnsw-corp-comms-guidelines

**T50**
- **TfNSW-Editorial-Style-Guidelines**
  - Date: 3/01/12
  - Filename: tfnsw-editorial-style-guidelines

**T51**
- **TP Style Guide Final Landscape**
  - Revision: -
  - Date: -
  - Filename: TP_Style_Guide_Final_Landscape

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- **Building Certification Procedure** 4TP-PR-184
  - Revision: 4
  - Date: 01/04/12
  - Filename: building_certification_procedure_4tp-pr-184

**T53**
- **Commissioning Management Plan** 4TP-SD-034
  - Revision: 4
  - Date: 21/11/11
  - Filename: commissioning_management_plan_4tp-sd-034

**T54**
- **Operational Readiness Plan 4TP-SD-033**
  - Revision: 4
  - Date: 22/11/11
  - Filename: operational_readiness_plan_4tp-sd-033

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**T55**
- **Building Certification Procedure** 4TP-PR-184
  - Revision: 4
  - Date: 01/04/12
  - Filename: building_certification_procedure_4tp-pr-184

**T56**
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  - Date: 01/04/12
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### 18. Information from Contractor's Tender Schedules

(Clauses 6.4(b) and 6.7)

**1. Prices and Rates for valuation of Variations:**

The prices and rates referred to in clause 6.4(b)(i)(A) of the Deed are those set out in the table below, which prices and rates exclude Overhead Costs and profits and are not subject to rise and fall:

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<td>6</td>
<td>Labourer</td>
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<tr>
<td>7</td>
<td>Operator</td>
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<td>8</td>
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<td>11</td>
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<td>14</td>
<td>Assistant Linesman</td>
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<td>Linesman</td>
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<td>17</td>
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<td>RailCorp Supervisor Level</td>
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<td>Semi-Trailer (40 T trailer) including driver</td>
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<td>Rigid Trucks including driver</td>
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<td>15T Tippers including driver</td>
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<td>36</td>
<td>12T Bogey Tippers including driver</td>
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<td>37</td>
<td>3T Excavator including operator</td>
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<td>65</td>
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<td>66</td>
<td>11T Vibrating Padfoot</td>
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<td><strong>Track Plant (Dry Hire unless noted)</strong></td>
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<td>68</td>
<td>Welders Truck (dry hire)</td>
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<td>Octopus attachment for 20T Excavator</td>
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<td>Front End Loaders (dry hire)</td>
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<td>Excavator with Octopus Grab</td>
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2. Original Contract Price Clarifications

(a) Disposal of Contamination Off-Site

The prices and rates referred to in clause 3.9(h) of the Deed are those set out in the table below.

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<th>RATE ($) EXCLUDING GST</th>
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<td>3</td>
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<td>4</td>
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The waste classification set out in the above table shall be in accordance with the Department of Environmental and Climate Change NSW Waste Classification Guidelines: Part 1 Classifying Waste.

All rates set out in the table above are inclusive of all taxes and direct and indirect costs (excluding GST) and are not subject to any adjustment to allow for Overhead Costs, profit, rise and fall or any other costs, with the exception that:

- if there are adjustments in the Government impost and EPA Levy fees (currently $93 / tonne), these rates will be adjusted accordingly.

The cost of disposal of Virgin Excavated Natural Material and Excavated Natural Material is included in the Original Contract Price.

(ii) Flood Mitigation Measures

The Original Contract Price has been agreed on the basis that, once the Gosford City Council’s flood model is obtained by the Contractor, the Contractor will:

(a) undertake flood study to determine the flood impacts of the works;
(b) will design any works additional to those required by the Deed, including the Works Brief and the Principal's Design, necessary to meet Council's requirements as described in clause 4.8.1(b) of the Works Brief and the Conditions of Approval 41; and

(c) will advise the Principal the details of those additional proposed works.

If, as a result, the Principal directs the Contractor to undertake those additional works, in full or in part, then such additional work will constitute a Variation.

(iii) Signalling infrastructure

The Original Contract Price has been agreed on the basis that it:

(a) includes for the supply, installation, termination, testing and commissioning of all signalling infrastructure required for the Contractor to comply with its obligations under the Deed and includes an allowance for the impact on the Signalling Design of the amendments to the Principal's Design drawings as set out in Works Brief Appendix C; and

(b) excludes the supply of the signalling equipment listed in Schedule 34.
19. Form of Warranty

(Clause 2.2(g))

This Deed Poll is made the day of 20

To: Transport for New South Wales (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 (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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1</td>
<td>Name and Address of Warrantor</td>
<td>[#]</td>
</tr>
<tr>
<td>Item 2</td>
<td>Equipment (Recital A)</td>
<td>[#]</td>
</tr>
<tr>
<td>Item 3</td>
<td>Contractor (Recital A)</td>
<td>[#]</td>
</tr>
<tr>
<td>Item 4</td>
<td>Subcontractor (Recital A)</td>
<td>[#]</td>
</tr>
</tbody>
</table>
Northern Sydney Freight Corridor
Gosford Passing Loops Project

Item 5  Deed (Recital A)  [#]
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

Legal/306972234.13                Schedule 19
Page 125
20. Form of Statutory Declaration

(Clauses 11.2(i))

**Statutory Declaration**

I, ..........................................................................................................................

of ..........................................................................................................................

do solemnly and sincerely declare that:

1. I am the representative of:

   ("the Contractor")

   in the Office Bearer capacity of:

2. The Contractor has a contract with the [ ]:

   ("the 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:

<table>
<thead>
<tr>
<th>Employee</th>
<th>Amount unpaid or not accrued</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
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<td></td>
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</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>Amount unpaid or not accrued</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<tr>
<td></td>
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<td></td>
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</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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;

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:

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>Due amount unpaid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Employee, subcontractor or supplier</th>
<th>Amount unpaid or not accrued</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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:

   (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;

   (b) under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and

   (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.

12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:

   (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and

   (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.

14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.
From 30 April 2012 new requirements to confirm the identity of the declarant became mandatory in NSW. Witnesses must certify that they have seen the face of the declarant and either that they have known the declarant for more than 12 months, or confirmed their identity by sighting an approved identification document. For more detail see Affidavits and Statutory Declarations - How to administer an oath, affirmation or declaration in NSW (100086819).

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900 (NSW).

Declared at
this day of 20
Before me:

| Full name and qualification of person before whom the declaration is made |
| Signature of person before whom the declaration is made | Signature of declarant |

And as a witness, I certify the following matters concerning the person who made this declaration (declarant):

[*strike out the text that does not apply]*

1.  
   *I saw the face of the declarant.
   OR
   *I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.

2.  
   *I have known the declarant for at least 12 months.
   OR
   *I confirmed the declarant's identity using the following identification document:

   Identification document relied on
   (may be original or certified copy)

Signature of person before whom the declaration is made

Before me:
<table>
<thead>
<tr>
<th>(Signature of person before whom the declaration is made)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Name of the person before whom the declaration is made)</td>
</tr>
<tr>
<td>(Title* of the person before whom the declaration is made)</td>
</tr>
</tbody>
</table>

* The declaration must be made before one of the following persons:
  
  - where the declaration is sworn within the State of New South Wales:
    - (i) a justice of the peace of the State of New South Wales;
    - (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
    - (iii) a notary public.
  
  - where the declaration is sworn in a place outside the State of New South Wales:
    - (i) a notary public; or
    - (ii) any person having authority to administer an oath in that place.
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)

(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.

<table>
<thead>
<tr>
<th>Offences in respect of a false Statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>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:</td>
</tr>
<tr>
<td>(a) the person is the subcontractor;</td>
</tr>
<tr>
<td>(b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or</td>
</tr>
<tr>
<td>(c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.</td>
</tr>
</tbody>
</table>

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

21. Property Owner’s Certificate

(Clause 3.4(b))

This deed poll is made the day of 20

To: Transport for New South Wales (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 (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 subject to compliance by the Contractor with 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 and control 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, controlling 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" means restoring the Worksite to a condition not less than that existing immediately prior to the Contractor obtaining access to the Worksite, including in compliance with conditions of the Planning Approval, any Third Party Agreement requirements and any additional conditions required by relevant Authorities.

"Contractor's Construction Access Notice" means a written notice issued by the Contractor to the Principal that provides at least 10 days 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") and as otherwise defined in the General Conditions. 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.
Where an area of the Site adjoins private land, public land or road reserve, the extent of the Site is limited to the cadastral boundary.
<table>
<thead>
<tr>
<th>Drawing Number and Revision</th>
<th>Worksite Identified on Site Drawings</th>
<th>Asset Lands/Temporary Lands</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSFC-1733-GP-CI-SK-1001-REV E</td>
<td>Cover Sheet</td>
<td></td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1002-REV E</td>
<td>Location Plan</td>
<td></td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1011-REV B</td>
<td>T1</td>
<td>Temporary Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1011-REV B</td>
<td>T2</td>
<td>Temporary Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1012-REV B</td>
<td>T3</td>
<td>Temporary Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1010-REV E</td>
<td>T4</td>
<td>Temporary Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1009-REV D</td>
<td>T5</td>
<td>Temporary Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1008-REV E</td>
<td>T6</td>
<td>Temporary Lands</td>
</tr>
<tr>
<td>Lot 14 Sec 6 Deposited Plan 1591</td>
<td>T7</td>
<td>Temporary Lands</td>
</tr>
<tr>
<td>Lot 15 Sec 6 Deposited Plan 1591</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cnr Keevers Lane and Faunce Street Gosford</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1002-REV E</td>
<td>T8</td>
<td>Temporary Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1003-REV E</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1004-REV E</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Northern Sydney Freight Corridor
#### Gosford Passing Loops Project

#### Design and Construction Contract

**(GPL-01-D&C)**

<table>
<thead>
<tr>
<th>Drawing Number and Revision</th>
<th>Worksite Identified on Site Drawings</th>
<th>Asset Lands/Temporary Lands</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSFC-1733-GP-CI-SK-1002-REV E</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1003-REV E</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1004-REV E</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1005-REV C</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1006-REV C</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1007-REV D</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1008-REV E</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1009-REV D</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1010-REV E</td>
<td>A1</td>
<td>Asset Lands</td>
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<tr>
<td>NSFC-1733-GP-CI-SK-1011-REV B</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1012-REV B</td>
<td>A1</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1008-REV E</td>
<td>A2</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1008-REV E</td>
<td>A3</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1007-REV D</td>
<td>A4</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1008-REV E</td>
<td>A4</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1003 REV E</td>
<td>A5</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1008-REV E</td>
<td>A6</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1013-REV A</td>
<td>A7</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1014-REV A</td>
<td>A7</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1015-REV B</td>
<td>A7</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1017-REV B</td>
<td>A7</td>
<td>Asset Lands</td>
</tr>
<tr>
<td>NSFC-1733-GP-CI-SK-1018-REV A</td>
<td>A7</td>
<td>Asset Lands</td>
</tr>
</tbody>
</table>

### 22.3 Site Access and Use Conditions

(a) The Contractor has Control of, and must Control, the Site including any Worksites, commencing on the access date, unless otherwise identified in Table 2.

(b) The Contractor must Reinstall 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 Table 2 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 TfNSW Standard Requirements TSR Prelude and the Site Traffic Management Plan required under TfNSW Standard Requirements TSR S1;

(iii) the site office facilities provided for the Principal must be provided when, and in the places, required by the Principal's Representative and as otherwise required under 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 (including any Third Party Agreements);

(vi) 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 or emergency response in general; and

(vii) the Contractor must protect all existing utility Services within and adjacent to the Worksites in accordance with the requirements of the respective utility companies.

(d) The Contractor acknowledges that the Site may include 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 function and use of these driveways or access and egress points.

(e) The Contractor acknowledges that the Site 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.

(f) The Contractor acknowledges that in addition to the site conditions of access and use stated in this Schedule 22, the conditions of access and use of various Worksite will be subject to the requirements specified in Schedule 11.

Table 2. Access Dates and Conditions
<table>
<thead>
<tr>
<th>Worksite</th>
<th>Access Dates</th>
<th>Conditions of Access and Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>T1</td>
<td>26 May 2013</td>
<td>The Contractor must provide to the Principal’s Representative a Contractor’s Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times. The Contractor must provide for, and allow shared access with pedestrians as per existing Right of Carriageway. The Contractor must Reinstate this Worksite within 60 days of the Completion of Portion 3.</td>
</tr>
<tr>
<td>T2</td>
<td>26 May 2013</td>
<td>The Contractor must provide to the Principal’s Representative a Contractor’s Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times. The Contractor must Reinstate this Worksite within 60 days of the Completion of Portion 3.</td>
</tr>
<tr>
<td>T3</td>
<td>26 May 2013</td>
<td>The Contractor must provide to the Principal’s Representative a Contractor’s Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times. The Contractor must Reinstate this Worksite within 60 days of the Completion of Portion 3. Coordinate with Gosford City Council to determine the requirements to use this Worksite in respect of protecting the existing underground utilities, including 900 mm diameter sewerage pipe and comply with Gosford City Council’s requirements.</td>
</tr>
<tr>
<td>T4</td>
<td>26 May 2013</td>
<td>The Contractor must provide to the Principal’s Representative a Contractor’s Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times. The Contractor must Reinstate this Worksite within 60 days of the Completion of Portion 3. Existing pedestrian access must be maintained at all times. The Contractor must provide vehicle and pedestrian access to adjoining properties at all times. The Contractor must not remove or cut any existing cluster of trees around the northern end of the site compound and the surrounding area as identified in the additional REF assessment.</td>
</tr>
<tr>
<td>T5</td>
<td>26 May 2013</td>
<td>The Contractor must provide to the Principal’s Representative a Contractor’s Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite</td>
</tr>
</tbody>
</table>
## Worksite Access Dates Conditions of Access and Use

<table>
<thead>
<tr>
<th>Worksite</th>
<th>Access Dates</th>
<th>Conditions of Access and Use</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>by Other Contractors at all times.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must Reinstate this Worksite within 60 days of the Completion of Portion 3.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must not remove or cut any existing cluster of trees along the creek and in the surrounding area as identified in the additional REF assessment.</td>
</tr>
<tr>
<td>T6</td>
<td>26 May 2013</td>
<td>The Contractor must provide to the Principal’s Representative a Contractor’s Construction Access Notice.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must Reinstate this Worksite within 60 days of the Completion of Portion 3.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must not remove or cut any existing cluster of trees along the creek and in the surrounding area as identified in the additional REF assessment.</td>
</tr>
<tr>
<td>T7</td>
<td>15 January 2013</td>
<td>The Contractor must provide to the Principal’s Representative a Contractor’s Construction Access Notice.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor will be responsible for undertaking the required building renovation works to enable the use of this Worksite for its intended purposes and to comply with all the relevant Codes and Standards.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must Reinstate this Worksite as part of Portion 4.</td>
</tr>
<tr>
<td>T8</td>
<td>26 May 2013</td>
<td>This Worksite is to be established by the Contractor for access to the Rail Corridor being at least 7m in width including but not limited to; filling to suitable levels, new 7m wide access gate, site clearing and tree removal.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must provide to the Principal’s Representative a Contractor’s Construction Access Notice.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must Reinstate this Worksite within 60 days of the Completion of Portion 3.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>This is a shared access and the Contractor must ensure safe vehicle and pedestrian access at all times.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Contractor must not park vehicles or use this Worksite for material and equipment storage or unloading.</td>
</tr>
<tr>
<td>A1</td>
<td>15 January 2013</td>
<td>The Contractor must provide to the Principal’s Representative a</td>
</tr>
<tr>
<td>Worksite</td>
<td>Access Dates</td>
<td>Conditions of Access and Use</td>
</tr>
<tr>
<td>----------</td>
<td>--------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>A2</td>
<td>10 March 2013</td>
<td>The Contractor must provide to the Principal's Representative a Contractor's Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times.</td>
</tr>
<tr>
<td>A3</td>
<td>10 March 2013</td>
<td>The Contractor must provide to the Principal's Representative a Contractor's Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times.</td>
</tr>
<tr>
<td>A4</td>
<td>10 March 2013</td>
<td>The Contractor must provide to the Principal's Representative a Contractor's Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times.</td>
</tr>
<tr>
<td>A5</td>
<td>10 March 2013</td>
<td>The Contractor must provide to the Principal's Representative a Contractor's Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times. The Contractor must liaise with Gosford City Council and relevant bus operators to ensure that safe access for pedestrians is provided at all times.</td>
</tr>
<tr>
<td>A6</td>
<td>10 March 2013</td>
<td>The Contractor must provide to the Principal's Representative a Contractor's Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times.</td>
</tr>
<tr>
<td>A7</td>
<td>10 March 2013</td>
<td>The Contractor must provide to the Principal's Representative a Contractor's Construction Access Notice. The Contractor must provide for, and allow access to, this Worksite by Other Contractors at all times.</td>
</tr>
</tbody>
</table>

Note: No works are allowed to be undertaken by the Contractor within the Asset and Temporary Lands until the Contractor has obtained its Environmental Protection Licence.
23. Form of Subcontractor Deed

(Clause 2.2(f))

THIS DEED POLL is made on ........................................., 20..... by
................................................................. ACN.............. of
................................................................. (the Subcontractor).

RECITALS:

A. Transport for New South Wales (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 (Principal) has entered into a deed with [Contractor] (the Principal) for the design and construction of [Works] (the Works).

B. The Subcontractor has an agreement (the Subcontract) with the Contractor for the execution and completion of the [Works] (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 for New South Wales (ABN 18 804 239 602)

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

__________________________________________________________
Name of Director in full

__________________________________________________________
Signature of Secretary/other Director

__________________________________________________________
Name of Secretary/other Director in full
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
Name of Director in full

Signature of Secretary/other Director
Name of Secretary/other Director in full

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

Signature of Director
Name of Director in full

Signature of Secretary/other Director
Name of Secretary/other Director in full

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

Signature of Director
Name of Director in full

Signature of Secretary/other Director
Name of Secretary/other Director in full
24. Pre-Condition Surveys

(Clause 3.13(a))

2. Signal Hut 50.8 – Ch 81.730 km Upside – NSFC-1733-GP-GN-DG-0103-G
3. Hyundai Car Dealership Building – Ch 82.500 km Upside – NSFC-1733-GP-GN-DG-0105-G
4. Brady’s Gully Underbridge – Ch 82.71 km – NSFC-1733-GP-GN-DG-0106-G
5. Wingello Creek Underbridge – Ch 83.230 km – NSFC-1733-GP-GN-DG-0107-G
6. Wyoming Creek Underbridge – Ch 83.38 km – NSFC-1733-GP-GN-DG-0108-G
## 25. Options

(Clauses 1.1 and 6.3)

There are limitations in the manner in which the Options can be exercised by the Principal's Representative. These are detailed with each Option.

<table>
<thead>
<tr>
<th>Option GPL-D&amp;C-1</th>
<th>Not Used</th>
</tr>
</thead>
</table>

**Option GPL-D&C-2 | Existing 43A/B Turnouts Replacement**

| Description: | Like for like replacement of existing non-standard 43 turnouts (A&B) at 81.009km and 81.067km turnouts |
| Works Brief Amendment: | Items to be removed from the Works Brief |
| | Nil |
| | Items to be added to the Works Brief |
| | 4.4 Permanent Way |
| | 4.4.1 Scope |
| | (a)(xvi) Design, supply, installation and commissioning of new non-standard 43 turnouts (A&B) on concrete sleepers at the same location at 81.009km and 81.067km. The existing non-standard 43 turnouts are currently on timber sleepers, 1:9-crossing on the straight, 53kg, and mechanical point roding driven. This includes: removal of existing 43 points, civil/earthworks, drainage, OHW adjustment, signalling interface and the operational and reliability readiness works. |
| | 4.4.2 Technical Requirements |
| | (h) (xxi) All design and installation works are to be carried out in accordance with Railcorp standards and associated specifications and in consultation with RailCorp. |
| Relevant Portion: | This Option GPL-D&C-1 will form part of Portion 3. |
| Adjustment to the Contract Sum: | [Redacted] |
| Period for exercising the Option: | This Option may be exercised at any time within 12 months from the Commencement Date |
## Northern Sydney Freight Corridor
### Gosford Passing Loops Project

| Description: | The design and construction of noise walls along the Up side between approximately chainages 81.950km and 82.150km. |
| Works Brief Amendment: | **Items to be removed from the Works Brief**
Nil |
| | **Items to be added to the Works Brief**
4.11 Noise Walls |
| | 4.11.1 Scope |
| | (a) The design and installation of new noise walls along the Up side between approximately chainages 81.950km and 82.150km. |
| | 4.11.2 Technical Requirements |
| | (a) Operational and construction noise and vibration mitigation must be designed in accordance with the following:
| | (i) Interim Guidelines: Assessment of Noise from Rail Infrastructure Projects, The Department of Environment and Climate Change NSW, 2007;
| | (ii) Assessing Vibration: A technical guideline, Department of Environment and Conservation, 2006;
| | (iii) Road Noise Policy Office of Environment & Heritage 2011;
| | (iv) Interim Construction Noise Guideline, Department of Environment and Climate Change NSW, 2009;
| | (v) Construction Noise Strategy (Rail Projects), Transport for NSW, 2012;
| | (vi) British Standard BS 6472:1982 Evaluation of Human Exposure to Vibration in Buildings (1 Hz to 80 Hz);
| | (vii) German Standard DIN4150-2 1999 Structural Vibration: Effects of vibration on structures; and
| | (b) The noise walls must not encroach on the minimum clearance zones for rail facilities in accordance with RailCorp Standards including ESC 215 ‘Transit Space’ and ESC 360 ‘Miscellaneous Structures’.
| | (c) The noise walls will be most effective located close to the new Up Refugel track. The minimum structure clearance, to track centrel ine, is 4.25m and 6.2m if vehicular access is required.
| | (d) The noise walls are to be designed in accordance with the principles contained within the document ‘RTA Noise wall design guideline, design guidelines to improve the appearance of noise walls in NSW’. |
(e) The noise walls must be free from holes, openings and gaps.

(f) The noise walls must be constructed from steel posts and pre-cast concrete panels or similar approved products. The noise wall layout must be simple, straight, or large radius curved alignments, sympathetic to the Rail Corridor, adjoining terrain and infrastructure.

(g) The noise walls shall be positioned on top of the new cutting, and the height of the barrier must be 3m above the top of the new cutting. The noise barrier could, subject to the design, be an extension to the retaining wall in this area. The Contractor must demonstrate that the noise walls' thickness in the Contractor's design satisfies the requirements for structural adequacy, durability and Design Life specified in the Contract.

(h) The noise walls, including their connections into the retaining wall substructure and support steelwork, must have an urban design treatment consistent with the requirements of the Urban Design and Landscaping Plan (UDLP).

(i) During the detailed design development, the Contractor shall prepare the UDLP in consultation with Council and relevant stakeholders. The UDLP shall outline the principles upon which noise walls will be designed. The UDLP must be submitted to the Principal for review in accordance with the Contract.

(j) All steel posts are to be of a hot dipped galvanised finish.

(k) The textured/formed face of the pre-cast wall must face out from the Rail Corridor.

(l) All exposed hard surfaces, including concrete noise walls shall be suitably finished and sized to enable RailCorp to paint over any graffiti that occurs. The wall coating applied by the Contractor must match the adjacent surface, the colour and the appearance of the main structure of the noise walls to the greatest extent possible.

(m) The noise walls must be designed and constructed in accordance with all relevant codes and standards.

<table>
<thead>
<tr>
<th>No.</th>
<th>Element</th>
<th>Design Life (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Noise Walls</td>
<td>50</td>
</tr>
</tbody>
</table>

Adjustment to the Contract Sum:  

Relevant Portion: This Option GPL-D&C-3A will form part of Portion 3.

Period for exercising the Option: This Option may be exercised at any time within 12 months from the Commencement Date.
### Northern Sydney Freight Corridor
#### Gosford Passing Loops Project

<table>
<thead>
<tr>
<th>Option GPL-D&amp;C-3B</th>
<th>Design and Construction of Noise Walls on Down Side</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Description:</strong></td>
<td>The design and construction of noise walls along the Down side between approximately chainages 81.300km to 6m south of the southern footpath edge of Etna St (Racecourse Road) Bridge.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Works Brief Amendment:</th>
<th>Items to be removed from the Works Brief</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Nil</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Items to be added to the Works Brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.11 Noise Walls</td>
</tr>
</tbody>
</table>

#### 4.11.1 Scope

(a) Down side between approximately chainages 81.300km to 6m south of the southern footpath edge of Etna St (Racecourse Road) Bridge.

#### 4.11.2 Technical Requirements

(a) Operational and construction noise and vibration mitigation must be designed in accordance with the following:

(i) Interim Guidelines: Assessment of Noise from Rail Infrastructure Projects, The Department of Environment and Climate Change NSW, 2007;

(ii) Assessing Vibration: A technical guideline, Department of Environment and Conservation, 2006;

(iii) Road Noise Policy Office of Environment & Heritage 2011;

(iv) Interim Construction Noise Guideline, Department of Environment and Climate Change NSW, 2009;

(v) Construction Noise Strategy (Rail Projects), Transport for NSW, 2012;

(vi) British Standard BS 6472:1992 Evaluation of Human Exposure to Vibration in Buildings (1 Hz to 80 Hz);

(vii) German Standard DIN4150-2 1999 Structural Vibration: Effects of vibration on structures; and


(b) The noise walls must not encroach on the minimum clearance zones for rail facilities in accordance with RailCorp Standards including ESC 215 ‘Transit Space’ and ESC 360 ‘Miscellaneous Structures’.

(c) Not used.

(d) The noise walls are to be designed in accordance with the principles contained within the document ‘RTA Noise wall design guideline, design guidelines to improve the appearance of noise walls in NSW’.
(e) The noise walls must be free from holes, openings and gaps.

(f) The noise walls must be constructed from steel posts and pre-cast concrete panels or similar approved products. The noise wall layout must be simple, straight, or large radius curved alignments, sympathetic to the Rail Corridor, adjoining terrain and infrastructure.

(g) The noise walls shall be positioned on top of the new cutting, and the height of the barrier must be 3m above the top of the new cutting. The noise barrier could, subject to the design, be an extension to the retaining wall in this area. The Contractor must demonstrate that the noise walls' thickness in the Contractor's design satisfies the requirements for structural adequacy, durability and Design Life specified in the Contract.

(h) The noise walls, including their connections into the retaining wall substructure and support steelwork, must have an urban design treatment consistent with the requirements of the Urban Design and Landscaping Plan (UDLP).

(i) During the detailed design development, the Contractor shall prepare the UDLP in consultation with Council and relevant stakeholders. The UDLP shall outline the principles upon which noise walls will be designed. The UDLP must be submitted to the Principal for review in accordance with the Contract.

(j) All steel posts are to be of a hot dipped galvanised finish.

(k) The textured/formed face of the pre-cast wall must face out from the Rail Corridor.

(l) All exposed hard surfaces, including concrete noise walls shall be suitably finished and sized to enable RailCorp to paint over any graffiti that occurs. The wall coating applied by the Contractor must match the adjacent surface, the colour and the appearance of the main structure of the noise walls to the greatest extent possible.

(m) The noise walls must be designed and constructed in accordance with all relevant codes and standards.

<table>
<thead>
<tr>
<th>Item to be Added to Table 3-1 Design Life of the Works Brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
</tr>
<tr>
<td>28</td>
</tr>
</tbody>
</table>

Relevant Portion: This Option GPL-D&C-3B will form part of Portion 3.

Adjustment to the Contract Sum: ____________________________

Period for exercising the Option: This Option may be exercised at any time within 12 months from the Commencement Date.

<table>
<thead>
<tr>
<th>Option GPL-D&amp;C-3C</th>
<th>Design and Construction of Noise Walls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description:</td>
<td>The design and construction of noise walls along the Up side between</td>
</tr>
</tbody>
</table>
approximately chainages 81.950km and 82.150km.

The noise walls will be a lightweight noise wall system consisting of steel posts cast into concrete footings with 75mm thick Acoustic-max Panels placed horizontally between posts to form the wall system.

The noise wall must be painted to the colour agreed by the Principal to provide an attractive wall system for the urban location. The noise wall system must have a 25 plus DBA.

<table>
<thead>
<tr>
<th><strong>Works Brief Amendment:</strong></th>
<th><strong>Items to be removed from the Works Brief</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Nil</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Items to be added to the Works Brief</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>4.11 Noise Walls</td>
</tr>
<tr>
<td>4.11.1 Scope</td>
</tr>
<tr>
<td>(a) The design and installation of new noise walls along the Up side between approximately chainages 81.950km and 82.150km.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Technical Requirements</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Operational and construction noise and vibration mitigation must be designed in accordance with the following:</td>
</tr>
<tr>
<td>(i) Interim Guidelines: Assessment of Noise from Rail Infrastructure Projects, The Department of Environment and Climate Change NSW, 2007;</td>
</tr>
<tr>
<td>(ii) Assessing Vibration: A technical guideline, Department of Environment and Conservation, 2006;</td>
</tr>
<tr>
<td>(iii) Road Noise Policy Office of Environment &amp; Heritage 2011;</td>
</tr>
<tr>
<td>(iv) Interim Construction Noise Guideline, Department of Environment and Climate Change NSW, 2009;</td>
</tr>
<tr>
<td>(v) Construction Noise Strategy (Rail Projects), Transport for NSW, 2012;</td>
</tr>
<tr>
<td>(vi) British Standard BS 6472:1992 Evaluation of Human Exposure to Vibration in Buildings (1 Hz to 80 Hz);</td>
</tr>
<tr>
<td>(vii) German Standard DIN4150-2 1999 Structural Vibration: Effects of vibration on structures; and</td>
</tr>
</tbody>
</table>

| (b) The noise walls must not encroach on the minimum clearance zones for rail facilities in accordance with RailCorp Standards including ESC 215 'Transit Space' and ESC 360 'Miscellaneous Structures'. |

| (c) The noise walls will be most effective located close to the new Up Refuge track. The minimum structure clearance, to track centreline, is 4.25m and 6.2m if vehicular access is required. |
(d) The noise walls are to be designed in accordance with the principles contained within the document ‘RTA Noise wall design guideline, design guidelines to improve the appearance of noise walls in NSW’.

(e) The noise walls must be free from holes, openings and gaps.

(f) The noise walls must be an approved lightweight noise wall system consisting of steel posts cast into concrete footings with 75mm thick Acoustic-max Panels placed horizontally between posts to form the wall system. The noise wall must be painted to the colour agreed by the Principal to provide an attractive wall system for the urban location. The noise wall system must have a 25 plus DBA. The noise wall layout must be simple, straight, or large radius curved alignments, sympathetic to the Rail Corridor, adjoining terrain and infrastructure.

(g) The noise walls shall be positioned on top of the new cutting, and the height of the barrier must be 3m above the top of the new cutting. The noise barrier could, subject to the design, be an extension to the retaining wall in this area. The Contractor must demonstrate that the noise walls' thickness in the Contractor's design satisfies the requirements for structural adequacy, durability and Design Life specified in the Contract.

(h) The noise walls, including their connections into the retaining wall substructure and support steelwork, must have an urban design treatment consistent with the requirements of the Urban Design and Landscaping Plan (UDLP).

(i) During the detailed design development, the Contractor shall prepare the UDLP in consultation with Council and relevant stakeholders. The UDLP shall outline the principles upon which noise walls will be designed. The UDLP must be submitted to the Principal for review in accordance with the Contract.

(j) All steel posts are to be of a hot dipped galvanised finish.

(k) The textured/formed face of the pre-cast wall must face out from the Rail Corridor.

(l) All exposed hard surfaces, including concrete noise walls shall be suitably finished and sized to enable RailCorp to paint over any graffiti that occurs. The wall coating applied by the Contractor must match the adjacent surface, the colour and the appearance of the main structure of the noise walls to the greatest extent possible.

(m) The noise walls must be designed and constructed in accordance with all relevant codes and standards.

Item to be Added to Table 3-1 Design Life of the Works Brief

<table>
<thead>
<tr>
<th>No.</th>
<th>Element</th>
<th>Design Life (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Noise Walls</td>
<td>50</td>
</tr>
</tbody>
</table>

Relevant Portion: This Option GPL-D&C-3C will form part of Portion 3.

Adjustment to the

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Northern Sydney Freight Corridor  
Gosford Passing Loops Project

<table>
<thead>
<tr>
<th>Contract Sum:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Period for exercising the Option:</td>
<td>This Option may be exercised at any time within 12 months from the Commencement Date</td>
</tr>
</tbody>
</table>

### Option GPL-D&C-3D: Design and Construction of Noise Walls

**Description:**
The design and construction of noise walls along the Down side between approximately chainages 81.300km to 6m south of the southern footpath edge of Etna St (Racecourse Road) Bridge.

The noise walls will be a lightweight noise wall system consisting of steel posts cast into concrete footings with 75mm thick Acoustic-max Panels placed horizontally between posts to form the wall system.

The noise wall must be painted to the colour agreed by the Principal to provide an attractive wall system for the urban location. The noise wall system must have a 25 plus DBA.

### Works Brief Amendment:

- **Items to be removed from the Works Brief:** Nil
- **Items to be added to the Works Brief:**
  4.11 Noise Walls
  4.11.1 Scope
    (a) The design and installation of new noise walls along the Up side between approximately chainages 81.950km and 82.150km and along the Down side between approximately chainages 81.300km to 6m south of the southern footpath edge of Etna St (Racecourse Road) Bridge.

  4.11.2 Technical Requirements
    (a) Operational and construction noise and vibration mitigation must be designed in accordance with the following:
      (i) Interim Guidelines: Assessment of Noise from Rail Infrastructure Projects, The Department of Environment and Climate Change NSW, 2007;
      (ii) Assessing Vibration: A technical guideline, Department of Environment and Conservation, 2006;
      (iii) Road Noise Policy Office of Environment & Heritage 2011;
      (iv) Interim Construction Noise Guideline, Department of Environment and Climate Change NSW, 2009;
      (v) Construction Noise Strategy (Rail Projects), Transport for NSW, 2012;
      (vi) British Standard BS 6472:1992 Evaluation of Human Exposure to Vibration in Buildings (1 Hz to 80 Hz);
      (vii) German Standard DIN4150-2 1999 Structural Vibration:
### Effects of vibration on structures, and


(b) The noise walls must not encroach on the minimum clearance zones for rail facilities in accordance with RailCorp Standards including ESC 215 ‘Transit Space’ and ESC 360 ‘Miscellaneous Structures’.

(c) Not used.

(d) The noise walls are to be designed in accordance with the principles contained within the document ‘RTA Noise wall design guideline, design guidelines to improve the appearance of noise walls in NSW’.

(e) The noise walls must be free from holes, openings and gaps.

(f) The noise walls must be an approved lightweight noise wall system consisting of steel posts cast into concrete footings with 75mm thick Acoustic-max Panels placed horizontally between posts to form the wall system. The noise wall must be painted to the colour agreed by the Principal to provide a attractive wall system for the urban location. The noise wall system must have a 25 plus DBA. The noise wall layout must be simple, straight, or large radius curved alignments, sympathetic to the Rail Corridor, adjoining terrain and infrastructure.

(g) The noise walls shall be positioned on top of the new cutting, and the height of the barrier must be 3m above the top of the new cutting. The noise barrier could, subject to the design, be an extension to the retaining wall in this area. The Contractor must demonstrate that the noise walls’ thickness in the Contractor’s design satisfies the requirements for structural adequacy, durability and Design Life specified in the Contract.

(h) The noise walls, including their connections into the retaining wall substructure and support steelwork, must have an urban design treatment consistent with the requirements of the Urban Design and Landscaping Plan (UDLP).

(i) During the detailed design development, the Contractor shall prepare the UDLP in consultation with Council and relevant stakeholders. The UDLP shall outline the principles upon which noise walls will be designed. The UDLP must be submitted to the Principal for review in accordance with the Contract.

(j) All steel posts are to be of a hot dipped galvanised finish.

(k) The textured/formed face of the pre-cast wall must face out from the Rail Corridor.

(l) All exposed hard surfaces, including concrete noise walls shall be suitably finished and sized to enable RailCorp to paint over any graffiti that occurs. The wall coating applied by the Contractor must match the adjacent surface, the colour and the appearance of the main structure of the noise walls to the greatest extent possible.

(m) The noise walls must be designed and constructed in accordance

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with all relevant codes and standards.

<table>
<thead>
<tr>
<th>No.</th>
<th>Element</th>
<th>Design Life (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Noise Walls</td>
<td>50</td>
</tr>
</tbody>
</table>

Relevant Portion: This Option GPL-D&C-3D will form part of Portion 3.

Adjustment to the Contract Sum: 

Period for exercising the Option: This Option may be exercised at any time within 12 months from the Commencement Date.
<table>
<thead>
<tr>
<th>Description:</th>
<th>Deflection walls to provide protection to the Booths Hyundai building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Works Brief Amendment:</td>
<td>Items to be removed from the Works Brief</td>
</tr>
<tr>
<td></td>
<td>4.26 Deflection Walls</td>
</tr>
<tr>
<td></td>
<td>4.26.1 Scope</td>
</tr>
<tr>
<td></td>
<td>(b) Should the Principal’s review of the risk assessment conclude that a deflection wall is not required in this location, the Contractor must design and construct drainage works of sufficient capacity to ensure continuity of drainage through the area generally along the alignment of the deleted deflection wall.</td>
</tr>
<tr>
<td></td>
<td>Items to be added to the Works Brief</td>
</tr>
<tr>
<td></td>
<td>4.26 Deflection Walls</td>
</tr>
<tr>
<td></td>
<td>4.26.1 Scope</td>
</tr>
<tr>
<td></td>
<td>(b) Design and construction of new deflection walls to provide protection to the Booths Hyundai building along the Up side between approximately chainages 82.450km and 82.530km as shown in drawings NSFC-1733-GP-CI-DG-0013 and NSFC-1733-GP-CI-DG-0105.</td>
</tr>
<tr>
<td></td>
<td>(c) Associated subsurface drainage structure integrated into the deflection wall as shown in drawing NSFC-1733-GP-CI-DG-0013.</td>
</tr>
<tr>
<td></td>
<td>4.26.2 Technical Requirements</td>
</tr>
<tr>
<td></td>
<td>(a) All deflection walls must be designed in accordance with all relevant RailCorp and Australian Standards including:</td>
</tr>
<tr>
<td></td>
<td>(i) ESC 360 ‘Miscellaneous Structures’;</td>
</tr>
<tr>
<td></td>
<td>(ii) AS 5100 ‘Bridge Design Code’; and</td>
</tr>
<tr>
<td></td>
<td>(iii) ESC 215 ‘Transit Space’.</td>
</tr>
<tr>
<td></td>
<td>(b) All deflection walls must be constructed in accordance with the relevant RailCorp Structures Construction Specifications, including SPC 301 ‘Structures Construction’.</td>
</tr>
<tr>
<td></td>
<td>(c) Reinforced concrete deflection walls must be constructed with Class 2 finish with tonal range control as per clause 3.6.3(b) of AS 3610-1995.</td>
</tr>
<tr>
<td></td>
<td>(d) Deflection wall materials must provide a consistent aesthetic appearance with other elements throughout the Asset Lands and with other structural elements, to provide an integrated urban design approach to all elements.</td>
</tr>
<tr>
<td></td>
<td>(e) The design and construction of deflection walls must not place any loads on any Service.</td>
</tr>
<tr>
<td></td>
<td>(f) Design and construction of the subsurface drainage structure must comply with the technical requirements of Works Brief Section 4.12.1.2.</td>
</tr>
<tr>
<td>Relevant Portion:</td>
<td>This Option GPL-D&amp;C-4 will form part of Portion 3.</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Adjustment to the Contract Sum:</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>Period for exercising the Option:</td>
<td>This Option may be exercised at any time within 12 months from the Commencement Date.</td>
</tr>
<tr>
<td>Option GPL-D&amp;C-5</td>
<td>Follow Up Tamp</td>
</tr>
<tr>
<td>------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Description:</td>
<td>Undertake a follow up tamp 3 to 12 months after the commissioning of all new tracks</td>
</tr>
<tr>
<td>Works Brief</td>
<td>Items to be removed from the Works Brief</td>
</tr>
<tr>
<td>Amendment:</td>
<td>Nil</td>
</tr>
<tr>
<td></td>
<td>Items to be added to the Works Brief</td>
</tr>
<tr>
<td></td>
<td>4.4. Permanent Way</td>
</tr>
<tr>
<td></td>
<td>4.4.1 Scope</td>
</tr>
<tr>
<td></td>
<td>(a)(xvi) The Contractor is to carry out a follow-up tamp of all refurbished and new tracks/turnouts constructed as part of the GPL project, within a period of 3 to 12 months after the commissioning of all new tracks.</td>
</tr>
<tr>
<td>Adjustment to the Contract Sum:</td>
<td></td>
</tr>
<tr>
<td>Period for exercising the Option:</td>
<td>This Option may be exercised at any time within 24 months from the Commencement Date.</td>
</tr>
<tr>
<td>Description:</td>
<td>Under Road Crossing for 11kV Cables</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>Works Brief Amendment:</td>
<td>Replacement of existing 11kV under road crossing cable route that runs from Gosford Substation to the new jointing pits replacing Pole 1 and Pole 100.</td>
</tr>
<tr>
<td>Items to be removed from the Works Brief</td>
<td>Nil</td>
</tr>
<tr>
<td>Items to be added to the Works Brief</td>
<td>4.19 High Voltage Power Supply</td>
</tr>
<tr>
<td>4.19.1 Scope</td>
<td>(a)(x) the new 11kV underground cables 671/3 and 872/1 will be jointed to the existing cables that run from Gosford Substation at the new jointing pits. The Contractor must confirm that the existing cables are capable of supporting a 200A supply. Any testing of the cables must be coordinated with RailCorp. The Contractor must replace the existing cables if they are found not to be capable of supporting a 200A supply. These Works would consist of the design and construction of the following activities:</td>
</tr>
<tr>
<td></td>
<td>A. construct a new under road crossing across Showground Road to the edge of the Gosford Substation fencing;</td>
</tr>
<tr>
<td></td>
<td>B. install the associated cable conduits to accommodate the new cables including spares; and</td>
</tr>
<tr>
<td></td>
<td>C. supply and pull through new 11kV cables capable of supporting a 200A supply into the new under road crossing.</td>
</tr>
<tr>
<td>4.19.2 Technical Requirements</td>
<td>(q) The Showground Road 11kV crossings will consist of four (4) cable conduits which are in accordance to RailCorp standards. The length from the jointing pits to the Gosford Substation Perimeter Fence is approximately 25m; and</td>
</tr>
<tr>
<td></td>
<td>(r) Any works within the Gosford Substation Perimeter Fence including termination of the new 11kV cables will be completed by RailCorp. The Contractor must coordinate with RailCorp all works outside the Gosford Substation Perimeter Fence to support the cable connection.</td>
</tr>
<tr>
<td>Relevant Portion:</td>
<td>This Option GPL-D&amp;C-6 will form part of Portion 1.</td>
</tr>
<tr>
<td>Adjustment to the Contract Sum:</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>Period for exercising the Option:</td>
<td>This Option may be exercised at any time within 12 months from the Commencement Date.</td>
</tr>
</tbody>
</table>

### Option GPL-D&C-7

Replacement of 11kV Cables in Under Road Crossing on Showgrounds
## Northern Sydney Freight Corridor
### Gosford Passing Loops Project

**Design and Construction Contract**  
(GPL-01-D&C)

<table>
<thead>
<tr>
<th>Road</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Description:</strong></td>
<td>Replacement of existing 11kV under road crossing cable that runs from Gosford Substation to the new jointing pits replacing Pole 1 and Pole 100.</td>
</tr>
<tr>
<td><strong>Works Brief Amendment:</strong></td>
<td></td>
</tr>
<tr>
<td>Items to be removed from the Works Brief</td>
<td>Nil</td>
</tr>
<tr>
<td>Items to be added to the Works Brief</td>
<td>4.19 High Voltage Power Supply</td>
</tr>
<tr>
<td>4.19.1 Scope</td>
<td>(a)(x) the new 11kV underground cables 671/3 and 672/1 will be jointed to the existing cables that run from Gosford Substation at the new jointing pits. The Contractor must confirm that the existing cables are capable of supporting a 200A supply. Any testing of the cables must be coordinated with RailCorp. The Contractor must replace the existing cables if they are found not to be capable of supporting a 200A supply. These Works would consist of the design and construction of the following activities:</td>
</tr>
<tr>
<td></td>
<td>A. removal of existing cables from existing cable conduits; and</td>
</tr>
<tr>
<td></td>
<td>B. supply and pull through new 11kV cables capable of supporting a 200A supply through the existing service conduits.</td>
</tr>
<tr>
<td>4.19.2 Technical Requirements</td>
<td>(q) Any works within the Gosford Substation Perimeter Fence including termination of the new 11kV cables will be completed by RailCorp. The Contractor must coordinate with RailCorp all works outside the Gosford Substation Perimeter Fence to support the cable connection.</td>
</tr>
<tr>
<td><strong>Relevant Portion:</strong></td>
<td>This Option GPL-D&amp;C-7 will form part of Portion 1.</td>
</tr>
<tr>
<td><strong>Adjustment to the Contract Sum:</strong></td>
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</tr>
<tr>
<td><strong>Period for exercising the Option:</strong></td>
<td>This Option may be exercised at any time within 12 months from the Commencement Date.</td>
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<tr>
<td>Option GPL-D&amp;C-8</td>
<td>Conversion of CSR from GST to underground conduit</td>
</tr>
<tr>
<td>-----------------</td>
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</tr>
<tr>
<td>Description:</td>
<td>Conversion of CSR from GST to underground conduit for signals, 11kV power, low voltage power, telecommunications and communication systems for the entire length of the Project.</td>
</tr>
<tr>
<td>Works Brief Amendment:</td>
<td>Item to be removed from the Works Brief</td>
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<tr>
<td>4.5 Signalling System</td>
<td></td>
</tr>
<tr>
<td>4.5.2 Technical Requirements</td>
<td></td>
</tr>
<tr>
<td>(f) Signal cable routes must be located in GST wherever possible. All GST works must be in accordance with RailCorp Specification SPG 0705 Construction of Cable Routes and Signalling Civil Works.</td>
<td></td>
</tr>
<tr>
<td>Items to be added to the Works Brief</td>
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</tr>
<tr>
<td>4.5 Signalling System</td>
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<tr>
<td>4.5.2 Technical Requirements</td>
<td></td>
</tr>
<tr>
<td>(f) Not used.</td>
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<tr>
<td>Items to be removed from the Works Brief</td>
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<tr>
<td>4.7 Combined Services Route</td>
<td></td>
</tr>
<tr>
<td>4.7.2 Technical Requirements</td>
<td></td>
</tr>
<tr>
<td>(b) All CSR must be located in GST wherever possible and all electrical clearance requirements from signalling structures are to be complied with.</td>
<td></td>
</tr>
<tr>
<td>Items to be added to the Works Brief</td>
<td></td>
</tr>
<tr>
<td>4.7 Combined Services Route</td>
<td></td>
</tr>
<tr>
<td>4.7.2 Technical Requirements</td>
<td></td>
</tr>
<tr>
<td>(b) All cable routes will be located underground wherever possible and all electrical clearance requirements from signalling structures are to be complied with.</td>
<td></td>
</tr>
<tr>
<td>Items to be removed from the Works Brief</td>
<td></td>
</tr>
<tr>
<td>4.19 High Voltage Power Supply</td>
<td></td>
</tr>
<tr>
<td>4.19.1 Scope</td>
<td></td>
</tr>
<tr>
<td>(a)(i) the existing aerial 11kV Feeder 671/3 (Pole 94 to Pole 100) and 11 kV Feeder 672/1 (Pole 1 to Pole 5) are to run in GST.</td>
<td></td>
</tr>
</tbody>
</table>
(a)(iii) The proposed cable for 671/3 is to be connected to the existing ABC on Pole 94 with a fully insulated and screened touch safe joint and then run down the pole and into the proposed GST. The cable runs towards Narara then exits the GST to supply the new padmount transformer for the new Signal Location 77, then returns to the GST to run to a jointing pit adjacent to Gosford Substation where it will be jointed to the existing cable that runs from Gosford Substation to Pole 100;

(a)(iv) The cable for 11 kV Feeder 672/1 is to be joined to the existing cable running between Gosford Substation and Pole 1 at another jointing pit adjacent to Gosford Substation. This cable is also proposed to run in the GST along the Down side of the Rail Corridor and then cross to Pole 5 on the Up side of the Rail Corridor via a new ULX. The cable is to be connected to the existing 11kV aerial conductors at the top of the pole using the standard RailCorp arrangement shown on drawing number EL0186406;

4.19.2 Technical Requirements

(p) All 11kV high voltage power supply routes will be located in a GST wherever possible. All GST works must be in accordance with RailCorp Specification SPG 0705 Construction of Cable Routes and Signalling Civil Works.

Items to be added to the Works Brief

4.19 High Voltage Power Supply

4.19.1 Scope

(a)(i) The existing aerial 11kV Feeder 671/3 (Pole 94 to Pole 100) and 11 kV Feeder 672/1 (Pole 1 to Pole 5) are to run in underground conduits within the CSR;

(a)(iii) The proposed cable for 671/3 is to be connected to the existing ABC on Pole 94 with a fully insulated and screened touch safe joint and then run down the pole and into the 150 mm HD PVC ducts of the proposed CSR. The cable runs towards Narara then exits the CSR to supply the new padmount transformer for the new Signalling Location 50.8, then returns to the CSR to run to a jointing pit adjacent to Gosford Substation where it will be jointed to the existing cable that runs from Gosford Substation to Pole 100. The Contractor must test the existing cable to confirm that it is capable of supporting a 200A supply. The testing is to be coordinated with RailCorp;

(a)(iv) The cable for 11 kV Feeder 672/1 is to be joined to the existing cable running between Gosford Substation and Pole 1 at another jointing pit adjacent to Gosford Substation. The Contractor must test the existing cable to confirm that it is capable of supporting a 200A supply. The testing is to be coordinated with RailCorp. This cable is also proposed to run in the CSR along the Down side of the Rail Corridor and then cross to Pole 5 on the Up side of the Rail Corridor via a new ULX. The cable is to be connected to the existing 11kV aerial conductors at the top of the pole using the standard RailCorp arrangement shown on drawing number EL0186406;
### 4.19.2 Technical Requirements

(p) Not used.

<table>
<thead>
<tr>
<th>Items to be removed from the Works Brief</th>
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</thead>
<tbody>
<tr>
<td>4.20 Low Voltage Power Supply and Distribution</td>
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<thead>
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<th>Items to be added to the Works Brief</th>
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<tbody>
<tr>
<td>4.20 Low Voltage Power Supply and Distribution</td>
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</table>

<table>
<thead>
<tr>
<th>Technical Requirements:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(dd) All low voltage power supply routes must be located in a GST wherever possible.</td>
</tr>
</tbody>
</table>

### 4.24 Communications - Backbone

<table>
<thead>
<tr>
<th>Technical Requirements:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(m) All communication cable routes must be located in a GST wherever possible. All GST works must be in accordance with RailCorp Specification SPG 0705 Construction of Cable Routes and Signalling Civil Works and RailCorp Standard ESM 102 Communication Outdoor Cabling Standard.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Items to be added to the Works Brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.24 Communications - Backbone</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Technical Requirements:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(m) Not used.</td>
</tr>
</tbody>
</table>

### Relevant Portion:

This Option GPL-D&C-8 will form part of Portion 3.

### Adjustment to the Contract Sum:

### Period for exercising the Option:

This Option may be exercised at any time prior to 1 February 2013.
<table>
<thead>
<tr>
<th>Option GPL-D&amp;C-9</th>
<th>Increased Length of Up Refuge at Northern end only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description:</td>
<td>Increased length of Up Refuge track work and associated infrastructure including, but not limited to OHW, access roads, retaining walls, earthworks, drainage and signalling infrastructure. The Up Refuge turnout at the Narara End to be moved 145 metres towards the Country.</td>
</tr>
<tr>
<td>Works Brief Amendment:</td>
<td>Item to be removed from the Works Brief</td>
</tr>
<tr>
<td>4.4. Permanent Way</td>
<td></td>
</tr>
<tr>
<td>4.4.1 Scope</td>
<td></td>
</tr>
<tr>
<td>(a)(ii) new Up Refuge track and formation between 81.330km and 83.603km, which includes associated runoff track. The Up Refuge is realigned on wholly new formation with new track componentry to ESC200 and maintain 6.9m centres (where possible) between the new Up Refuge and existing Up Main;</td>
<td></td>
</tr>
<tr>
<td>(a)(ix) one (1) standard tangential turnout and associated track work componentry connecting the proposed Up Refuge and the Up Main at approximately 83.589km (via Up Main) and an Asymmetrical Switch Catchpoint Unit on concrete bearers located on the Up Refuge at 83.450km (Up Refuge kilometrage). Note this Catchpoint will be flexed (curved) to accommodate the Mainline horizontal track curvature.</td>
<td></td>
</tr>
<tr>
<td>Item to be added to the Works Brief</td>
<td></td>
</tr>
<tr>
<td>4.4. Permanent Way</td>
<td></td>
</tr>
<tr>
<td>4.4.1 Scope</td>
<td></td>
</tr>
<tr>
<td>(a)(ii) new Up Refuge track and formation between 81.330km and 83.752km, which includes associated run-off track. The Up Refuge is realigned on wholly new formation with new track componentry to ESC200;</td>
<td></td>
</tr>
<tr>
<td>(a)(ix) one (1) standard tangential turnout and associated special track work componentry connecting the proposed Up Refuge and the Up Main at approximately 83.752km with an associated catchpoint at approximately 83.599km;</td>
<td></td>
</tr>
<tr>
<td>Items to be removed from the Works Brief</td>
<td></td>
</tr>
<tr>
<td>4.6 Overhead Wiring</td>
<td></td>
</tr>
<tr>
<td>4.6.1 Scope</td>
<td></td>
</tr>
<tr>
<td>(a)(i) complete electrification of the Down Refuge and interface with the existing main line tracks' OHW and OHW structures;</td>
<td></td>
</tr>
<tr>
<td>(a)(ii) all OHW structures (including free standing anchor masts for terminations at new tracks) and foundations (footings) required for</td>
<td></td>
</tr>
</tbody>
</table>
Northern Sydney Freight Corridor  
Gosford Passing Loops Project  

### Adjustments to the Contract Sum:

- **Period for exercising the Option:**
  - This Option may be exercised at any time prior to 28 February 2013.

---

#### 4.6 Overhead Wiring

**4.6.1 Scope**

- **(a)(i)** OHW Works required for the complete electrification of the Down Refuge, electrification of the Up Refuge track section between 83.603km and 83.752km and the interface with the existing main line tracks' OHW and OHW structures;

- **(a)(ii)** all OHW structures (including free standing anchor masts for terminations at new tracks) and foundations (footings) required for the installation of the new OHW system and all modifications to the existing OHW system required to construct the Up Refuge and Down Refuge Works;

---

#### Principal’s Design

The design of permanent way for the Up Refuge is amended to comply with Works Brief section 4.4 which supersedes drawing titled “Modified Narara End Junction Layout, Concept Track Layout for Scope Reduction with Down Refuge Runoff Track Retained” contained in Works Brief Appendix C Part 3.

---

#### Relevant Portion:

- This Option GPL-D&C-9 will form part of Portion 3.
## Option GPL-D&C-10: Increased length of Down Refuge at Northern end only

| Description: | Increased length of Down Refuge Trackwork and associated infrastructure including but not limited to OHW, access roads, retaining walls, earthworks, drainage and signalling infrastructure.  

The Down Refuge Turnout at the Narara End to be moved 100 metres towards the Country. |
| Works Brief Amendment: | Items to be removed from the Works Brief |
| | 4.4. Permanent Way |
| | 4.4.1 Scope |
| | (a)(i) new Down Refuge track and formation between 81.724km and 83.522km, which includes the run-off track; |
| | (a)(viii) two (2) standard tangential turnouts and associated special track work componentry forming a crossover between the proposed Down Refuge and the Down Main between approximately 83.422km and 83.588km with an associated run-off track; |
| Items to be added to the Works Brief | Items to be added to the Works Brief |
| | 4.4. Permanent Way |
| | 4.4.1 Scope |
| | (a)(i) new Down Refuge track and formation between 81.724km and 83.688km, including run-off track; |
| | (a)(viii) two (2) standard tangential turnouts and associated special track work componentry forming a crossover between the proposed Down Refuge and the Down Main between approximately 83.520km and 83.682km with an associated run-off track; |
| Principal's Design | The design of permanent way for the Down Refuge is amended to comply with Works Brief section 4.4 which supersedes drawing titled "Modified Narara End Junction Layout, Concept Track Layout for Scope Reduction with Down Refuge Runoff Track Retained" contained in Works Brief Appendix C Part 3. |
| Relevant Portion: | This Option GPL-D&C-10 will form part of Portion 3. |
| Adjustment to the Contract Sum: | |
| Period for exercising the Option: | This Option may be exercised at any time prior to 1 February 2013. |
## Northern Sydney Freight Corridor
### Gosford Passing Loops Project

#### Design and Construction Contract

**Option GPL-D&C-11**

<table>
<thead>
<tr>
<th>Removal of Down Refuge OHW</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Description:</strong></td>
</tr>
</tbody>
</table>

#### Works Brief Amendment:

<table>
<thead>
<tr>
<th>Items to be removed from the Works Brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2 Overview of the Gosford Passing Loops Project</td>
</tr>
<tr>
<td>(d) electrification of the new Down Refuge;</td>
</tr>
</tbody>
</table>

#### 4.6 Overhead Wiring

#### 4.6.1 Scope

(a)(i) complete electrification of the Down Refuge and interface with the existing main line tracks' OHW and OHW structures;

(a)(ii) all OHW structures (including free standing anchor masts for terminations at new tracks) and foundations (footings) required for the installation of the new OHW system on the Down Refuge and all modifications to the existing OHW system required to construct the Up Refuge and Down Refuge Works;

(a)(iii) complete catenary systems including contact and catenary wiring, feeder wires, droppers, jumpers, sectioning insulation, cut-in insulation and feeder suspension insulation to suit new OHW arrangements;

(a)(v) electrical sectioning and isolation works;

(a)(viii) switches and feeding arrangements;

(a)(ix) footings for overhead wiring structures including overhead wiring anchor masts;

(a)(xii) staged removal / modification of the Overhead Wiring on the Down Loco Siding No. 1 to provide electrification of the temporary run-off track (100m north of 88 points) during the construction phase. This wire will eventually be replaced by the new Overhead Wiring run on the Down Refuge.

#### 4.6.2 Technical Requirements

(a) A new OHW system is required to allow traction power to be supplied to the Down Refuge track works.

(w) The design and construction of OHW structures must not preclude the future electrification of the Up Refuge.

#### Items to be added to the Works Brief

1.2 Overview of the Gosford Passing Loops Project

(d) not used;
4.6 Overhead Wiring

4.6.1 Scope

(a)(i) not used;

(a)(ii) all OHW structures (including free standing anchor masts for terminations at new tracks) and foundations (footings) required for all modifications to the existing OHW system required to construct the Up Refuge and Down Refuge Works;

(a)(iii) not used;

(a)(v) not used;

(a)(viii) not used;

(a)(ix) not used;

(a)(xii) modification of the overhead wiring on the Down Loco Siding No. 1 to provide electrification of the run-off track (100m north of 88 points).

4.6.2 Technical Requirements

(a) not used.

(w) The design and construction of OHW structures must not preclude the future electrification of either the Up Refuge or the Down Refuge.

Principal's Design

The Principal's Design is modified in accordance with the notation on the sketches attached to Exhibit J to this Deed, as shown below:

<table>
<thead>
<tr>
<th>Drawings to be removed from the Principal's Design</th>
<th>Drawings to be added to the Principal's Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSFC-1733-GP-OH-DG-0021</td>
<td>Removal of Down Refuge OHW - Sketch 1</td>
</tr>
<tr>
<td>NSFC-1733-GP-OH-DG-0103</td>
<td>Removal of Down Refuge OHW - Sketch 2</td>
</tr>
<tr>
<td>NSFC-1733-GP-OH-DG-0104</td>
<td>Removal of Down Refuge OHW - Sketch 3</td>
</tr>
<tr>
<td>NSFC-1733-GP-OH-DG-0105</td>
<td>Removal of Down Refuge OHW - Sketch 4</td>
</tr>
<tr>
<td>NSFC-1733-GP-OH-DG-0106</td>
<td>Removal of Down Refuge OHW - Sketch 5</td>
</tr>
<tr>
<td>NSFC-1733-GP-OH-DG-0107</td>
<td>Removal of Down Refuge OHW - Sketch 6</td>
</tr>
<tr>
<td>NSFC-1733-GP-OH-DG-0108</td>
<td>Removal of Down Refuge OHW - Sketch 7</td>
</tr>
<tr>
<td>Option GPL-D&amp;C-11</td>
<td>Not used</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------</td>
</tr>
</tbody>
</table>

**Relevant Portion:** This Option GPL-D&C-11 will form part of Portion 3.

**Adjustment to the Contract Sum:**

**Period for exercising the Option:** This Option may be exercised at any time prior to 1 February 2013.
### Northern Sydney Freight Corridor
### Gosford Passing Loops Project

#### Description:
- Addition of vehicle access roads between approximate chainages 81.800km to 82.160km and associated retaining walls.
- Addition of vehicle access roads between approximate chainages 82.380km to 82.640km and associated retaining walls.
- The typical sections for access roads are to be revised to replace the sub-base course with a structural fill layer specified to RailCorp standard SPC 411).

#### Items to be removed from the Works Brief

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.14 Access Roads</td>
</tr>
<tr>
<td>4.14.2 Technical Requirements</td>
</tr>
<tr>
<td>(d) Vehicular maintenance access roads are required along the rail alignment to enable safe access for RailCorp staff to carry out construction, maintenance, repair, and equipment replacement activities wherever possible.</td>
</tr>
<tr>
<td>(h) Not used.</td>
</tr>
<tr>
<td>(i) In areas where no vehicular access is provided, standard formation width for walkway access must be provided as a minimum.</td>
</tr>
<tr>
<td>(l) The maintenance access must be designed to use an appropriate sub-base course such as a 200mm thick DGS20 sub-base course for in situ subgrade CBR of 3% or greater. Add extra 150mm selected fill material (minimum CBR 15%) under the sub-base course for in-situ subgrade with CBR 2%.</td>
</tr>
</tbody>
</table>

#### Items to be added to the Works Brief

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.14 Access Roads</td>
</tr>
<tr>
<td>4.14.2 Technical Requirements</td>
</tr>
<tr>
<td>(d) Vehicular maintenance access roads are required along the rail alignment to enable safe access for RailCorp staff to carry out construction, maintenance, repair, and equipment replacement activities for the proposed turnouts, overhead wiring section overlaps, drainage channels/culverts, signalling equipment, signalling bungalows, HV poles, and other assets. Such access must be all weather and include for heavy vehicle and crane access, inside and outside the Asset Lands.</td>
</tr>
<tr>
<td>(h) The design and construction of the maintenance access roads must provide for safe egress and access. Sections longer than 300 m that would require a vehicle to reverse out must provide a turnaround area at a maximum spacing of 300 m.</td>
</tr>
<tr>
<td>(i) In areas where no vehicular access is provided, standard formation width for walkway access across bridges, culverts and</td>
</tr>
</tbody>
</table>
underpasses must be provided as a minimum.

(1) The design and construction of the maintenance access roads must provide for safe egress and access. Sections longer than 300 m that would require a vehicle to reverse out must provide a turnaround area at a maximum spacing of 300 m.

**Principal's Design**

The Principal's Design is modified in accordance with the drawings attached to this Schedule 25 as shown in the table below:

<table>
<thead>
<tr>
<th>Drawings to be removed from the Principal's Design</th>
<th>Drawings to be added to the Principal's Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access Road Alternative Sketch 1</td>
<td>NSFC-1733-GP-CI-DG-0103</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 2</td>
<td>NSFC-1733-GP-CI-DG-0104</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 3</td>
<td>NSFC-1733-GP-CI-DG-0105</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 4</td>
<td>NSFC-1733-GP-CI-DG-0106</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 5</td>
<td>NSFC-1733-GP-CI-DG-0011</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 6</td>
<td>NSFC-1733-GP-CI-DG-0012</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 7</td>
<td>NSFC-1733-GP-CI-DG-0013</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 8</td>
<td>NSFC-1733-GP-CI-DG-0014</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 9</td>
<td>NSFC-1733-GP-CI-DG-0015</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 10</td>
<td>NSFC-1733-GP-CI-DG-0202</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 11</td>
<td>NSFC-1733-GP-CI-DG-0203</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 12</td>
<td>NSFC-1733-GP-CI-DG-0204</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 13</td>
<td>NSFC-1733-GP-CI-DG-0205</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 14</td>
<td>NSFC-1733-GP-CI-DG-0206</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 15</td>
<td>NSFC-1733-GP-CI-DG-0108</td>
</tr>
<tr>
<td>Access Road Alternative Sketch 16</td>
<td>NSFC-1733-GP-CI-DG-0109</td>
</tr>
</tbody>
</table>

**Relevant Portion:**

This Option GPL-D&C-13 will form part of Portion 3.

**Adjustment to the Contract Sum:**

<table>
<thead>
<tr>
<th>Period for exercising the Option:</th>
</tr>
</thead>
<tbody>
<tr>
<td>This Option may be exercised at any time prior to 1 February 2013.</td>
</tr>
</tbody>
</table>

**Option GPL-D&C-14**

Not used.
<table>
<thead>
<tr>
<th>Option GPL-D&amp;C-15</th>
<th>Increase Length of the Up Refuge Track at the Southern End and add Overhead Wiring to the entire length of the Up Refuge.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description:</td>
<td>Increase the length of the Up Refuge track work at the southern end only and associated infrastructure including, but not limited to, earthworks, access roads, retaining walls, drainage, signalling infrastructure and utilities. Add the overhead wiring scope to the entire length of the Up Refuge track.</td>
</tr>
</tbody>
</table>
| Works Brief      | **Items to be removed from the Works Brief**  
| Amendment:       | 1.2 Overview of the Gosford Passing Loops Project  
|                  | (d) electrification of the new Down Refuge;  
|                  | **Items to be added to the Works Brief**  
|                  | 1.2 Overview of the Gosford Passing Loops Project  
|                  | (d) electrification of the new passing loops;  
|                  | **Items to be removed from the Works Brief**  
|                  | 4.4 Permanent Way  
|                  | 4.4.1 Scope  
|                  | (a)(ii) new Up Refuge track and formation between 81.330km and 83.603km, which includes associated runoff track. The Up Refuge is realigned on wholly new formation with new track componentry to ESC200, and maintain 6.9m centres (where possible) between the new Up Refuge and existing Up Main;  
|                  | (a)(iii) removal of the existing weighbridge siding between 81.300km and 81.530km and installation of a timber buffer stop at the end of the weighbridge siding. This includes the removal of frame G crossover and making good the siding end and installation of the buffer stop. Frame G is to be booked out of use and permanently removed on WE10 6/7 September 2014 Realignment;  
|                  | (a)(vi) booking out of use and removal of the existing Up Refuge track between 81.300km and 85 points and installation of a new buffer stop at the termination of the reduced existing Up Refuge at 81.300km;  
|                  | (a)(xiv) two (2) standard tangential turnouts and associated special track work componentry forming a crossover between the proposed Up Main at 81.330km and Up Refuge at 81.439km and with an associated run-off track; and  
|                  | (a)(xv) realignment of the Up Main between 81.303km and 81.441km.  
| | **Items to be added to the Works Brief**  
| | 4.4 Permanent Way |
4.4.1 Scope

(a)(ii) new Up Refuge track and formation between 81.105km and 83.603km. For the section between 81.105km and 81.455km, the new Up Refuge reflects the existing RailCorp designed alignment with minor adjustments to provide acceptable passing clearance and parallel tracks and with new track componentry to ESC 200. For the section between 81.455km and 83.603km, the Up Refuge is realigned on wholly new formation with 6.9m centres (where possible) between the new Up Refuge and the Up Main and with new track componentry to ESC200;

(a)(iii) realignment and reconditioning of the Weighbridge Siding with replacement of track componentry between 81.190km and 81.340km. This includes the removal of frame G crossover and replacement with plan-lined track. A ballast skim and replacement of the timber sleepers, baseplates and fasteners is required. The rail will need to match the existing rail used on the Weighbridge Siding. Timber sleepers shall be used to replace existing non compliant timber sleepers. Frame G is to be booked out of use and permanently removed on WE10 6/7 September 2014 Realignment;

(a)(vi) booking out of use and removal of the existing Up Refuge track from north of 58 points and reinstatement of a new track and formation from north of 58 points. (The Contractor is to note that the existing weighbridge siding at 58 points is to be retained). The existing Up Refuge Loop is to be booked out of use from WE10 6/7 September 2014 to permanently remove 85A and 85B points and allow the reconfiguration of the Up Refuge;

(a)(xiv) not used; and

(a)(xv) not used.

Item to be removed from the Works Brief

4.6 Overhead Wiring

4.6.1 Scope

(a)(i) complete electrification of the Down Refuge and interface with the existing main line tracks’ OHW and OHW structures;

(a)(ii) all OHW structures (including free standing anchor masts for terminations at new tracks) and foundations (footings) required for the installation of the new OHW system on the Down Refuge and all modifications to the existing OHW system required to construct the Up Refuge and Down Refuge Works;

(a)(xi) remove the overhead wiring from the existing Up Refuge; and

Item to be added to the Works Brief

4.6 Overhead Wiring

4.6.1 Scope

(a)(i) complete electrification of the Up Refuge and Down Refuge
and interface with the existing main line tracks' OHW and OHW structures;

(a)(ii) all OHW structures (including free standing anchor masts for terminations at new tracks) and foundations (footings) required for the installation of the new OHW system and all modifications to the existing OHW system required to construct the Up Refuge and Down Refuge Works;

(a)(xi) not used; and

<table>
<thead>
<tr>
<th>Item to be added to the Works Brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appendix L – Waivers</td>
</tr>
</tbody>
</table>

---

Northern Sydney Freight Corridor  
Gosford Passing Loops Project

Design and Construction Contract  
(GPL-01-D&C)
<table>
<thead>
<tr>
<th>ID</th>
<th>Discipline</th>
<th>Waiver against standard name</th>
<th>Standard Clause</th>
<th>Line(s) affected</th>
<th>From (km)</th>
<th>To (km)</th>
<th>Reason for waiver</th>
<th>Comments (including method of removing waiver)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>OHW</td>
<td>&quot;Design of Overhead Wiring Structures &amp; Signal Gantry&quot; TMC331 &quot;Transit Space&quot; ESC215</td>
<td>6.2.3 (TMC331) 6.1.1 (ESC215)</td>
<td>Up Main and Up Refuge</td>
<td>61.1</td>
<td>61.2</td>
<td>The existing portal structure horizontal clearance to the track centreline is approximately 3600mm. In accordance with the specified standards, the horizontal mast clearance needs to be a minimum of 3000mm for the Main Lines</td>
<td>As part of NSFC project, the operational change is proposed. i.e. Passenger trains to be running through the Up Refuge while freight trains are stopped/parked on the Main Line. It is noted by RailCorp that the current operation of the passenger trains is running through the Gosford Yard with reduced horizontal clearances and it is understood that the re-alignment of the track through this section is marginal. Therefore a waiver for this may not be required.</td>
</tr>
</tbody>
</table>
Principal's Design

The design of permanent way for the Up Refuge is amended to comply with Works Brief section 4.4 which supersedes drawing titled "Modified Sydney End Up refuge Connection" contained in Works Brief Appendix C Part 3.

The Principal's Design is also modified in accordance with the drawing attached to Exhibit J to this Deed as shown in the table below:

<table>
<thead>
<tr>
<th>Drawings to be removed from the Principal's Design</th>
<th>Drawings to be added to the Principal's Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hand marked-up version of drawing NSFC-1733-GP-DR-DG-0102 (see Works Brief Appendix C Part 3).</td>
<td>NSFC-1733-GP-DR-DG-0102</td>
</tr>
</tbody>
</table>

Relevant Portion: This Option GPL-D&C-15 will form part of Portion 3.

Adjustment to the Contract Sum: [Redacted]

Period for exercising the Option: This Option may be exercised at any time prior to 28 February 2013.
### Signalling Gantries

<table>
<thead>
<tr>
<th>Option GPL-D&amp;C-16</th>
<th>Description:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Due to clearance constraints throughout the Works, certain signals may require installation onto gantries.</td>
<td></td>
</tr>
</tbody>
</table>

#### Works Brief Amendment:

<table>
<thead>
<tr>
<th>Item to be removed from the Works Brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.5 Signalling System</td>
</tr>
<tr>
<td>4.5.1 Scope</td>
</tr>
<tr>
<td>(d) The Contractor must assess the Signalling Design against the Principal’s Track Geometry Design in order to determine the locations and the type of signalling infrastructure required.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item to be added to the Works Brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.5 Signalling System</td>
</tr>
<tr>
<td>4.5.1 Scope</td>
</tr>
<tr>
<td>(d) The Contractor must assess the Signalling Design against the Principal’s Track Geometry Design in order to determine the locations and the type of signalling infrastructure required, including but not limited to the following signals and supporting structures:</td>
</tr>
<tr>
<td>(i) the installation of a new signal GF100 located at Ch. 81.334 on the existing gantry signal structure at this location (Note: The Works include the extension of the walk way on top of the existing gantry structure at Ch. 81.334 to provide maintenance access to the new signal GF100; and</td>
</tr>
<tr>
<td>(ii) installation of a new signalling gantry structure for signals GF101 and GF104 as per the Signalling Plan. The final position and location of all new signalling infrastructure will be subject to confirmation by a signal sighting committee.</td>
</tr>
</tbody>
</table>

#### Technical Requirements

<table>
<thead>
<tr>
<th>4.5.2 Technical Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>(g) Signalling gantry structures and footings must be designed and constructed in accordance with RailCorp standards ESC 330 ‘Overhead Wiring Structures and Signal Gantries’ and ESC 215 ‘Transit Space’.</td>
</tr>
<tr>
<td>(h) Signalling gantry structures and footings must be designed in accordance with RailCorp standard drawings.</td>
</tr>
<tr>
<td>(i) The design and layout of signalling gantry structures must minimize incursion into adjacent tracks, walkway and vehicular access areas and avoid clashes/clearance infringements with/to the drainage system and other buried services, retaining walls, bridge abutments, signalling locations and signal sighting and catch points.</td>
</tr>
<tr>
<td>(j) The Contractor must liaise with the local RailCorp maintainers in regards to placing of signal GF100 on the existing gantry and extending the walkway. The existing gantry details are provided in Appendix N.</td>
</tr>
</tbody>
</table>

### Relevant Portion:

This Option GPL-D&C-16 will form part of Portion 4.
<table>
<thead>
<tr>
<th>Adjustment to the Contract Sum:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Period for exercising the Option:</td>
<td>This Option may be exercised at any time prior to 28 February 2013.</td>
</tr>
</tbody>
</table>
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 for New South Wales (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 (TfNSW), is responsible for developing certain major railway systems and other major projects.

C. TfNSW is responsible for procuring the execution and completion of two passing loops north of Gosford Station to improve the capacity and reliability of the rail freight paths between Sydney and Newcastle, known as the Gosford Passing Loops Project. It has entered into a deed (Main Deed) with the Contractor to design and construct a certain part of the Gosford Passing Loops Project (the Works).

D. RailCorp is relying on TfNSW 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 TfNSW 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
Northern Sydney Freight Corridor  
Gosford Passing Loops Project

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:

<table>
<thead>
<tr>
<th>Period in which delay occurs</th>
<th>Rate per hour or part thereof</th>
</tr>
</thead>
<tbody>
<tr>
<td>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)</td>
<td>$30,000</td>
</tr>
<tr>
<td>During all other times</td>
<td>$15,000</td>
</tr>
</tbody>
</table>

4. The aggregate of the Contractor's liability to RailCorp under this Deed Poll and the Contractor's liability to TfNSW 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 TfNSW 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.
Northern Sydney Freight Corridor
Gosford Passing Loops Project

Executed as a deed poll.

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

______________________________________________________
Signature of Director

______________________________________________________
Name of Director in full

______________________________________________________
Signature of Secretary/other Director

______________________________________________________
Name of Secretary/other Director in full
## 27. Performance and Compliance Incentive Payment Table

(Clauses 1.1 and 11.4)

<table>
<thead>
<tr>
<th>Performance Category</th>
<th>Performance Indicator</th>
<th>Performance requirement for monthly payment</th>
<th>Conditions for payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time – commences 1/3/2013 for 25 months</td>
<td>Monthly Report</td>
<td>Monthly Report provided to the Principal on or before the 5(^{th}) day of each month.</td>
<td>The maximum monthly amount payable for the Time category is [___]</td>
</tr>
<tr>
<td>Contractor Program</td>
<td>Non-rejection of the Contractor Program provided in accordance with clause 10.2(e) and TSR Prelude.</td>
<td>Percentage of payment is dependant on the Contractor’s achievement of the performance requirements.</td>
<td></td>
</tr>
<tr>
<td>Design Program</td>
<td>Submit all Design Documentation (General Conditions clause 5.3) at the times set out in the proceeding months’ non rejected Contractor Program.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction Program</td>
<td>Implement construction activities at the times set out in the proceeding months’ non-rejected Contractor Program and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Design Meetings</td>
<td>Organise and attend all design progress and review meetings (TSR-T1 clause 2.9.1) at the times set out in the proceeding months’ non rejected Contractor Program.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Possessions and Resources</td>
<td>Contractor to provide the necessary notices and attend the required meetings in relation to the planning and utilisation of “RailCorp Critical Resources” and Track Possessions as set out in the Contract and relevant TSRs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Safety – 1/3/2013</td>
<td></td>
<td></td>
<td>The maximum monthly amount</td>
</tr>
<tr>
<td>Performance Category for 25 months</td>
<td>Performance Indicator</td>
<td>Performance requirement for monthly payment</td>
<td>Conditions for payment</td>
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<tr>
<td>----------------------------------</td>
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<td>--------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Induction</td>
<td>Site induction process well documented, effectively delivered and includes fatigue and Drug and Alcohol management. Site personnel inducted before commencing on site. Visitors provided with brief induction and accompanied by inducted site staff. Records of inductions maintained.</td>
<td>Payment in respect of the Safety category for each month will be determined by the Principal's Representative as 0, 50 or 100 percent of the maximum monthly amount set out above. Percentage of payment is dependant on the Contractor's achievement of the performance requirements. No payment will be made in respect of the Safety category in respect of any month in which any lost time injury occur.</td>
<td></td>
</tr>
<tr>
<td>Safety Management System</td>
<td>Compliance with TfNSW Standard Requirements TSR S1.</td>
<td>Safety Project Safety Management Management Plan implemented. Provision of Safety Statistics to the Principal each month on schedule.</td>
<td>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.</td>
</tr>
<tr>
<td>Safety Assurance</td>
<td>All documentation required for the safety assurance report is provided on an ongoing basis to the Principal's Representative.</td>
<td>Safe Work Method Statements documented and implemented for all significant activities and incorporate Principal's review comments. Hierarchy of controls applied.</td>
<td></td>
</tr>
<tr>
<td>Safe Work Method Statements</td>
<td>Toolbox meetings held at start of new activities.</td>
<td>Safety Committee inspections carried out regularly and recommendations documented. Evidence that recommendations have been considered and appropriately dealt with.</td>
<td></td>
</tr>
<tr>
<td>Personal Protective Equipment</td>
<td>All on site personnel wearing appropriate PPE and complying with RailCorp requirements, including but not limited to: • high visibility safety vests with reflective strips front and back, closed at the front and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance Category</td>
<td>Performance Indicator</td>
<td>Performance requirement for monthly payment</td>
<td>Conditions for payment</td>
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<tr>
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</tr>
<tr>
<td>Fall Prevention</td>
<td></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 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.</td>
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<td></td>
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<td>• Warning signs to advise of fall hazards.</td>
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<td></td>
<td>• Ladders properly secured and safe use of ladders (use of platform ladders preferred where relevant).</td>
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<tr>
<td></td>
<td></td>
<td>• Signs &quot;persons working above&quot; and safety fence/barrier to guard the area below.</td>
<td></td>
</tr>
<tr>
<td>Traffic Management</td>
<td>Traffic Management Plan</td>
<td>Traffic Management Plan implemented including management of external traffic impacts, pedestrian safety and all moving plant on-site.</td>
<td></td>
</tr>
<tr>
<td>Protection of Existing Infrastructure</td>
<td>Procedures are implemented to avoid damage to existing infrastructure (RailCorp and adjacent utilities)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site &quot;Housekeeping&quot;</td>
<td></td>
<td>Site and amenities clean and tidy.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Access ways well</td>
<td></td>
</tr>
<tr>
<td>Performance Category</td>
<td>Performance Indicator</td>
<td>Performance requirement for monthly payment</td>
<td>Conditions for payment</td>
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<td></td>
<td></td>
<td>defined and kept clear of obstacles.</td>
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<td></td>
<td></td>
<td>• Signs to warn hazards.</td>
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<td>• Entry points to Site controlled or locked.</td>
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<td></td>
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<td>• Adequate lighting provided.</td>
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<td></td>
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<td>• Protection of excavation areas.</td>
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<td>• Work areas provided with good drainage.</td>
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<td>• Electrical leads tagged and properly supported clear of the ground.</td>
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<td>• Waste materials cleared regularly.</td>
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<td></td>
<td></td>
<td>• No obstacles to existing access of adjacent stakeholders.</td>
<td></td>
</tr>
<tr>
<td>Emergency Procedures</td>
<td>Emergency procedures documented and all site personnel trained as part of site induction in:</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>• evacuation procedure, including assembly areas;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• how to summon first aid for injuries or medical conditions; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• location of fire extinguishers onsite.</td>
<td></td>
</tr>
<tr>
<td>Site Incidents and/or Injuries</td>
<td>No Lost Time Injuries (LTIs) during the month and no major safety investigations and no fatalities during the month. 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.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Infringement notices/fines/prosecutions</td>
<td>No infringement notices, PINs or fines issued and no prosecutions notified or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance Category</td>
<td>Performance Indicator</td>
<td>Performance requirement for monthly payment</td>
<td>Conditions for payment</td>
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<tr>
<td>----------------------</td>
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<td>------------------------</td>
</tr>
<tr>
<td>Rail Safety and Reliability</td>
<td>Project Safety Management Plan</td>
<td>Project Safety Management Plan adequately covers rail safety matters. Contractor and relevant Subcontractors have appropriately documented systems and processes in compliance with the Rail Safety Act 2008, Rail Safety (General) Regulation 2008 and Rail Safety (Drug and Alcohol Testing) Regulation 2008 and TfNSW's accreditation.</td>
<td>The maximum monthly amount payable for the Rail Safety and Reliability Category is [ ] Payment in respect of the Rail Safety and Reliability category for each month will be determined by the Principal's Representative as 0, 50 or 100 percent of the maximum monthly amount set out above. Percentage of payment is dependant on the Contractor's achievement of the performance requirements. No payment will be made in respect of Rail Safety and Reliability category in respect of any month in which any notifiable Incident occurs.</td>
</tr>
<tr>
<td>Interface Agreement</td>
<td>Contractor undertakes all actions required by the Interface Agreement.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RailCorp Interface</td>
<td>Contractor attends all RailCorp Interface (incl IA meetings) Meetings and submits Project Safety Agreement (PSA) forms 6 weeks prior to the works being undertaken.</td>
<td></td>
<td>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 scheduled train services arising from any act or omission of the Contractor in performing the Contractor's Activities. 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.</td>
</tr>
<tr>
<td>Competency Management</td>
<td>Competency certification system implemented and effective.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Worksite Protection</td>
<td>Contractor to have in place appropriate Worksite Protection at all relevant times. All Project personnel to adhere to all instructions given by the Worksite Protection staff.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Work Activity Advice (WAA)</td>
<td>All WAA's are provided to the Principal's Representative 6 weeks prior to works being undertaken.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Track Possession Management</td>
<td>Contractor attends Track Possession planning meetings required as per TSR Prelude Clause (5.4). Contractor constructively and co-operatively participates in planning activities to be carried</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance Category</td>
<td>Performance Indicator</td>
<td>Performance requirement for monthly payment</td>
<td>Conditions for payment</td>
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<tr>
<td></td>
<td></td>
<td>out during Track Possessions. Contractor attends post Track Possession meetings as required to review performance and lessons learned from the Track Possession.</td>
<td></td>
</tr>
<tr>
<td>Train Delays or damage to RailCorp infrastructure</td>
<td></td>
<td>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).</td>
<td></td>
</tr>
<tr>
<td>Close out of Rail Reliability issues identified Damage to Rail Infrastructure Damage to other utilities Damage to other parties infrastructure train services</td>
<td></td>
<td>Reliability issues raised by the Principal and agreed between the two parties are closed out within the timeframe agreed with the Principal's Representative.</td>
<td></td>
</tr>
</tbody>
</table>

**Environmental Management** — commences 1/3/2013 for 25 months

Environmental Compliance

Compliance with conditions of Planning Approval, Preferred Activity Report and all other permits and licenses.
Number of Incidents and NCRs recorded for the period.
If Incidents or NCRs occur, they have been notified to the Principal’s Representative within the required timeframe and responded to, appropriately acted on and closed out within the nominated timeframes.
Suggestions by the Principal or relevant Authorities are considered and dealt with in

The maximum monthly amount payable for the Environmental Management category is

Payment in respect of the Environmental Management category for each month will be determined by the Principal’s Representative as 0, 50 or 100 percent of the maximum monthly amount set out above.
Percentage of payment is dependant on the Contractor’s achievement of the performance requirements.
No payment will be made in respect of the Environmental Management category in respect of any month in which any notifiable Incident occurs.
## Performance Category | Performance Indicator | Performance requirement for monthly payment | Conditions for payment |
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>the nominated timeframes.</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Environmental Management obligations and requirements as identified in the contract are fulfilled.</td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Compliance data required to populate the Planning and Environment Compliance Monitoring System (PECOMS) is supplied in accordance with required format and timeframes.</td>
<td>No payment will be made in respect of Environmental Management category in respect of any month in which any NCR, SON, Stop Work direction or report in respect of an Incident is not responded to, acted on or closed out within the specified timeframe.</td>
</tr>
<tr>
<td>ER directions and suggestions</td>
<td>System Deficiency Notices (SDNs) initiated by the Environmental Representative (ER) and issued by the Principal’s Representative are responded to, appropriately acted on and closed out promptly. No stop work direction has been issued. Suggestions by the ER are considered and dealt within the nominated timeframes.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental Management Plan and Environmental Control Map(s)</td>
<td>Environmental Management Plan and Environmental Control Map(s) implemented and updated as works progress or in response to issues identified by the Contractor, ER, the Principal or relevant Authorities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environment Training</td>
<td>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. Site inductions are carried out for all site personnel and Subcontractors working on the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance Category</td>
<td>Performance Indicator</td>
<td>Performance requirement for monthly payment</td>
<td>Conditions for payment</td>
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<td></td>
<td></td>
<td>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. Relevant personnel to attend all environmental training provided by the Principal.</td>
<td></td>
</tr>
<tr>
<td>Implementation of Remediation Action Plan</td>
<td></td>
<td>The Contractor must implement Remediation Action Plan prepared by 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 ER or Principal’s Representative are to be implemented during the construction stages.</td>
<td></td>
</tr>
<tr>
<td>Meetings and inspections and resources</td>
<td></td>
<td>Contractor’s Environmental Manager attends, as required by the Principal’s Representative, meetings and joint inspections with environmental agencies, the ER 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.</td>
<td></td>
</tr>
<tr>
<td>Communications —commences</td>
<td></td>
<td>The maximum monthly amount payable for the</td>
<td></td>
</tr>
<tr>
<td>Performance Category</td>
<td>Performance Indicator</td>
<td>Performance requirement for monthly payment</td>
<td>Conditions for payment</td>
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<td>---------------------------------------------</td>
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</tr>
<tr>
<td>1/3/2013 for 25 months</td>
<td>Community notification</td>
<td>All notices, signage, advertisements etc are accurate, submitted within the timeframes stipulated in the TfNSW Standard Requirements – C1 for review by TfNSW’s Director Communications and published or delivered within the times specified in the Planning Approval.</td>
<td>Payment in respect of the Communications category for each month will be determined by the Principal’s Representative as 0, 50, 75 or 100 percent of the maximum monthly amount set out above. Percentage of payment is dependant on the Contractor’s achievement of the performance requirements.</td>
</tr>
<tr>
<td></td>
<td>Community meetings</td>
<td>Material provided as required for the Community Meetings submitted with reasonable notice for review by TfNSW’s 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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Complaints</td>
<td>All complaints by members of the public are appropriately responded to and closed out within the times specified in the TfNSW Standard Requirements – C1.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Incidents</td>
<td>All Incidents are promptly notified in accordance with the TfNSW Standard Requirements.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Regulatory notifications and inspections</td>
<td>All notices, correspondence, contacts and site visits by regulatory agencies including the Office of Environment and Heritage, Department of Planning and Infrastructure, ITSР and WorkCover NSW are promptly notified to the Principal's Representative and TfNSW's General Manager Public and Corporate Affairs.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Media Contacts</td>
<td>Media contacts are promptly referred to TfNSW's General Manager Public and Corporate Affairs.</td>
<td></td>
</tr>
<tr>
<td>Compliance Audits –</td>
<td></td>
<td>The maximum monthly amount payable for the Compliance</td>
<td></td>
</tr>
</tbody>
</table>
### Northern Sydney Freight Corridor
#### Gosford Passing Loops Project

<table>
<thead>
<tr>
<th>Performance Category</th>
<th>Performance Indicator</th>
<th>Performance requirement for monthly payment</th>
<th>Conditions for payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>commences 1/3/2013 for 25 months</td>
<td>Audit Process and Program</td>
<td>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 with the Principal's Representative in a collaborative audit process.</td>
<td>Payment in respect of the Compliance Audits category for each month will be determined by the Principal's Representative as 0, 50 or 100 percent of the maximum monthly amount set out above. Percentage of payment is dependant on the Contractor's achievement of the performance requirements.</td>
</tr>
<tr>
<td></td>
<td>Audit Procedure</td>
<td>Contractor has a systematic documented procedure to manage Principal's and Contractor's Collaborative Compliance Audit standard and associated documentation requirements.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Audit Findings</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compliance Working Group (CWG)</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compliance Audits</td>
<td>Contractor conducts regular audits of its compliance with TfNSW'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.</td>
<td></td>
</tr>
</tbody>
</table>

**Quality commences - 1/3/2013 for 25**

The maximum monthly amount payable for the Quality commences category is **[redacted]**.
<table>
<thead>
<tr>
<th>Performance Category</th>
<th>Performance Indicator</th>
<th>Performance requirement for monthly payment</th>
<th>Conditions for payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>months</td>
<td>Verification &amp; records</td>
<td>Contractor has carried out verification, certification and maintained all appropriate records of the Subcontractor's and Contractor's activities.</td>
<td>Payment in respect of the Quality for each month will be determined by the Principal's Representative as 0, 50 or 100 percent of the maximum monthly amount set out above. Percentage of payment is dependant on the Contractor's achievement of the performance requirements.</td>
</tr>
<tr>
<td></td>
<td>Records Management</td>
<td>The Contractor maintains all records as required by the Principal, stipulated through all TSR documents provided by the Principal.</td>
<td>Rejection of any design package will be grounds for withholding 100 percent of the Contractor's incentive payments for each month until the design is accepted by Principal's Representative.</td>
</tr>
<tr>
<td></td>
<td>Hold and Witness Points</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Defects Management</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Engineering Authority</td>
<td>All necessary personnel engaged in rail-related engineering activities have been granted Engineering Authority.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Design Approval</td>
<td>Designs are provided to the Principal's Representative in accordance with the agreed schedule, of a high quality and not requiring significant modifications or amendments. Design packages rejected by the Principal or RailCorp as part of the Design Review process.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Management Plans</td>
<td>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 progress are scheduled and the Principal is informed of</td>
<td></td>
</tr>
<tr>
<td>Performance Category</td>
<td>Performance Indicator</td>
<td>Performance requirement for monthly payment</td>
<td>Conditions for payment</td>
</tr>
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<td>---------------------------------------------</td>
<td>------------------------</td>
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<tr>
<td></td>
<td></td>
<td>outcomes. Points of interest are brought to the attention of the Principal in sufficient time.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non-conformance, corrective action and preventative action measures</td>
<td>The Contractor provides the Principal with its methodology to monitor, measure and improve.</td>
<td></td>
</tr>
</tbody>
</table>
28. Dispute Resolution Board Agreement

(Clauses 1.1 and 15)

This Agreement is made on the following parties:

1. Transport for New South Wales (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 (TfNSW)

and

2. [insert name of Contractor under Project Deed] (ABN [insert ABN]) of [insert address] (the Contractor)

and

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

[Name and Address of Member]
[Name and Address of Member]
[Name and Address of Member]

RECITALS:

A. TfNSW is responsible for procuring the execution and completion of two passing loops north of Gosford Station to improve the capacity and reliability of the rail freight paths between Sydney and Newcastle, known as the Gosford Passing Loops Project. It has entered into a deed (Project Deed) with the Contractor to design and construct a certain part of the Gosford Passing Loops Project.

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, TfNSW and the Contractor in relation to the Dispute Resolution Board and the Disputes (the Agreement).

THIS AGREEMENT PROVIDES

1. Definitions and Interpretation

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:

(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;
Northern Sydney Freight Corridor  
Gosford Passing Loops Project

(h) headings are for convenience only and do not affect the interpretation of this Agreement;

(i) a reference to:
   (i) a party or clause is a reference to a party or clause of or to this Agreement; and
   (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;

(j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

(k) for all purposes (other than where designated as a Business Day), "day" means calendar day;

(l) a reference to "$" is to Australian currency;

(m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and

(n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. Agreement to prevail

(a) The parties agree that if there is any inconsistency between the terms of this Agreement and 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 15.12 of the Project Deed.

3. Formation of the Dispute Resolution Board

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

(a) During the first meeting at the Site, the Dispute Resolution Board will 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) in accordance with the procedures included in Appendix 1 to this Agreement (unless otherwise agreed by the parties).

(b) 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 15.6 of the Project Deed.

5. Dispute Resolution Board Member's obligations

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 and if a dispute cannot be prevented, determined in accordance with clause 15 of 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

(a) TfNSW 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) TfNSW 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.

7. TfNSW's commitment and responsibilities

TfNSW 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

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

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
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Gosford Passing Loops Project

(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

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

11.1 Liability

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

11.2 Due care and diligence

(a) 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

12.1 Indemnity

(a) TfNSW 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

(a) 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

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

14. Members’ termination

14.1 Resignation

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

14.2 Termination

A Member may be terminated at any time if TfNSW 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 TfNSW and the Contractor under clause 14.2;

then

(c) a replacement Member may be appointed in accordance with clause 15.11 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.

15. Governing law

(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.

16. Relationship of the parties

Nothing in this Agreement will be construed or interpreted as constituting the relationship between TfNSW, the Contractor and the Members as that of partners, joint venturers or any other fiduciary relationship.
17. 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).

(i) to the Principal: Level 5, Tower A
Zenith Centre
821 Pacific Highway
CHATSWOOD NSW 2067
Fax: (02) 9200 0290

(ii) to the Contractor: [to be completed]

(iii) to the Members: [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 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

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

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

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

(a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

(b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

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

22. Amendment

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

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.
Northern Sydney Freight Corridor
Gosford Passing Loops Project

EXECUTED as an agreement

SIGNED FOR AND ON BEHALF OF
TRANSPORT for New South Wales by its
duly authorised representative in the presence of:

Representative
Witness

Name of Representative (Please Print)
Name of Witness (Please Print)

SIGNED FOR AND ON BEHALF OF
[CONTRACTOR] by its duly authorised
representative in the presence of:

Representative
Witness

Name of Representative (Please Print)
Name of Witness (Please Print)
Northern Sydney Freight Corridor
Gosford Passing Loops Project

SIGNED BY THE MEMBER [ ] in
the presence of:

Member

Witness

Name of Witness (Please Print)

SIGNED BY THE MEMBER [ ] in
the presence of:

Member

Witness

Name of Witness (Please Print)

SIGNED BY THE MEMBER [ ] in
the presence of:

Member

Witness

Name of Witness (Please Print)
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, attempting to prevent, and if unable to prevent, in determining Disputes under clause 15 of the Project Deed in a timely 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 communicate with 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 The 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 There must be no 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.

1.7 Communications between the parties and the Dispute Resolution Board for the purpose of attempting to prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under clause 15 of the Project Deed.

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 TfNSW 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 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.
APPENDIX 2

Rules for Dispute Resolution Board decisions

1. Written submissions

1.1 Within 7 days after the referral of a Dispute to the Dispute Resolution Board under clause 15.6 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 Notice of Referral to DRB under clause 15.6 of the Project Deed) must, in addition to any particulars provided by Party A in the relevant Notice of Referral to DRB, 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.

2. 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.

3. 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 under clause 15.6 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.

4. Modification

These rules may be modified only by agreement of TfNSW and the Contractor.
APPENDIX 3

Schedule of Fees and Disbursements

[The Schedule of Fees and Disbursements will be inserted following negotiation with the Members.]
29. Criteria for Members of Dispute Resolution Board

(Clause 15.11(c))

(a) 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.

(b) 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 contractors, design professionals and consultants; and

(C) disclosure of close professional or personal relationships with any key members of any entity involved in the project.
30. Deed of Guarantee and Indemnity
(Clauses 1.1, 2.8(g) and 11.7(a))

Deed of Guarantee and Indemnity made at  on 20

Transport for New South Wales (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 (Principal)

[ABN [ ] of [ ]]

(Guarantor)

RECITALS

A. The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.

B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Contractor to perform the Obligations.

C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

THIS DEED PROVIDES

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Contract means the Gosford Passing Loops Project Design and Construction Contract dated on or about the date of this Deed between the Principal and the Contractor.

Contractor means [insert details].

Event of Default means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Insolvency Provision means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement,
arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Obligations means all the liabilities and obligations of the Contractor to the Principal under or arising out of or in any way in connection with the Contract or the work to be carried out or performed by the Contractor under the Contract, and includes any liabilities or obligations which:

(a) are liquidated or unliquidated;
(b) are present, prospective or contingent;
(c) are in existence before or come into existence on or after the date of this Deed;
(d) relate to the payment of money or the performance or omission of any act;
(e) sound in damages only; or
(f) accrue as a result of any Event of Default,

and irrespective of:

(g) whether the Contractor is liable or obligated solely, or jointly, or jointly and severally with another person;
(h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
(i) the capacity in which the Contractor and the Principal comes to owe or be owed such liability or obligation,

and Obligation means any liability or obligation forming part of the Obligations.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means the rate which is 2% above the rate expressed as a percentage per annum:

(a) which is the average of the bid rates shown at approximately 10.15 am on reference rate page “BBSY” on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
(b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on
the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

1.2 Defined terms

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

1.3 Interpretation

In this Deed unless the context otherwise requires:

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

(b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";

(c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;

(d) a reference to any Authority, institute, association or body is:

(i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

(ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;

(e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) a reference to any legislation or to any section or provision of it includes:

(i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and

(ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;

(g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Contractor of all the Obligations.

2.2 Payment by Guarantor

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 Perform Obligations

If the Contractor defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Contractor in the same manner as the Contractor is required to perform the Obligations.
3. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

(a) any failure by the Contractor to perform the Obligations duly and punctually; or
(b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason.

4. Liability under this deed

4.1 Liability as guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression “Guarantor” in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

4.2 Limitation on Guarantor's liability

The liability of the Guarantor under this Deed will not exceed the liability which the Guarantor would have had to the Principal arising out of or in connection with the Contract, the Works or the Obligations, if the Guarantor had been named in the Contract as being jointly and severally liable with the Contractor to the Principal.

5. Nature and preservation of liability

5.1 Absolute liability

(a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.

(b) This Deed binds each person who has executed it, notwithstanding that:

(i) any person, whether named as a party or not, does not execute this Deed;

(ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or

(iii) this Deed is or becomes unenforceable, void or voidable against any other person.
5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor’s liability under this Deed, including any of the following:

(a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Contractor or the Guarantor;

(b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;

(c) the occurrence of any Event of Default;

(d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;

(e) the Principal accepting or declining to accept any Security from any person at any time;

(f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;

(g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;

(h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;

(i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;

(j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor;

(k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;

(l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;

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(m) the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;

(n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;

(o) the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor;

(p) (where the Guarantor is an individual) the death or mental incapacity of the Guarantor; or

(q) the provisions of section 440J of the Corporations Act 2001 (Cth) operating to prevent or delay:
   (i) the enforcement of this Deed against any Guarantor; or
   (ii) any claim for contribution against any Guarantor.

5.3 No merger

(a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the Principal.

(b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Contractor, or any particulars concerning any Obligation.

5.5 Appropriation

(a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.
(b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor’s liability under this Deed, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor’s liability under this Deed.

5.6 Void or voidable transactions

If:

(a) the Principal has at any time released or discharged:
   (i) the Guarantor from its obligations under this Deed; or
   (ii) any assets of the Guarantor from a Security,
   in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal, or

(b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
   (i) the Guarantor from its obligations under this Deed; or
   (ii) any assets of the Guarantor from a Security;

and

(c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and

(d) that claim is upheld or is conceded or compromised by the Principal,

then:

(e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;

(f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and

(g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

The liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the Principal.
5.8 Claim on the Guarantor

The Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.

5.9 No representation by Principal etc.

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Contractor or any other person.

6. Representations and Warranties

6.1 General representations and warranties

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and warrants to the Principal:

(a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;

(b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;

(c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the business assets or financial condition of the Guarantor;

(d) all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and

(e) the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

(a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;

(b) the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
6.3 Representations and warranties repeated

Each representation and warranty in this Deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor’s liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3.

7.4 Merger

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher
of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed must be:

(a) free of any set-off or counterclaim; and

(b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:

(c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;

(d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and

(e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

7.6 Currency indemnity

(a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.

(b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Principal in a currency (Payment Currency) other than the currency (Agreed Currency) in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.
8. Expenses and stamp duties

8.1 Expenses
The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis, incurred by the Principal in connection with:
(a) any consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
(b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties
(a) The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, financial institutions duty and debits tax which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed; and
(b) the Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

8.3 Goods and Services Tax
If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, the Contract or this Deed (GST Liability) then:
(a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
(b) otherwise - the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

9. Assignment
The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.
10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

10.2 Jurisdiction

(a) This clause 10.2 only applies where clauses 10.3 to 10.8 do not apply.

(b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.

(c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

10.3 Reference to arbitration

(a) Clauses 10.3 to 10.8 will only apply where the Guarantor is a foreign company (as defined in section 9 of the Corporations Act 2001 (Cth)).

(b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).

(c) The seat of the arbitration will be Sydney.

(d) The number of arbitrators will be one.

(e) The language of the arbitration will be English.

10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.5 Not used

10.6 Consolidation

The parties agree that section 24 of the International Arbitration Act 1974 (Cth) will apply in respect of consolidations.
10.7 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.8 Award final and binding

Any award will be final and binding upon the parties.

11. Miscellaneous

11.1 Notices

(a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a 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 the Guarantor: [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 record showing the number of the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all
further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed.

11.4 Form of demand
A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines. It need not specify the amount of the Guaranteed Money, nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

11.5 Entire agreement
This Deed 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.

11.6 Joint and several liability
The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor 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. This Deed binds each person who signs as a “Guarantor” even if another person who was intended to become a “Guarantor” does not become a “Guarantor” or is not bound by this Deed.

11.7 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.

11.8 Remedies cumulative
Each Power is cumulative and in addition to each other Power available to the Principal.
11.9 Waiver

(a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.

(b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.

(c) No waiver by the Principal of:
   (i) a breach of any term of this Deed; or
   (ii) any other failure by the Guarantor to comply with a requirement of this Deed,
will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

11.10 Consents

Any consent of the Principal referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

11.10A Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

11.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.12 Not Used

11.13 Variations

This Deed may only be varied by a document signed by or on behalf of both the Principal and the Guarantor.

11.14 Provisions limiting or excluding liability

Any provision of this Deed which seeks to limit or exclude a liability of the Principal or the Guarantor is to be construed as doing so only to the extent permitted by law.
11.15 Counterparts

(a) This Deed need not be executed by the Principal.

(b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

Executed as a deed.

Executed 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
31. Not Used
32. Escrow Deed

(Clause 5.10(a))

Between ['Name'] of ['Address'] (ABN [*]) ('Escrow Holder'),
and ['Name'] of ['Address'] (ABN [*]) ('Supplier'); and
and Transport for New South Wales (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 ('TfNSW').

RECITALS

A. The Supplier has agreed to deposit with the Escrow Holder a copy of the Source Code and to allow TfNSW 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 Gosford Passing Loops Project Design and Construction Contract between TfNSW 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:
Northern Sydney Freight Corridor
Gosford Passing Loops Project

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

(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:
Northern Sydney Freight Corridor  
Gosford Passing Loops Project

(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;
Northern Sydney Freight Corridor
Gosford Passing Loops Project

(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 TfNSW may test deposits
TfNSW 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 TfNSW 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 TfNSW 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 TfNSW 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, TfNSW 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 TfNSW's request and at no charge, give TfNSW all reasonable assistance to enable TfNSW to carry out the tests referred to in clause 2.2.

2.5 Failure to deposit correct version in escrow

If testing by TfNSW 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 TfNSW;
(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 TfNSW to examine the Register at any time during regular business hours; and

(f) provide the Supplier or TfNSW 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 TfNSW

5.1 TfNSW 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 TfNSW may notify the Escrow Holder and the Supplier of this event and request that the Escrow Holder release the Source Code Material to TfNSW (TfNSW Notice).
5.2 Supplier may dispute release

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

5.3 Release of Source Code Material to TfNSW

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

(a) if no Supplier Objection is received, within 2 Business Days after the Escrow Holder receives a TfNSW 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 TfNSW under this clause 5, then the Supplier grants TfNSW 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 TfNSW 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 TfNSW 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 TfNSW

The Escrow Holder must immediately notify the TfNSW 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

TfNSW must pay the Establishment Fee and Annual Fee to the Escrow Holder within 30 days of the TfNSW’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 TfNSW. 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 TfNSW;

(b) for the Annual Fee, on or after each anniversary of the date of this agreement, to TfNSW; 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.

8.4 Taxes

TfNSW 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 TfNSW 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 TfNSW on release of the Source Code Material to TfNSW 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 TfNSW 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 TfNSW;
(b) TfNSW giving 90 days written notice to the Supplier and the Escrow Holder; or
(c) the Supplier giving 90 days written notice to TfNSW and the Escrow Holder.

12.4 By TfNSW or the Supplier
Either the Supplier or TfNSW may, by giving notice to the Escrow Holder (with a copy to TfNSW or the Supplier, as applicable), terminate this agreement with immediate effect if:
(a) the Escrow Holder commits a material breach of this agreement; and
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 TfNSW (and TfNSW must, if the Supplier so requests), enter into another agreement between the Supplier, TfNSW 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 TfNSW.

(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).

(i) to TfNSW: Level 5, Tower A
    Zenith Centre
    821 Pacific Highway
    CHATSWOOD NSW 2067
    Fax: (02) 9200 0290

(ii) to the Escrow Holder: [to be completed]

(iii) to the Supplier: [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 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 ("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

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

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]
Northern Sydney Freight Corridor
Gosford Passing Loops Project

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

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4. Escrow deposit details

4.1 Compilation

(a) What hardware is required to compile the Software Application?
(b) What operating system and version is used in the compilation process?

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

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

(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?

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

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

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

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

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

6. Signature

Date: ___________________________________________________________________

Signature: __________________________________________________________________

Name (please print): __________________________________________________________________

For and on behalf of the Supplier
The Supplier warrants that the details set out above are correct and complete.
Northern Sydney Freight Corridor
Gosford Passing Loops Project

Executed and delivered as a Deed in Sydney

Signed for and on behalf of Transport for New South Wales (ABN: 18 804 239 602):

Signature of Authorised Officer

Print Name
(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
33. **Overhead Costs**

(Clauses 1.1, 6.4(b) and 7.3(b))

(a) **On-site overheads**

The on-site overheads are those overhead costs and expenses which are specific to the Site, including:

(i) on-site personnel with project management, site supervision, administration and support functions;

(ii) site accommodation including amenities and parking facilities;

(iii) phones lease and installation, rental and charges including mobiles;

(iv) storage area and facilities;

(v) office supplies and consumables;

(vi) site services;

(vii) furniture and office fittings;

(viii) site-based computers;

(ix) printing, photocopying and stationery;

(x) reproduction of drawings;

(xi) project specific insurances only (and not corporate held insurances);

(xii) project specific software, data processing and network systems;

(xiii) security;

(xiv) cleaning;

(xv) postage;

(xvi) site communications;

(xvii) first aid and personal protective equipment for the personnel referred to in paragraph (i);

(xviii) small tools; and

(xix) waste disposal associated with site accommodation, including amenities and parking facilities (excluding waste disposal associated with construction activities).

(b) **Off-site overheads**

The off-site overheads are on account of costs and expenses related to off-site business functions of the Contractor (in respect of the Works), including the following matters:

(i) safety and quality;
(ii) research and development;
(iii) financial, legal, human resources and commercial;
(iv) executive management;
(v) corporate infrastructure and support;
(vi) parent company fees;
(vii) corporate head offices running costs and payroll;
(viii) Contract Control Group meetings (non-site personnel); and
(ix) bonds and bank guarantees.
### 34. Principal Supplied Items

(Clauses 1.1 and 7.11)

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<tr>
<th>Principal Supplied Item</th>
<th>Place of Availability</th>
<th>Date of Availability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rails 110m legs of 60kg/m Head Harden (75 lengths)</td>
<td>Gosford Passing Loops Worksites</td>
<td>7 September 2014</td>
</tr>
<tr>
<td>Cardfile N16902101 (7 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 May 2013</td>
</tr>
<tr>
<td>Cardfile Backplate Provided with Cardfile (7 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 May 2013</td>
</tr>
<tr>
<td>Power Supply N16661203 (7 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 May 2013</td>
</tr>
<tr>
<td>CPU N17061301 (7 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 May 2013</td>
</tr>
<tr>
<td>EEPROM N17002001 (7 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 May 2013</td>
</tr>
<tr>
<td>Relay VCOR N322500-701 (7 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 September 2013</td>
</tr>
<tr>
<td>PCB, NONVITAL ISOL 32 OUT N17062701 (7 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 September 2013</td>
</tr>
<tr>
<td>Base VCOR N451376-0302 (7 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 September 2013</td>
</tr>
<tr>
<td>1 Wide Blanking Plate N451850-2902 (4 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 May 2013</td>
</tr>
<tr>
<td>2 Wide Blanking Plate N451859-2901 (28 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 May 2013</td>
</tr>
<tr>
<td>Vital Input (50v) (In16) N17061003 (18 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 September 2013</td>
</tr>
<tr>
<td>Peg, for Keying strips. J7091460473 (400 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 May 2013</td>
</tr>
<tr>
<td>Vital Output 12v (Out16) N17060501 (14 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 September 2013</td>
</tr>
<tr>
<td>Output Isolation Module N17001102 (10 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 September 2013</td>
</tr>
</tbody>
</table>
## Northern Sydney Freight Corridor
### Gosford Passing Loops Project

<table>
<thead>
<tr>
<th>Principal Supplied Item</th>
<th>Place of Availability</th>
<th>Date of Availability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non Vital Isolated IN32 (12v) N17063701 (10 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 September 2013</td>
</tr>
<tr>
<td>Address Select PCB N17003101 (40 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 May 2013</td>
</tr>
<tr>
<td>Connector Receptacle 48 way EG173.051 (53 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 April 2013</td>
</tr>
<tr>
<td>Guide Pins 48 way EG043.554 (370 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 April 2013</td>
</tr>
<tr>
<td>Microlok Batteries 65 AH (12 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 April 2013</td>
</tr>
<tr>
<td>Lugs for 48 way Connector (Contact, crimp, 48 way receptacle) (2600 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 April 2013</td>
</tr>
<tr>
<td>Supply CSEE Transmitter TX (frequencies qty as per table below) (22 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 September 2013</td>
</tr>
<tr>
<td>Plugboard (12 Terminals) PFC12 2261174Y00 (50 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 July 2013</td>
</tr>
<tr>
<td>Supply TU (frequencies qty as per table below) (39 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>13 December 2013</td>
</tr>
<tr>
<td>Supply CSEE receiver RX (frequencies qty as per table below) (20 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 September 2013</td>
</tr>
<tr>
<td>Supply MU (frequencies qty as per table below) 2261295M12 (39 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 December 2013</td>
</tr>
<tr>
<td>Mounting Channel N.S1 modular (20 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 July 2013</td>
</tr>
<tr>
<td>Obturation Plug (Blanking) PFO 2261209W00 (100 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 July 2013</td>
</tr>
<tr>
<td>Key Relay Install 2261196K00 (5 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 December 2013</td>
</tr>
<tr>
<td>Insertion Tool 2261193P00 (5 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 December 2013</td>
</tr>
<tr>
<td>Coding Cover Plug Oval (100) 2250383P00 (5 pk's of 100)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 July 2013</td>
</tr>
<tr>
<td>Coding cover Plug Rectangular (100) HAX9400122 (5 pk's of 100)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 July 2013</td>
</tr>
<tr>
<td>Supply SI unit ACI 2256915P02 (27 off)</td>
<td>Gosford Passing Loops Worksites</td>
<td>14 December 2013</td>
</tr>
</tbody>
</table>
35. Form of Other Contractor Deed Poll

(Clause 7.4)

This Deed Poll made the day of 20

In favour of: [insert details] (ABN [insert details]) of [insert details]

("Contractor")

Transport for New South Wales (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW), of Level 6, 18 Lee St, Chippendale NSW 2008 ("Principal")

Given by: [insert details] (ABN [insert details]) of [insert details]

("Other Contractor")

Recitals

A. By a contract dated [insert data] ("Contract") between the Principal and the Contractor, the Contractor agreed to design and construct certain works ("Works"), on the land more particularly described in the Contract (the "Site").

B. The Other Contractor has been appointed under a Contract ("Other Contract") to undertake certain works on the Site ("Other Contractor Works").

C. For the purposes of the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW) (together, the "WHS Legislation"), the Works and the Other Contractor Works are a 'construction project' within the meaning of the WHS Legislation.

D. Under the Contract, the Principal engaged the Contractor as principal contractor and authorised the Contractor to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.

E. Under the provisions of the Contract, the Principal is required to procure the provision of this Deed Poll from each Other Contractor (as that term is defined in the Contract) that undertakes Other Contractor Works (as that term is defined in the Contract).

This Deed Poll Provides

1. In consideration of the Contractor accepting this Deed Poll, the Other Contractor agrees that:

   (a) the Other Contractor, its subcontractors and their respective personnel while they are on the Site, will comply with Site safety regulations, any Site
rules or regulations and with all directions of the Contractor with respect to work health and safety;

(b) the Other Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the Contractor so that the Contractor discharges its obligations as principal contractor;

(c) the Other Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Contractor, the Principal and all other persons who have a work health and safety duty in relation to the same matter;

(d) the Other Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Contractor while on Site;

(e) the Contractor may exclude the Other Contractor, any of its subcontractors and their respective personnel from the Site for work health and safety reasons;

(f) the Contractor may direct the Other Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;

(g) where high risk construction work is to be carried out in the performance of the Other Contractor Works, the Other Contractor must:

(i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;

(ii) provide a copy of the safe work method statement to the Principal and the Contractor prior to the commencement of high risk construction work;

(iii) review and revise the safe work method statement in accordance with the WHS Legislation;

(iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and

(v) where so directed by the Contractor, suspend the performance of any high risk construction work;

(h) the Other Contractor shall in carrying out the work under the Other Contract, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and

(i) in its contracts with subcontractors, the Other Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Other Contractor under this Deed Poll.
2. The Other Contractor indemnifies the Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Contractor as a result of:

(a) any failure by the Other Contractor to comply with any direction given by the Contractor in accordance with this Deed Poll; or

(b) any breach by the Other Contractor, any of its subcontractors or their respective personnel of:

   (i) their respective contractual or legislative work health and safety obligations; or

   (ii) the provisions of this Deed Poll.

3. This Deed Poll will be governed by and construed in accordance with the law for the time being of New South Wales.
Northern Sydney Freight Corridor  
Gosford Passing Loops Project

Executed as a Deed Poll.

Executed by *[Other Contractor]* by or in the presence of:

<table>
<thead>
<tr>
<th>Signature of Director</th>
<th>Signature of Secretary/other Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Director in full</td>
<td>Name of Secretary/other Director in full</td>
</tr>
</tbody>
</table>
36. Form of Interface Agreement Deed Poll

(Clauses 1.1 and 1.6)

Deed Poll in favour of RailCorp and Transport for NSW

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

By: [insert name of D&C Contractor] (ABN [insert D&C Contractor's ABN]) of [insert D&C Contractor's address] ("D&C Contractor"),
in favour of: Rail Corporation New South Wales (ABN 59 325 778 353) a statutory State owned corporation constituted pursuant to the Transport Administration Act 1988, of Level 6, 18 Lee Street, Chippendale NSW 2008 ("RailCorp");
and Transport for NSW (ABN 28 458 799 157) a statutory State owned corporation constituted pursuant to the Transport Administration Act 1988, of Level 6, 18 Lee St, Chippendale NSW 2008 ("TfNSW").

RECITALS
A. RailCorp operates the commuter rail system in Sydney, including the Main North Line and surrounds where the Works are to be undertaken by the D&C Contractor and others.

B. TfNSW is responsible for developing certain major railway systems and other major projects.

C. TfNSW is responsible for procuring the execution and completion of certain works on the Gosford Passing Loops project (the "Works") on behalf of RailCorp and the New South Wales Government, and has entered into a Design & Construct Contract ("D&C Contract") to achieve this.

D. RailCorp is relying on TfNSW to procure the D&C Contractor (and others) to execute and complete the Works in accordance with the D&C Contract to ensure that RailCorp will satisfy, among other things, its obligations to provide an operating commuter rail system.

E. RailCorp will suffer loss if TfNSW does not procure the D&C Contractor to execute and complete the Works in accordance with the D&C Contract and Interface Agreement.

F. RailCorp and TfNSW have entered into an Interface Agreement for Works carried out on RailCorp land, which applies to the Works and the D&C Contract (the "Interface Agreement").
G. It is a condition of the D&C Contract, Clause 1.6, that upon request by TfNSW, the D&C Contractor enters into a Deed Poll in favour of TfNSW and RailCorp. This Deed Poll binds the D&C Contractor to the executed Interface Agreement between TfNSW and RailCorp dated 22 October 2012.

THIS DEED WITNESSES THAT THE D&C CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES WITH AND FOR THE BENEFIT OF RAILCORP AND TfNSW AS FOLLOWS:

1. It will observe all the requirements of the Interface Agreement and ensure that it does not do anything which would cause a party to the Interface Agreement to breach the requirements of the Interface Agreement.

2. This Deed Poll is governed by the laws of the State of New South Wales.

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

4. Where terms used in this Deed Poll are defined in the D&C Contract or Interface Agreement, those terms have the meaning given to them in the D&C Contract or Interface Agreement.

Executed as a deed poll.

Executed by [insert D&C Contractor's name] ABN [insert D&C Contractor's 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
Northern Sydney Freight Corridor
Gosford Passing Loops Project

Executed and delivered as a Deed in Sydney
Signed for and on behalf of Transport for New South Wales (ABN 18 804 239 602):

\[Signature\]
Signature of Authorised Officer

Print Name
Christopher Deccan Lock
(block letters)
Deputy Director General
Transport Projects Division
Transport for New South Wales
Position held

Signed, sealed and delivered for and on behalf of Downer EDI Works Pty Ltd by its attorney under a power of attorney dated 17 January 2013 in the presence of:

\[Signature\]
Signature of Witness

\[Signature\]
Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

\[Signature\]
Full name of witness

\[Signature\]
Full name of attorney
LIST OF EXHIBITS

EXHIBIT A - TNSW 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 - REPORTS
EXHIBIT H - SITE, WORKSITES AND RELATED DRAWINGS
EXHIBIT I - THIRD PARTY AGREEMENTS
EXHIBIT J - OPTION SKETCHES