Execution Version

SYDNEY LIGHT RAIL MANAGING CONTRACTOR
SLR-MC-01

Transport for NSW (ABN 18 804 239 602)
Principal

Laing O'Rourke Australia Construction (39 112 099 000)
Managing Contractor
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EXHIBIT C  Principal's insurance policies
EXHIBIT D  Planning Approval
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Site Drawings
FORMAL INSTRUMENT OF AGREEMENT

DATE 30 June 2014

PARTIES

Transport for NSW ABN 18 804 239 602 (Principal)

Laing O'Rourke Australia Construction Pty Ltd ABN 39 112 099 000 (Managing Contractor)

OPERATIVE PROVISIONS

1. The Managing Contractor must investigate, design, cost, program, construct and complete the Works in accordance with the Contract.

2. The Principal will pay the Managing Contractor the management fee, the contract sum (Package 1 Works) and the Reimbursable Costs (Packages 2 & 3) (which are each exclusive of GST) in accordance with the Contract as payment for the due and proper performance of the Managing Contractor Activities.

3. The Principal and the Managing Contractor agree that the following documents will together comprise the Contract between them:

   (a) this Formal Instrument of Agreement;

   (b) AS 4916 – 2002 Managing Contractor Contract General Conditions as amended, including:

       (i) all Annexure Parts; and

       (ii) all Exhibits,

        to this Formal Instrument of Agreement but excluding the information, data or documents (including the Information Documents) referred to in subclause 5.7; and

   (c) the terms of any Portion Proposal Agreement (Package 3).
EXECUTED as a deed.

Signed, sealed and delivered for and on behalf of Transport for NSW ABN 18 804 239 602 by Chris Locke, Deputy Director General of Transport Projects Division but without incurring any personal liability in respect thereof in the presence of:

Bevan Brown
Signature
Name

Signature of witness
Hillica Vujica
Name of witness in full

EXECUTED by Laing O’Rourke Australia Construction Pty Ltd ABN 39 112 099 000 in accordance with section 127(1) of the Corporations Act 2001 (Cth)

Nicholas Gregory Luzar
Signature of director
Name

JOHN O’CONNOR
Signature of director/Secretary
Name
STANDARDS AUSTRALIA

Australian Standard
Managing Contractor Contract — General conditions

1. INTERPRETATION AND CONSTRUCTION OF CONTRACT

1.1 Definitions

In the Contract, except where the context otherwise requires:

- **Act of Prevention** means the qualifying cause of delay referred to in paragraph (a) of the definition of qualifying cause of delay;

- **Additional Third Party Agreement** has the meaning given to that term in subclause 19A(b)(i)(B);

- **Agreed Variation** means the variation agreed between the parties as specified in Annexure Part BB;

- **Agreed Variation Amount Approval** means:

  (a) any licence, permit, consent, approval, declaration, nomination, waiver, determination, exemption, certificate or permission from any Authority or under any law, or any requirement made under any law;

  (b) in relation to anything that could be prohibited or restricted by law if an Authority acts in any way within a specified period, the expiry of that period without that action being taken,

    which must be obtained or satisfied (as the case may be):

  (c) to perform the Managing Contractor Activities including, for the avoidance of doubt, all things required for dealing with, transporting and disposing of contamination or any other spoil or waste;

  (d) in connection with the site or any Extra Land;

  (e) for the use and occupation for its intended purpose
of the completed Works or a completed Portion; or

(f) to otherwise comply with law,

and, for the avoidance of doubt, includes:

(g) the Planning Approval; and

(h) any EPL,

but does not include:

(i) any direction given by the Principal or the Principal’s Representative pursuant to the Contract; or

(j) the exercise by the Principal of its rights under the Contract;

**Approved Subcontract Agreement** means an agreement which is entered into by the Managing Contractor with a subcontractor:

(a) in accordance with subclause 6.2(a)(i); or

(b) on terms which have been approved by the Principal’s Representative under subclause 6.3 and subclause 6.6 (if applicable);

**Artefact** means any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical or archaeological interest;

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

**Authority** includes:

(a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality;

(b) any other person having a right to impose a requirement, or whose consent is required, under law with respect to any part of the Managing Contractor Activities; and

(c) any other person having jurisdiction over, or
ownership of, any Utility or part of the site;

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

**Claim** includes any claim, action, demand, judgment or proceeding, including for an increase in the management fee or the contract sum (Package 1 Works), for payment of money (including damages), for relief from or suspension of obligations, for an extension of time to the date for completion of any Portion or for any other form of relief:

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

(b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the **Managing Contractor Activities**, the **Works**, or either party's conduct prior to the date of the **Contract**;

(c) otherwise at law or in equity 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;

**completion** means the stage in the execution of a **Portion** when:

(a) the **Portion** is complete in accordance with the **Contract** except for minor **Defects**:

(i) which do not prevent the **Portion** from being reasonably capable of being used for the intended purpose of the **Portion**; and

(ii) which can be corrected without prejudicing the convenient use of the **Portion**;

(b) the **Managing Contractor** has:

(i) carried out and passed all tests (if any)
necessary to verify that the Portion is in the condition the Contract requires the Portion to be in at completion, including those specifically required by the Contract;

(ii) given to the Principal's Representative all documents and information required to be handed over to the Principal's Representative before completion of that Portion, including any which evidence the satisfaction of legislative requirements which the Contract requires the Managing Contractor to obtain before completion and documents and information required for the use, operation, maintenance and repair of the Portion; and

(c) the Managing Contractor has done everything else that it is required to do under the Contract before completion of the Portion;

construction plant means all plant, equipment, appliances and things used in the carrying out of the Managing Contractor 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 and water treatment chemicals;

Contract means the agreement between the Principal and the Managing Contractor, as evidenced by the documents referred to in clause 3 of the Formal Instrument of
Agreement;

**contract sum (Package 1 Works)** means, in respect of a **Portion** forming part of the **Package 1 Works**, the applicable price (which includes margin for profit and offsite overhead) for that **Portion** set out in Annexure Part B, as may be adjusted in accordance with the **Contract**, and for the avoidance of doubt does not include the **management fee** (Packages 1 & 2);

**Cost Plan (Packages 2 & 3)** has the meaning given to that term in subclause 3.7(b);

**date for completion** means:

(a) in respect of a **Portion** forming part of the **Package 1 Works** or the **Package 2 Works**, the applicable date for completion for that **Portion** as set out in Item 4 of Annexure Part A; or

(b) in respect of a **Portion** forming a **Portion Proposal Agreement (Package 3)**, the date agreed by the parties in accordance with subclause 2.1B, as adjusted by any **EOT** relating to that **Portion**;

**date of completion** means:

(a) in respect of a **Portion**, the date evidenced in a notice of completion for the **Portion** under subclause 23.8; or

(b) where another date is determined in any expert determination process or proceedings as the date upon which **completion** of the **Portion** was achieved, that other date;

**date of the Contract** means the date of the **Contract** as stated in the **Formal Instrument of Agreement**;

**Deed of Disclaimer** means the document set out in Exhibit G;

**Defect** means:

(a) any defect, deficiency, fault, error or omission in the **Managing Contractor Activities**, the **Works** or the **Temporary Works**; or

(b) any:
(i) cracking, shrinking, movement or subsidence in the Temporary Works or the Works; or

(ii) other aspect of the Managing Contractor Activities, the Works or the Temporary Works,

which is not in accordance with the requirements of the Contract;

Defects Liability Period means, in respect of a Portion, the period of 12 months commencing from the date of completion of the Portion or such other period as may be agreed in writing between the parties for that Portion;

design documentation means all:

(a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models, samples, prototypes, calculations, shop drawings, digital records, business rules, system processes and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means, which are required for the performance of the Managing Contractor Activities, or which the Managing Contractor or any other person creates in performing the Managing Contractor Activities (including the design of the Works and the Temporary Works); and

(b) computer software (including both source code and object code versions) associated with paragraph (a);

direction includes any decision (including approval or certificate), demand, determination, direction, instruction, notice, order, permission, rejection or requirement;

dispute has the meaning given to that term in subclause 30.1(a);

EEO Act means the Energy Efficiency Opportunities Act 2006 (Cth);

Environment includes all aspects of the surroundings of human beings including:

(a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
(b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and

(c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures;

*Environmental Management Plan* means the environmental management plan the Contractor must prepare in accordance with *TNSW Standard Requirements*, as may be updated in accordance with the *Contract*;

*EOT (from ‘extension of time’) EPL* has the meaning given to that term in subclause 23.2;

*Executive Negotiators* means the representatives of the *Principal* and the *Managing Contractor* nominated in Item 2 of Annexure Part A or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party;

*Extra Land* has the meaning given to that term in subclause 19.8(a);

*final certificate* has the meaning given to that term in subclause 25.7;

*final payment claim* means the final payment claim referred to in subclause 25.7;

*Force Majeure Event* means:

(a) earthquake;

(b) act of terrorism;

(c) act of a public enemy;

(d) war (declared or undeclared);

(e) invasion or act of a foreign enemy;

(f) riot or revolution;

(g) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of
nuclear fuel;

(h) pressure waves; and

(i) maritime and aviation disasters;

**Formal Instrument of Agreement** means the formal instrument of agreement to which these general conditions of contract are attached;

**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 **Managing Contractor Activities**;

**Information Document** means:

(a) the information, data and documents referred to, or included, in Annexure Part Q, and

(b) such other information, data and documents as may be issued (or made available) by the **Principal** to the **Managing Contractor** prior to, on or after the **date of the Contract** and identified as "Information Documents" for the purposes of the **Contract**;

**intellectual property right** means any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including patents, registered design, trademark or name, copyright or other protected right, whether created or in existence before, on or after the **date of the Contract** and includes any thing whether tangible or intangible;
latent condition
(Packages 2 & 3) means physical conditions on that part of the site upon which only the Package 2 Works or the Package 3 Works are to be undertaken, including artificial things but excluding weather conditions, which differ materially from the physical conditions:

(a) described in or reasonably to be inferred from the Reports; or

(b) which a competent and experienced contractor could reasonably have been expected to anticipate as at the date of the Contract, or in respect of the Package 3 Works as at the date of a Portion Proposal Agreement (Package 3), if such a contractor had:

(i) inspected all information made available by the Principal to the Managing Contractor (including the Reports);

(ii) examined all documents and information relevant to the risks, contingencies and other circumstances having an effect on the Managing Contractor’s obligations under the Contract relating to the Package 2 Works and the Package 3 Works and which was obtainable by the making of reasonable enquiries (including the Reports); and

(iii) inspected the applicable part of the site and its surroundings;

legislative requirements includes:

(a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Managing Contractor Activities or the Works, or the particular part thereof, are being carried out;

(b) Approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Managing Contractor Activities or the Works (which includes the Planning Approval); and

(c) fees and charges payable in connection with the foregoing;
management fee means, as the context requires, management fee (Packages 1 & 2) and the management fee (Package 3);

management fee (Package 3) means the fee specified in a Portion Proposal Agreement (Package 3) for the carrying out of Services (Package 3) (if any), as adjusted in accordance with subclause 25.5;

management fee (Packages 1 & 2) means the fee specified in Annexure Part B for carrying out Services (Packages 1 & 2), as adjusted in accordance with subclause 25.5;

Managing Contractor has the meaning given to that term in the Formal Instrument of Agreement;

Managing Contractor's Program has the meaning given to that term in clause 21(b) as may be updated in accordance with clause 21;

Managing Contractor's Representative means the representative of the Managing Contractor as specified in Item 3 of Annexure Part A;

Managing Contractor Activities means all things and tasks which the Managing Contractor is, or may be, required to do to comply with its obligations under the Contract, including variations and things and tasks necessary to bring each Portion to completion (including the activities as set out in any applicable Portion Proposal Agreement (Package 3) as are identified as a condition precedent to completion of that Portion), whether or not the performance of such things or tasks is subcontracted by the Managing Contractor to another person;

Managing Contractor Key Personnel means the Managing Contractor's personnel referred to in subclause 17.2;

Managing Contractor Work (Package 2) means, in respect of the Package 2 Works only, the part of the Reimbursable Works (Package 2) to be performed by the Managing Contractor itself as described in Annexure Part Y;

Managing Contractor Work (Package 3) means, in respect of the Package 3 Works only, the part of the Reimbursable Works (Package 3) to be performed by the Managing Contractor itself as described in any Portion Proposal Agreement (Package 3);

Managing Contractor Work (Packages 2 & 3) means, as the context requires, the Managing Contractor Work (Package 2) and Managing Contractor Work (Package 3).
3) NGER Legislation means the National Greenhouse and Energy Reporting Act 2007 (Cth) and the regulations and any other legislative instruments under that Act;

NSW Code means the New South Wales Government's Code of Practice for Procurement (January 2005), or any substitute for, or update to, such code as contemplated in the NSW Guidelines;

NSW Guidelines means the New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (1 July 2013);

OpCo means the person whom the Principal engages after the date of the Contract to finance, design, construct, test, commission, operate and maintain the project, as notified by the Principal to the Managing Contractor in writing;

OpCo Collateral Warranty means the form of deed set out in Annexure Part V or such other form as is agreed in writing by the Principal's Representative;

Option End Date means the date specified in Item 27 of Annexure Part A;

Other Contractors means any contractor, consultant, artist, tradesperson or other person engaged by the Principal to do work (which includes rectification of defective work), including OpCo and any utility company, other than the Managing Contractor and the subcontractors;

Package 1 Works means that part of the Works comprising:

(a) Portion 1.1, Portion 1.2, Portion 1.3, Portion 1.4 and Portion 1.5 (as those Portions are described in the Principal's project requirements); and

(b) any other Portions which the Principal and the Managing Contractor agree are to be included in the Package 1 Works;

Package 2 Works means that part of the Works comprising:

(a) Portion 2.1, Portion 2.2, Portion 2.3, Portion 2.4, Portion 2.5 and Portion 2.6 (as those Portions are
described in the *Principal's project requirements*; and

(b) any other *Portions* which the *Principal* and the *Managing Contractor* agree are to be included in the *Package 2 Works*;

**Package 3 Works** means that part of the *Works* comprising the *Portions* under any *Portion Proposal Agreement (Package 3)*;

**payment withholding request** means a request which is, or purports to be, a payment withholding request made under the SOP Act;

**Planning Approval** means:

(a) the *Approvals* set out in Exhibit D, as may be modified from time to time; and

(b) any other *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 *Managing Contractor Activities* or the *project*; and includes all conditions to such Approvals and documents incorporated by reference;

**Portion** means, as the context requires:

(a) Portion 1.1, Portion 1.2, Portion 1.3, Portion 1.4 and Portion 1.5 (as those *Portions* are described in the *Principal's project requirements*) forming the *Package 1 Works*;

(b) Portion 2.1, Portion 2.2, Portion 2.3, Portion 2.4, Portion 2.5 and Portion 2.6 (as those *Portions* are described in the *Principal's project requirements*) forming the *Package 2 Works*;

(c) a portion of the *Works*, or other *Managing Contractor Activities* (such as design) forming the *Package 3 Works*; or

(d) a portion of the *Works* created pursuant to subclause 23.9;
**Portion Cost Plan (Packages 2 & 3)**

has the meaning given to that term in subclause 3.7(c);

**Portion Proposal (Package 3)**

means a proposal submitted by the Managing Contractor in accordance with subclause 2.1B(c) or resubmitted in accordance with subclause 2.1B(d);

**Portion Proposal Agreement (Package 3)**

means a Portion Proposal (Package 3) which has been accepted by the Principal under subclause 2.1B;

**PPS Act**

means the Personal Property Securities Act 2009 (Cth);

**PPS Law**

means:

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

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

**preliminary design**

means:

(a) the documents (if any) stated or referred to in Item 5 of Annexure Part A; and

(b) any other documents as may be issued (or made available) by the Principal to the Managing Contractor after the date of the Contract and which are specified to be "Preliminary Design" for the purposes of the Contract;

**prescribed notice**

has the meaning given to that term in subclause 29.1(a);

**Principal**

has the meaning given to that term in the Formal Instrument of Agreement;

**Principal's project requirements**

means:

(a) the Principal's written requirements for the Managing Contractor Activities described in the documents stated or referred to in Item 6 of Annexure Part A which, where stated in Item 6 of Annexure Part A, shall include a preliminary design; and
(b) such additional documents which are specified to be Principal’s project requirements under any Portion Proposal Agreement (Package 3),

as may be varied in accordance with the Contract;

Principal’s Representative means the person stated in Item 7 of Annexure Part A as the Principal’s Representative or other person from time to time appointed in writing by the Principal to be the Principal’s Representative and notified as such in writing to the Managing Contractor by the Principal and, so far as concerns the functions exercisable by an individual appointed in writing by the Principal’s Representative as a delegate under subclause 16.2, that person;

Prohibited Subcontractor means:

(a) any person:

(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 person employing an employee in respect of whom paragraphs (a)(i) or (a)(ii) apply;

project means the Sydney Light Rail project;

Project Deed means the document titled "Sydney Light Rail Project Deed" which will be entered into between the Principal and OpCo;

Project Safety Management Plan means the work health and safety management plan the Managing Contractor must prepare in accordance with TfNSW Standard Requirements, as may be updated in accordance with the Contract;

qualifying cause of delay means:

(a) any act, default or omission of the Principal, the Other Contractors or the agents of the Principal, not
being an act or omission:

(i) expressly permitted or allowed under the Contract; or

(ii) which is within a time frame expressly permitted or allowed by the Contract; or

(iii) to the extent the act or omission is caused or contributed to by an act or omission of the Managing Contractor or its subcontractors;

(b) a Force Majeure Event;

(c) a change in legislative requirements which necessitates a change to the Works;

(d) a strike that is industry-wide and not specific to the Managing Contractor, the site or any part of the Managing Contractor Activities;

(e) a court order under an environmental or other law which directly affects the Managing Contractor’s execution of the Works;

(f) the discovery of a latent condition (Packages 2 & 3); or

(g) cancellation of a Track Possession referred to in Item 7A of Annexure Part A;

(i) less than 12 weeks prior to the time at which it was planned to commence; or

(ii) in the case of an overnight Track Possession, less than 1 week prior to the time at which it was planned to commence,

unless the Principal provides a suitable alternative Track Possession reasonably able to be used by the Managing Contractor;

**Reimbursable Costs (Package 2)** means the amount of the Reimbursable Costs (Packages 2 & 3) referable to the carrying out of Reimbursable Works (Package 2);

**Reimbursable Costs (Package 3)** means the amount of the Reimbursable Costs (Packages 2 & 3) referable to the carrying out of Reimbursable Works (Package 3);
Reimbursable Costs (Packages 2 & 3) means, in respect of the Package 2 Works and Package 3 Works only, the aggregate of:

(a) all amounts properly and actually incurred and payable by the Managing Contractor to subcontractors under Approved Subcontract Agreements in respect of Reimbursable Works (Packages 2 & 3), but excluding:

(i) amounts incurred and payable to subcontractors for correcting Defects or for giving effect to a variation for the purpose of overcoming a Defect;

(ii) amounts (including damages) paid or payable by the Managing Contractor to any subcontractor by reason of any breach of contract or other wrongful act or omission by the Managing Contractor including a breach by the Managing Contractor of the Contract except to the extent that breach or wrongful act or omission was directly caused by any wrongful act or omission of the Principal;

(iii) the amounts payable to subcontractors under Approved Subcontract Agreements in respect of Reimbursable Works (Packages 2 & 3):

(A) as a result of variations directed under any provision of the Contract; or

(B) due to the Principal’s Representative directing the suspension of the Managing Contractor Activities under subclause 22.1 (excluding suspensions of the kinds referred to in subclause 22.4(a));

(iv) other amounts not properly incurred in respect of the execution of the Reimbursable Works (Packages 2 & 3);

(v) any cost, loss, expenses or amount which is stated not to form the Reimbursable Costs (Packages 2 & 3);

(vi) subject to subclause 6.12(b), any legal, expert or other consultants costs incurred by the
Managing Contractor arising out of or in connection with any Approved Subcontractor Agreement in respect of the Reimbursable Works (Packages 2 & 3); and

(vii) any amount in respect of any excess or exclusion in the insurance policies referred to in clauses 13, 14, 14A, 14B and 14C;

(b) the amount determined by multiplying the margin for profit and offsite overhead set out in Item 8 of Annexure Part A by the applicable Reimbursable Costs (Packages 2 & 3) under paragraph (a) and (d) of this definition;

(c) in respect of the Managing Contractor Work (Packages 2 & 3) means either:

(i) the sum agreed by the parties for the carrying out of such work; or

(ii) for work for which the Principal accepted rates, the sum ascertained by multiplying the measured quantity for each item of work actually carried out for any given period under the Contract by the rate listed in the schedule of rates,

excluding any amount which arises out of or in connection with:

(iii) correcting a Defect;

(iv) a variation;

(v) circumstances in which the Contract states that a cost is to be borne by the Managing Contractor or is not to form part of the Reimbursable Costs (Packages 2 & 3); and

(vi) any amount stated to be a debt, or moneys due, from the Contractor to the Principal;

(d) in respect of a variation directed under any provision of the Contract, or the Principal's Representative's direction of a suspension of the Managing Contractor Activities under subclause 22.1 (excluding suspensions of the kinds referred to in subclause 22.4(a)), the amounts to be included in
(or deducted from, as relevant) the Reimbursable Costs (Packages 2 & 3) determined in accordance with the requirements of subclauses 22.4(b) and 24.3;

(e) any amount agreed under subclause 6.9;

(f) any amount the Managing Contractor is required to pay in accordance with the Building and Construction Industry Long Service Payments Act 1986 (NSW) in connection with the Package 2 Works or Package 3 Works; and

(g) subject to subclauses 2.1C(c) to 2.1C(e), the amount properly and reasonably incurred by the Managing Contractor in preparing and negotiating any Portion Proposal (Package 3),

less:

(h) in respect of any Defect for which the Managing Contractor is responsible and which is the subject of an instruction under subclause 20.3(c), the amount that, in the opinion of the Principal's Representative, would have been payable to subcontractors for correcting the Defect if an instruction had been made under subclause 20.3(a); and

(i) any debt due and payable by the Managing Contractor to the Principal (including any debt under subclause 23.11 or 23.12);

Reimbursable Works (Package 2) means those Managing Contractor Activities (including those listed in Annexure Part C) relating only to the Package 2 Works which are not Services (Packages 1 & 2);

Reimbursable Works (Package 3) means those Managing Contractor Activities relating only to the Package 3 Works which are not Services (Package 3);

Reimbursable Works (Packages 2 & 3) means those Managing Contractor Activities (including those listed in Annexure Part C) relating only to the Package 2 Works and the Package 3 Works (as the case may be) which are not Services (Packages 1 & 2) or Services (Package 3);

related body corporate has the meaning given in section 9 of the Corporations Act 2001 (Cth);
Reports means:

(a) those documents (if any) set out in Exhibit E; and

(b) such other reports as may be issued by the Principal to the Managing Contractor prior to, on or after the date of the Contract and identified as a "Report" for the purposes of the Contract;

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. (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc., an equivalent rating with another reputable rating agency;

schedule of rates means any schedule included in Annexure Part F which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;

Services (Packages 1 & 2) means that part of the Managing Contractor Activities which is set out in Annexure Part D;

Services (Package 3) means that part of the Managing Contractor Activities relating only to the Package 3 Works which is agreed to be "Services (Package 3)" as set out in any Portion Proposal Agreement (Package 3);

site means:

(a) those areas (if any) specified as the site in P.1 of Annexure Part P;

(b) those areas identified as the site in a Portion Proposal Agreement (Package 3) for which access is to be provided by the Principal;

(c) those areas identified as the site in a Portion Proposal Agreement (Package 3) for which access is to be arranged by the Contractor; and

(d) any other land necessary for the carrying out of the Managing Contractor Activities;
SOP Act means the Building and Construction Industry Security of Payment Act 1999 (NSW);

Subcontract Proposal (Packages 2 & 3) means, in respect of the Package 2 Works or the Package 3 Works, a document issued to the Principal’s Representative by the Managing Contractor in accordance with subclause 6.3;

Subcontract Tender Documentation (Packages 2 & 3) means, in relation to a Subcontract Proposal (Packages 2 & 3):
(a) all design documentation relevant to the work to be subcontracted;
(b) the conditions of tender and the subcontract agreement; and
(c) any other documentation necessary for the completion of the work to be subcontracted;

Subcontractor means a subcontractor of the Managing Contractor;

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;

Temporary Works means any temporary physical works required for the purpose of performing the Managing Contractor Activities but which do not form part of the Works;

Tender means the response provided by a Tenderer to the Principal’s invitation to selected Tenderers to submit a tender to carry out the Managing Contractor Activities;

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

Tenderer means an entity or entities that submitted a Tender for the performance of the Managing Contractor Activities;
TfNSW means the Principal;

TfNSW Standard Requirements or TSRs means the documents which appear as Exhibit A;

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

Third Party Agreements means:

(a) the agreements in respect of which:

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

(ii) where the agreement has not been executed, a draft of the agreement, appears in Exhibit F; and

(b) each Additional Third Party Agreement;

Track Possession has the meaning given to it in the TSR entitled "Prelude";

Utility means any service, utility, facility or item of infrastructure for the provision of water, electricity, gas, ethane, fuel, telephone, drainage (including piped, open or subsoil drains), sewerage, industrial waste disposal, lighting, CCTV and electronic communications service;

variation means any variation to the scope, nature or requirements of the Works, the Temporary Works, the Services (Packages 1 & 2), the Services (Package 3) or the other Managing Contractor Activities, including any additions, reductions, increases, decreases or omissions to or from them;

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 Managing Contractor Activities;

work includes the provision of materials and like words have a corresponding meaning; and

Works means the physical works to be carried out in accordance with the Contract, including the Package 1 Works, the Package 2 Works, the Package 3 Works and variations, which by the Contract is to be handed over to the Principal,

and like words have a corresponding meaning.

1.2 Interpretation

In the Contract:

(a) headings and subheadings are for convenience only and do not affect interpretation;

and the following rules apply in interpreting the Contract unless the context makes it clear that a rule is not intended to apply:

(b) references to days mean calendar days, months means calendar months and references to a person include an individual, firm or a body, corporate or unincorporate;

(c) time for doing any act or thing under the Contract must, if it ends on a day which is not a Business Day, be deemed to end on the day next following which is a Business Day;

(d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;

(e) words importing a gender include every gender;

(f) communications between the Principal, the Principal’s Representative and the Managing Contractor must be in the English language;

(g) measurements of physical quantities must be in legal units of measurements of the jurisdiction in Item 9 of Annexure Part A;

(h) prices are in the currency in Item 10(a) of Annexure Part A and payments must be made in that currency at the place in Item 10(b) of Annexure Part A;

(i) the law governing the Contract and its interpretation and construction is the law of the jurisdiction in Item 9 of Annexure Part A;

(j) a reference to a standard, code, guideline or similar document (including Australian Standards, the Building Code of Australia, any New South Wales or
other government code or guideline) will be read as a reference to that
document as amended, updated, revised, superseded or replaced from time
to time;

(k) a reference to legislation or regulation will be read as a reference to that
legislation or regulation as amended, superseded or replaced from time to
time;

(l) no rule of construction applies to the disadvantage of a party on the basis that
the party put forward or drafted the Contract or any part;

(m) a reference to an Exhibit is a reference to the relevant Exhibit to these
General Conditions;

(n) if an example is given of anything (including a right, obligation or concept),
such as by saying it includes something else, the example does not limit the
scope of that thing; and

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

2. NATURE OF CONTRACT

2.1 Performance and payment

(a) The Managing Contractor must carry out and complete the Managing
Contractor Activities in accordance with the Contract (including the TNSW
Standard Requirements) and any directions given or purported to be given by
the Principal's Representative.

(b) The Principal must pay the Managing Contractor:

(i) in respect of the Package 1 Works and the Package 2 Works:

(A) to the extent relating to the Services (Packages 1 & 2), the
management fee (Packages 1 & 2);

(B) in respect only of the Package 1 Works, the contract sum
(Package 1 Works); and

(C) in respect only of the Package 2 Works and to the extent relating
to the Reimbursable Works (Packages 2), the Reimbursable
Costs (Package 2);

(ii) in respect of the Package 3 Works:

(A) to the extent relating to the Services (Package 3), the
management fee (Package 3); and
(B) to the extent relating to the Reimbursable Works (Package 3), the Reimbursable Costs (Package 3); and

(iii) any other amounts which may become payable under the Contract,
in accordance with the Contract.

(c) The parties acknowledge and agree that the management fee is:

(i) the Managing Contractor’s sole entitlement to payment for the performance of the Services (Packages 1 & 2) and Services (Package 3); and

(ii) only to be adjusted in the circumstances set out in subclause 25.5.

(d) The Managing Contractor acknowledges that:

(i) its entitlement to payment for the performance of the Managing Contractor Activities is strictly limited to the amounts described in subclause 2.1(b); and

(ii) in no circumstances will it be entitled to any additional payment in respect of the carrying out of the Managing Contractor Activities, including any work, on-site or off-site overheads, supervision, preliminaries, design management, provision of services or facilities, profit or otherwise, other than set out in subclauses 2.1(b) and 2.1(c).

(e) Notwithstanding any other term of the Contract, the Managing Contractor agrees that the Reimbursable Costs (Packages 2 & 3) will not include costs incurred in circumstances where they are incurred in breach of a provision of the Contract by the Managing Contractor.

2.1A Overview of Contract

To assist in an understanding of the structure of the Contract and without limiting any of the other provisions of the Contract, this subclause 2.1A provides an overview of some of the key features of the Contract:

(a) (Package structure): there are three separate packages of Works to be carried out by the Managing Contractor under the Contract, the Package 1 Works, the Package 2 Works and the Package 3 Works;

(b) (Package 1 Works): the Package 1 Works comprise, as at the date of the Contract, five separate Portions (being Portions 1.1, 1.2, 1.3, 1.4 and 1.5 as described in the principal’s project requirements). Each such Portion has its own date for completion and a daily rate of liquidated damages to apply if the Managing Contractor does not achieve completion of the Portion by the applicable date for completion;
(c) **Package 2 Works**: the Package 2 Works comprise, as at the date of the Contract, six separate Portions (being Portions 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 as described in the principal's project requirements). Each such Portion has its own date for completion and a daily rate of liquidated damages to apply if the Managing Contractor does not achieve completion of the Portion by the applicable date for completion. The Managing Contractor:

(i) subject to paragraph (c)(ii), must ensure that the Reimbursable Works (Package 2) are carried out by subcontractors under Approved Subcontract Agreements; and

(ii) may only itself carry out Reimbursable Works (Package 2) if it is Managing Contractor Work (Packages 2);

(d) **Services (Packages 1 & 2)**: the Services (Packages 1 & 2);

(i) covers specified activities to be carried out by the Managing Contractor itself which are in respect of either or both of the Package 1 Works and the Package 2 Works; and

(ii) are to be priced in the management fee (Packages 1 & 2); and

(iii) are not to be priced in either the contract sum (Package 1 Works) or the Reimbursable Costs (Package 2);

(e) **Package 3 Works**: as at the date of the Contract, the Package 3 Works is not identified or developed. Clause 2.1B (Portion Proposal (Package 3) and Portion Proposal Agreement (Package 3)) provides a regime for the parties to agree the scope and other requirements for the Package 3 Works at a later stage. This regime does not apply to the Portions referred to in paragraphs (b) and (c) above. If and to the extent there is any Package 3 Works, the Managing Contractor:

(i) must carry out the Services (Package 3) itself;

(ii) subject to paragraph (e)(iii), must ensure that the Reimbursable Works (Package 3) are carried out by subcontractors under Approved Subcontract Agreements; and

(iii) may only itself carry out Reimbursable Works (Package 3) if it is Managing Contractor Work (Package 3);

(f) **Pricing - management fee**: the Managing Contractor is entitled to be paid:

(i) management fee (Packages 1 & 2) to cover its cost of carrying out the Services (Packages 1 & 2);

(ii) management fee (Package 3) to cover its cost of carrying out the Services (Package 3);
(g) **Pricing for the Package 1 Works**: in addition to the management fee (Packages 1 & 2), the Managing Contractor will be paid for the carrying out of the Package 1 Works on a lump sum price basis, being the contract sum (Package 1 Works) as may be adjusted in accordance with the Contract;

(h) **Pricing for the Package 2 Works**: in addition to the management fee (Packages 1 & 2), the Managing Contractor will be paid for the carrying out of the Package 2 Works on a reimbursable cost basis, being the Reimbursable Costs (Package 2) for the Reimbursable Works (Packages 2);

(i) **Pricing for the Package 3 Works**: in addition to the management fee (Package 3), the Managing Contractor will be paid for the carrying out of the Package 3 Works (if any) on a reimbursable cost basis, being the Reimbursable Costs (Package 3) for the Reimbursable Works (Packages 3);

(j) **Access to the site for Package 1 Works**: the Principal will provide the Managing Contractor with access to that part of the site described in P.1 of Annexure Part P to assist in enabling the carrying out of part of the Package 1 Works. Any other land required to carry out the Package 1 Works must be obtained by the Managing Contractor;

(k) **Site condition risk for Package 1 Works**: except for the contract sum (Package 1 Works), the Managing Contractor is not entitled to any relief for encountering site conditions of any kind in the carrying out of the Package 1 Works;

(l) **Access to the site for Package 2 Works and Package 3 Works**: any land required to carry out the Package 2 Works and Package 3 Works must be obtained by the Managing Contractor; and

(m) **Site condition risk for Package 2 Works and Package 3 Works**: the Managing Contractor is entitled to relief for encountering site conditions in the carrying out of the Package 2 Works and Package 3 Works to the extent only the site conditions fall within the definition of latent condition (Packages 2 & 3) and then only to the extent permitted under the Contract.

### 2.1B Portion Proposal (Package 3) and Portion Proposal Agreement (Package 3)

(a) The Managing Contractor acknowledges and agrees that:

(i) as at the date of the Contract:

(A) the scope of the Package 3 Works is not identified or developed; and

(B) Appendix 5 to the Principal’s project requirements contains a list of potential categories of works to be considered as to whether or not any, some or all of which should form part of the Package 3 Works;
(ii) the Principal is relying on the Managing Contractor’s expertise, advice, skill and judgement to assist the Principal to determine the scope of any Package 3 Works, by investigating, designing, costing and programming such works in accordance with the Contract including subclauses 3.1 to 3.4, 3.7 and 21; and

(iii) unless and until the Principal agrees to a Portion Proposal (Package 3) in accordance with this subclause 2.1B, the Managing Contractor has no entitlement to construct any part of the Works applicable to any Portion Proposal (Package 3) or any of the categories of work referred in subclause 2.1B(a)(i)(B).

(b) At any time prior to the date of completion of the last Portion to achieve completion, the Principal may direct the Managing Contractor to submit a Portion Proposal (Package 3) in accordance with subclause 2.1B(c) to perform Managing Contractor Activities in respect of a Portion to which this subclause 2.1B relates.

(c) As soon as reasonably practicable, but in any event, by no later than 10 Business Days after the date of receipt of a direction under subclause 2.1B(b), the Managing Contractor must submit a proposal to the Principal which proposal must contain all of the following information:

(i) details of the scope of Works proposed to form the relevant Portion including any proposed amendments to the Principal’s project requirements to reflect the necessary requirements in respect of the Portion;

(ii) the design documentation the Managing Contractor proposes to use to construct the Portion;

(iii) the proposed date for completion applicable to the Portion;

(iv) the revised Managing Contractor Program updated to show in sufficient detail the proposed Managing Contractor Activities in connection with the Portion;

(v) the members of, and the extent to which each such member of, the Managing Contractor Key Personnel will be involved in the carrying out of the Managing Contractor’s Activities in connection with the Portion;

(vi) the proposed management fee (Package 3) in respect of that Portion, to be determined by multiplying the percentage set out in Item 8A of Annexure Part A by the total estimated Reimbursable Costs (Package 3) referable to that Portion;

(vii) the total estimated Reimbursable Costs (Package 3) referable to that Portion;
(viii) a Portion Cost Plan (Packages 2 & 3) for the Portion;
(ix) a Subcontract Proposal (Packages 2 & 3) for the Portion;
(x) details of the site required to carry out the relevant Portion and any approvals required for access to that site;
(xi) details of how the Managing Contractor will procure (if applicable) access to the site required to carry out the relevant Portion;
(xii) an updated Environmental Management Plan and Project Safety Management Plan applicable to the site required to carry out the relevant Portion;
(xiii) if applicable, details of the proposed Managing Contractor Work (Package 3) in accordance with the requirement of subclause 6.10(b); and
(xiv) such other details as the Principal's Representative may require from time to time.

(d) If requested by the Principal, the Managing Contractor must:

(i) cooperate with the Principal to seek to negotiate and agree the Portion Proposal (Package 3), including:

(A) those provisions of any new Additional Third Party Agreements to be complied with by the Managing Contractor,

(B) the extent to which (if at all) the Principal will provide access to any part of the proposed site (including the date for access for the purpose of subclause 19.1); and

(C) such different terms to the proposed Portion Proposal (Package 3) as the Principal may reasonably request; and

(ii) subject to the parties' agreement, resubmit a Portion Proposal (Package 3) in accordance with subclause 2.1B(c) (in which case subclause 2.1B(c) to (f) will re-apply).

(e) The Principal may, in its absolute discretion, accept any Portion Proposal (Package 3).

(f) If the Principal rejects a Portion Proposal (Package 3), then:

(i) the Managing Contractor has no entitlement to perform any Managing Contractor Activities contemplated in the Portion Proposal (Package 3); and
(ii) the Principal may seek to have the Managing Contractor Activities contemplated in the Portion Proposal (Package 3) undertaken by Other Contractors.

(g) If the Principal accepts any Portion Proposal (Package 3) then the Managing Contractor must immediately thereafter proceed to:

(i) procure the relevant subcontractors; and

(ii) complete the design (if applicable), construct and handover the relevant Portion,

in accordance with the requirements of the Contract.

2.1C No exclusivity and no commitment regarding any Portion Proposal (Package 3)

The Managing Contractor acknowledges and agrees that:

(a) the Principal is not under any obligation to accept any Portion Proposal (Package 3);

(b) no representation has been made by the Principal as to the number, volume or value of Portion Proposal (Package 3) that it may require the Managing Contractor to submit under the Contract;

(c) if the Principal does not accept any Portion Proposal (Package 3), the Managing Contractor may submit a claim to the Principal for the amount described in paragraph (g) of the definition of Reimbursable Costs (Packages 2 & 3), with such amount to be calculated by reference to:

(i) applicable rates in the schedule of rates; or

(ii) if no applicable rates exist in the schedule of rates, by rates determined by the Principal’s Representative to be applicable; and

(d) the Managing Contractor is not entitled to any payment in relation to preparing and negotiating any Portion Proposal (Package 3) if:

(i) in the Principal’s reasonable opinion:

(A) the Managing Contractor did not exercise the expertise, skill and judgement that would be expected of a prudent, competent and experienced contractor in preparing any Portion Proposal (Package 3);

(B) the Managing Contractor did not negotiate the Portion Proposal (Package 3) with the Principal in good faith; or
(C) as at the date that the Managing Contractor submitted any Portion Proposal (Package 3), the Managing Contractor could not, or would not be able to, carry out Contractor's Activities required under the applicable Portion Proposal (Package 3) for any reason; or

(ii) as at the date that the Managing Contractor submitted any Portion Proposal (Package 3), any of the events described in subclauses 27.11(a)(i) to (iv) apply in connection with the Managing Contractor.

2.2 Managing Contractor's warranties

The Managing Contractor warrants to the Principal that:

(a) the Managing Contractor at all times will be suitably qualified and experienced, and will exercise due skill, care and diligence in carrying out and completing the Managing Contractor Activities;

(b) the Managing Contractor has and will fully and carefully examine the Principal's project requirements (including the preliminary design) and all of the other documents that comprise the Contract and warrants that the preliminary design is suitable, appropriate and adequate for the intended purpose of the Works and that:

(i) if the Works and the Temporary Works are designed and constructed in accordance with the Principal's project requirements, the Works and the Temporary Works will satisfy the requirements of the Contract; and

(ii) the Managing Contractor will carry out and complete the Managing Contractor Activities in accordance with the Principal's project requirements;

(c) the Managing Contractor will carry out and complete the Managing Contractor's design obligations to accord with the Principal's project requirements and produce design documentation which:

(i) comply with the Contract, including the Principal's project requirements and all performance levels and performance requirements stated in the Contract;

(ii) comply with all applicable legislative requirements;

(iii) are suitable for the site; and

(iv) are fit for the intended purpose of the Works;

(d) the Managing Contractor is fully responsible for the methods of construction and will execute and complete the Managing Contractor Activities in accordance with the Contract and the design documentation which it is entitled to use for construction purposes under subclauses 3.3 and 5.4;
(e) all materials, plant, equipment and other items supplied under the Contract by the Managing Contractor will be new, in conformity with their description, of merchantable quality and fit for the purpose stated in or reasonably inferred from the Contract;

(f) all workmanship will be proper and tradesmanlike and to the standards specified in the Contract, and to the extent that such standards are not specified, then to standards commensurate with good industry practice;

(g) the Principal will receive good and clear title to the Works, including all materials, plant, equipment and other items incorporated therein or supplied by the Managing Contractor under the Contract;

(h) the Managing Contractor will carry out and complete the Managing Contractor Activities and construct the Works in accordance with the design documentation which it is entitled to use for construction purposes so that the Works, when completed, will:

(i) comply with the Contract in all respects, including the Principal's project requirements and any applicable Portion Proposal Agreement (Package 3);

(ii) meet and satisfy all performance levels and performance requirements stated in the Contract;

(iii) comply with the legislative requirements;

(iv) be suitable for the applicable part of the site upon which the Works will be located;

(v) meet the standards of workmanship specified in the Contract and, to the extent that such standards are not specified, standards commensurate with good industry practice; and

(vi) be fit for the intended purpose of the Works.

2.3 Warranties unaffected

The Managing Contractor acknowledges and agrees that:

(a) the warranties in subclause 2.2, the Managing Contractor's design obligations and the Managing Contractor's warranties, obligations and liabilities under the Contract and at law, remain unaffected; and

(b) the Managing Contractor will bear and continue to bear full liability and responsibility in accordance with the Contract for the performance of the Managing Contractor Activities,

notwithstanding any one or more of the following:
(c) that design work (including the preliminary design) has been carried out by or on behalf of the Principal and included in the Principal's project requirements;

(d) the involvement of subcontractors in the carrying out of any of the Managing Contractor Activities;

(e) any receipt or review of, or comment on, or rejection or approval of, or permission to use or deemed permission to use, or expression of satisfaction or dissatisfaction with:

(i) any design documentation;

(ii) any other document or information provided by the Managing Contractor;

(iii) any submission, proposal or recommendation by the Managing Contractor; or

(iv) any of the Managing Contractor's work methods or procedures, by or on behalf of the Principal or the Principal's Representative;

(f) any supervision, superintendence or review of, or comment on, or rejection or approval of, or expression of satisfaction or dissatisfaction with:

(i) any of the Managing Contractor's subcontractor selections;

(ii) any of the Managing Contractor's materials, plant or equipment selections;

(iii) the execution of any of the Managing Contractor Activities; or

(iv) any work, plant, equipment or materials, by or on behalf of the Principal or the Principal's Representative;

(g) the making available to the Managing Contractor, or the provision to the Managing Contractor, by or on behalf of the Principal or the Principal's Representative (whether prior to or after the date of the Contract), of any Information Documents; or

(h) any variation directed or approved by the Principal's Representative under subclause 24.1.

2.4 No duty of care or liability imposed on Principal

Without limiting any other provision of the Contract, no receipt of nor any review, comment, approval, consent, rejection, permission to use, deemed permission to use, permission to proceed, expression of satisfaction or dissatisfaction, supervision
(b) would not have entered into the Contract but for those acknowledgements, representations, warranties and agreements.

2.6 Managing Contractor resources

The Managing Contractor undertakes to provide a level of resources which is adequate to enable the Managing Contractor to comply with its obligations under the Contract and, in any event, the Managing Contractor must provide at least the level of resources in accordance with subclause 17.2.

2.7 Unconditional undertakings

(a) On or before the date of the Contract, the Managing Contractor must give the Principal, two unconditional undertakings:

(i) each for an amount of $1.5 million;

(ii) each in the form of Annexure Part I or as otherwise approved in writing by the Principal's Representative;

(iii) each in favour of the Principal;

(iv) each issued by a bank that maintains the Required Rating; and

(v) where required by law, duly stamped.

(b) Subject to its rights to have recourse to the unconditional undertakings and subject to subclause 28.3, the Principal must:

(i) within 20 Business Days after the date of completion of the last Portion to achieve completion, release 50% of the then held unconditional undertaking(s) provided by the Managing Contractor under this subclause 2.7; and

(ii) within 20 Business Days after the issue of the final certificate under subclause 25.7, release the then held balance of the unconditional undertaking(s) provided by the Managing Contractor under this subclause 2.7.

2.8 OpCo Collateral Warranty

(a) The Managing Contractor must, within 5 Business Days of receiving a written notice from the Principal which sets out the identity of OpCo, duly execute three copies of the OpCo Collateral Warranty and deliver them to the Principal.

(b) The obligations of the Managing Contractor under the OpCo Collateral Warranty are separate, independent and additional to its obligations under the Contract.
or superintendence or any other direction by or on behalf of the Principal or the Principal's Representative concerning:

(a) any design documentation, Portion Proposal (Package 3) or other document or information provided by the Managing Contractor;

(b) any work, plant, equipment, materials or other aspect of the Managing Contractor Activities; or

(c) any of the other things mentioned in subclause 2.3,

nor any failure by the Principal or the Principal’s Representative to do any of those things, will:

(d) except as expressly stated in the Contract, give rise to any entitlement for the Managing Contractor to recover any additional payment;

(e) limit or exclude any obligation or liability of the Managing Contractor (including responsibility for any errors, omissions or non-compliance with the Contract);

(f) prejudice any of the Principal’s rights against the Managing Contractor;

(g) impose on the Principal or the Principal’s Representative any duty of care to the Managing Contractor or any subcontractor or any of their agents or employees (whether in contract or in tort or for strict liability or otherwise);

(h) result in the Principal or the Principal’s Representative assuming any responsibility or liability for:

(i) the adequacy, quality, compliance or fitness of; or

(ii) any errors in or omissions from,

the Works or any part thereof or any design documentation or other document or information provided by the Managing Contractor, or

(i) constitute an admission that the Principal, the Principal’s Representative or any of their agents or employees have checked any design documentation, other document, information, work, plant, equipment, materials or other things for errors, omissions or compliance with the requirements of the Contract.

2.5 Acknowledgment of reliance

The Managing Contractor acknowledges that the Principal:

(a) has, in entering into the Contract, relied on each of the acknowledgements, representations, warranties and agreements by the Managing Contractor in subclauses 2.1B(a), 2.2, 2.3 and 2.4; and
3. DESIGN AND COST PLANNING

3.1 Managing Contractor’s design obligations

(a) The Managing Contractor must:

(i) undertake:

(A) the necessary consultation with the Principal and other stakeholders nominated by the Principal; and

(B) such investigations (including relevant surveys, soil reports and other risk reduction studies) a prudent, competent and experienced contractor would consider necessary for the comprehensive, safe and accurate planning, scoping, design, costing (to the extent relating to the Package 2 Works and Package 3 Works only) and programming of the Works, so as to plan and scope the Works; and

(ii) prepare and complete the design of the Works and Temporary Works by preparing the design documentation, so that the design documentation which the Managing Contractor prepares are suitable for construction and are fit for their intended purpose and otherwise comply with the requirements of the Contract.

(b) In preparing the design documentation the Managing Contractor must comply with the requirements of the Contract (including the Principal’s project requirements and any relevant Portion Proposal Agreement (Package 3)) and develop design documentation which are suitable for construction and comply with requirements of the Contract.

3.2 Value engineering – Package 2 Works and Package 3 Works

Unless directed otherwise by the Principal’s Representative in respect of one or more Portions forming part of the Package 2 Works or Package 3 Works, prior to the commencement of detailed design by the Managing Contractor of a Portion forming part of the Package 2 Works or Package 3 Works, the relevant personnel of the Managing Contractor (including, as a minimum, the Managing Contractor’s design manager and such other personnel of the Managing Contractor as are notified by the Principal’s Representative to so participate) must participate in a value engineering process, including participation in a series of workshops, to identify and eliminate any unnecessary costs and optimise whole of life costs of the applicable Package 2 Works or Package 3 Works, while ensuring that all other requirements for the Package 2 Works or Package 3 Works are satisfied.
3.3 Design Documentation

The Managing Contractor must submit all design documentation which it prepares progressively to the Principal's Representative at the times and otherwise in accordance with the TfNSW Standard Requirements, the requirements of subclause 5.4 and the Principal's project requirements.

3.4 Copies of Design Documentation

(a) The Managing Contractor must, in accordance with subclause 3.3 and the approved Managing Contractor's Program, progressively submit to the Principal's Representative the number of copies specified in Item 11 of Annexure Part A of all design documentation prepared by the Managing Contractor, whether complete or work in progress, which it intends to use for design or construction purposes.

(b) The Managing Contractor must give the Principal's Representative the number of copies specified in Item 11 of Annexure Part A of:

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

(ii) all final design documentation prepared by the Managing Contractor.

3.5 Availability of Design Documentation

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

(a) on each site applicable to each Portion or such other location as approved by the Principal, at least one complete set of all design documentations that the Managing Contractor is entitled to use for construction purposes pursuant to subclause 5.4; and

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

3.6 No departure from Design Documentation

The Managing Contractor must carry out the Managing Contractor Activities, and, where any part of the Works are being carried out by subcontractors, ensure that the subcontractors carry out the Works strictly in accordance with the design documentation which it is entitled to use for construction purposes in accordance with subclause 5.4.
3.7 **Cost planning – Package 2 Works and Package 3 Works**

The *Managing Contractor* must:

(a) plan:

(i) the *Package 2 Works* and the *Package 3 Works*; and

(ii) each *Portion* forming part of the *Package 2 Works* and the *Package 3 Works*,

in consultation with the *Principal’s Representative* and provide estimates of, and costings for, the construction and commissioning phase of the *Package 2 Works*, the *Package 3 Works* and each *Portion* forming part of the *Package 2 Works* or the *Package 3 Works* (as the case may be);

(b) within 20 *Business Days* of the *date of the Contract* (or any longer period agreed by the *Principal’s Representative* in writing), prepare for the approval of the *Principal’s Representative* a cost plan which sets out the *Managing Contractor’s* proposed packaging of the subcontractors of the *Package 2 Works* and *Package 3 Works* known as at that date and includes:

(i) a cost analysis in respect of each part of the *Reimbursable Works (Packages 2 & 3)* referable to each *Portion* forming part of the *Package 2 Works* and the *Package 3 Works* (if any) known as at that date, including a detailed break-up by reference to each separate subcontract package (a scope work breakdown structure), of the costs for construction and commissioning which must set a budget (including a contingency) for each subcontract package (a scope work breakdown structure);

(ii) the cash-flow requirements of the *Package 2 Works and Package 3 Works and each Portion* forming part of the *Package 2 Works* and the *Package 3 Works*,

and once this cost plan is approved by the *Principal’s Representative* it will be referred to as the "**Cost Plan (Packages 2 & 3)**";

(c) prepare a separate cost plan in respect of each *Portion* forming part of the *Package 2 Works* and the *Package 3 Works* which must, as a minimum, outline:

(i) the applicable *management fee*; and

(ii) the estimated *Reimbursable Cost (Packages 2 & 3)* payable to:

(A) the *subcontractor(s)*; and

(B) the *Managing Contractor* for carrying out the *Managing Contractor Work (Packages 2 & 3)* (if any),
referable to the construction of that Portion and once this cost plan is approved by the Principal's Representative it will be referred to as the "Portion Cost Plan (Packages 2 & 3)" for the relevant Portion;

(d) update the Cost Plan (Packages 2 & 3) monthly, so as to include each new Portion Cost Plan (Packages 2 & 3);

(e) institute a system of cost control (including monthly reports to the Principal setting out the cost to date, forecast cost to complete and forecast cost at completion of each Portion forming part of the Package 2 Works or the Package 3 Works, as the case may be) and, together with the Principal's Representative, review and, where approved by the Principal's Representative, amend the Cost Plan (Packages 2 & 3) and each Portion Cost Plan (Packages 2 & 3) to take account of any item affecting or likely to affect any component of the Cost Plan (Packages 2 & 3) and each Portion Cost Plan (Packages 2 & 3), and advise the Principal's Representative as to the alternative steps available where:

(i) the tenders for any part of the Reimbursable Works (Packages 2 & 3) which are to be performed by a subcontractor exceed the amount included for that work in the Cost Plan (Packages 2 & 3) and each Portion Cost Plan (Packages 2 & 3); or

(ii) the costs incurred in respect of any Reimbursable Works (Packages 2 & 3) (including under any applicable Approved Subcontract Agreement) exceed the amount allowed for the particular Reimbursable Works (Packages 2 & 3) in the cash-flow which forms part of the Cost Plan (Packages 2 & 3) and each Portion Cost Plan (Packages 2 & 3) or the forecast final costs of that Reimbursable Works (Packages 2 & 3) appear likely to exceed the total amount allowed for that work (including the contingency) in the Cost Plan (Packages 2 & 3) and each Portion Cost Plan (Packages 2 & 3);

(f) if requested at any time by the Principal's Representative, the Managing Contractor must provide to the Principal's Representative (or any person authorised by the Principal's Representative) all information necessary to corroborate the Cost Plan (Packages 2 & 3) and each Portion Cost Plan (Packages 2 & 3) and must co-operate in respect of any audit of the information concerning the Cost Plan (Packages 2 & 3) and each Portion Cost Plan (Packages 2 & 3); and

(g) use reasonable endeavours to carry out the Reimbursable Works (Packages 2 & 3) so that the Reimbursable Costs (Packages 2 & 3) do not exceed the applicable amounts included in the Cost Plan (Packages 2 & 3) and each Portion Cost Plan (Packages 2 & 3).
3.8 Independent Technical Advisor

(a) The Principal may engage one or more independent consultants to act as a technical reviewer, cost adviser or other specialist (Independent Technical Advisor) to review, report on and verify compliance with specific aspects of the Contract.

(b) The Managing Contractor must ensure that the Independent Technical Advisor is given reasonable and timely access to:

(i) all documents and records relevant to the Managing Contractor Activities;

(ii) all relevant personnel involved in carrying out the Managing Contractor Activities, including employees of the Managing Contractor and its subcontractors; and

(iii) the site,

in order to facilitate the Independent Technical Advisor to perform its functions.

(c) The Managing Contractor must not do, or omit to do, anything that may prevent or otherwise inhibit the Independent Technical Advisor from performing its functions.

(d) The Managing Contractor will not be relieved from any of its liabilities or responsibilities under the Contract or otherwise according to law, nor will the rights of the Principal whether under the Contract or otherwise according to law be limited, or otherwise affected, by the Independent Technical Advisor's performance of its functions.

(e) The Managing Contractor must, if requested, assist the Principal's Representative and the Principal's consultants in demonstrating compliance of the Works with the requirements of the Contract.

4. SERVICE OF NOTICES

4.1 Address for service

(a) A notice (and other documents) to be given or served under or arising out of a provision of the Contract must:

(i) be in writing; and

(ii) subject to subclause 4.1(c), be addressed or delivered to the relevant address or sent to the facsimile number shown in Item 12 of Annexure Part A (or any new address or facsimile number last communicated in writing to the person giving the notice).
(b) At any time and from time to time the Principal’s Representative may notify the Managing Contractor in writing of an electronic portal or document management system to be used for the purposes of the Contract (Electronic Portal). The Principal’s Representative’s notice will set out:

(i) details of the Electronic Portal;

(ii) the commencement date for the use of the Electronic Portal (Notice Date);

(iii) any password, login details or similar information required for the Managing Contractor to use the Electronic Portal;

(iv) the Electronic Portal address details for the Principal, the Principal’s Representative and the Managing Contractor; and

(v) any other information reasonably necessary for the use and service of notices via the Electronic Portal.

(c) If the Principal’s Representative provides a notice in accordance with subclause 4.1(b), then, on and from the Notice Date:

(i) in the case of notices by the Managing Contractor:

(A) without limiting subclause 4.1(c)(i)B, be sent to the Electronic Portal address of the Principal or the Principal’s Representative (as applicable); and

(B) under clauses 2.1B, 23, 25, 27, 29 and 30 (including any communication in respect of the SOP Act), in addition to an electronic copy sent in accordance with subclause 4(c)(i)A, an additional hardcopy must also be sent in accordance with the requirements of subclause 4.1(a); and

(ii) in the case of notices by the Principal or the Principal’s Representative:

(A) be sent in accordance with the requirements of subclause 4.1(a); or

(B) except in relation to notices by the Principal under clauses 2.1B, 25, 27, 28, 29 or 30, be sent to the Electronic Portal address of the Managing Contractor.

(d) If the Principal does not provide any notice in accordance with subclause 4.1(b), a notice (or any other document) will be deemed not to have been given or received if sent by e-mail or other electronic means.
4.2 Receipt of notices

(a) Subject to subclause 4.2(d), a notice sent by the Electronic Portal will be taken to have been received on the date recorded on the notice on which it was registered on the Electronic Portal.

(b) Subject to subclause 4.2(d), 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) Subject to subclause 4.2(d), 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 which is a Business Day.

(d) Where subclause 4.1(c)(i)B applies, the relevant notice will be taken to have been received on the later of the date determined in accordance with:

(i) subclause 4.2(a); and

(ii) subclauses 4.2(b) or 4.2(c) (as the case may be).

5. CONTRACT DOCUMENTS

5.1 Discrepancies

(a) Figured dimensions shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, error, ambiguity, omission or discrepancy in any document prepared for the purpose of carrying out the Managing Contractor Activities, that party must give the other written notice of it. The Principal's Representative, thereupon, and upon otherwise becoming aware, must, subject to subclause 5.2, direct the Managing Contractor as to the interpretation and construction which the Managing Contractor must follow.

(b) The Principal's Representative, in giving a direction in accordance with this subclause 5.1, is not required to determine whether or not there is an inconsistency, error, ambiguity, omission or discrepancy in the Contract.

(c) Any direction which the Principal's Representative gives in accordance with this subclause 5.1:

(i) will not relieve the Managing Contractor from or alter its liabilities or obligations under the Contract or otherwise at law; and
(ii) will not limit or otherwise affect the Principal’s rights against the Managing Contractor, whether under the Contract or otherwise according to law.

(d) The Managing Contractor must bear the cost of compliance with a direction under this subclause to the extent that any inconsistency, error, ambiguity, omission or discrepancy in the design documentation or between the design documentation and the Principal’s project requirements necessitates the direction and such cost shall not form part of the Reimbursable Costs (Packages 2 & 3).

5.2 Order of precedence

Unless otherwise directed by the Principal’s Representative, the interpretation which prescribes or requires the highest standard, quality or quantum will take precedence.

5.3 Principal-supplied documents

(a) The Principal must supply to the Managing Contractor the documents and number of copies thereof, both stated in Item 13 of Annexure Part A.

(b) The documents referred to in subclause 5.3(a):

(i) remain the Principal’s property and be returned to the Principal on written demand; and

(ii) not be used, copied nor reproduced for any purpose other than the Managing Contractor Activities.

5.4 Documents supplied by the Managing Contractor

(a) The Managing Contractor must supply to the Principal’s Representative the documents and the number of copies thereof, both stated in Item 11 of Annexure Part A, by the time required by the Principal’s Representative or otherwise in a timely manner to ensure that each Portion and the Works have achieved completion by the times required by the Contract.

(b) If the Managing Contractor submits documents to the Principal’s Representative (including in respect of documents the Managing Contractor is required to submit under a provision of the Contract to the Principal’s Representative for review), then except where the Contract otherwise provides:

(i) the Principal’s Representative shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Contract;

(ii) any Principal’s Representative’s acknowledgment or approval, or review or rejection of a document shall not prejudice the Managing
Contractor’s obligations nor the Principal’s rights, whether under the Contract or otherwise;

(iii) if the Contract requires the Managing Contractor to obtain the Principal’s Representative’s direction about such documents, the Principal’s Representative must give, within the time stated in Item 14 of Annexure Part A, a direction, including reasons if the documents are not suitable; and

(iv) the Principal’s Representative may, within 10 Business Days of receiving the document, reject the document (or any part), giving reasons for the rejection, provided that the Principal’s Representative may not unreasonably reject the document.

(c) The Managing Contractor will not be entitled to make any Claim in any way in connection with the Principal’s Representative’s review or rejection of such documents, or any failure or inadequacy in the Principal’s Representative’s review. Rejected documents must be revised and resubmitted within 10 Business Days of the rejection, and this subclause 5.4 will reapply to the resubmitted document.

(d) Where a document (other than a program) which is required to be submitted for review relates to a part of the Managing Contractor Activities or the Works, the Managing Contractor may not undertake those Managing Contractor Activities or construct the relevant part of the Works, unless otherwise agreed by the Principal’s Representative, until 10 Business Days have passed since the Principal’s Representative received the document without the Principal’s Representative having rejected the document.

(e) Any Managing Contractor Activities performed must comply with the requirements of relevant documents that have not been rejected.

5.5 Confidential information

(a) Subject to subclause 5.5(b), the Managing Contractor must ensure that it keeps confidential the Contract, the Third Party Agreements and such documents, samples, models, patterns and other information as are provided under the Contract.

(b) The Managing Contractor is not obliged to keep confidential any information:

(i) which is otherwise in the public domain other than by a breach of the Contract by the Managing Contractor; or

(ii) the disclosure of which is:

(A) required by legislative requirements; or

(B) given with the prior written consent of the Principal.
(c) If required in writing by the Principal, the Managing Contractor must enter into, or cause any of its subcontractors or employees to enter into, a separate agreement on terms of Annexure Part E or on such other terms as may be reasonably required by the Principal not to disclose to anyone else any confidential matter whether before or after completion or earlier termination of the Contract.

5.6 Disclosure by the Principal

(a) Without limiting the operation of subclause 9.4, the Principal may publish or disclose (on the internet or otherwise):

(i) the terms and conditions of the Contract; and

(ii) any document or information arising under, out of or in connection with the Contract or relating to the performance of the Managing Contractor Activities.

(b) The Managing Contractor acknowledges and agrees that disclosures regarding the Contract by the Principal may be required:

(i) under law, including the Government Information (Public Access) Act 2009 (NSW); and

(ii) to satisfy the disclosure requirements of the Audit Office of New South Wales and other legitimate government purposes or processes,

(Public Disclosure Obligations).

(c) The Managing Contractor must use all reasonable endeavours to assist the Principal in meeting the Principal’s Public Disclosure Obligations in connection with the Managing Contractor Activities.

5.7 Information Documents

(a) Prior to the date of the Contract, the Managing Contractor executed the Deed of Disclaimer and provided this to the Principal after which the Principal provided the Managing Contractor with, or gave the Managing Contractor access to, the Information Documents.

(b) In respect of any information, data or documents (including the Information Documents) made available to the Managing Contractor prior to the date of the Contract, without limiting subclause 5.7(c) or the warranties or acknowledgements in the Deed of Disclaimer.

(i) the Managing Contractor acknowledges that:

(A) 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 such
information, data or documents (including the Information Documents);

(B) such information, data and documents (including the Information Documents) do not form part of the Contract; and

(C) subclause 5.7(c) applies to such information, data or documents (including the Information Documents); and

(ii) the Principal will not be liable upon any Claim by the Managing Contractor arising out of or in any way in connection with:

(A) the provision of, or the purported reliance upon, or use of that information, data or documents (including the Information Documents) by the Managing Contractor or any other person to whom the information, data or documents (including the Information Documents) is disclosed; or

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

(c) The Managing 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 Managing 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 the Contract except to the extent that any such information, statement or document forms part of the Contract;

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

(iii) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties, acknowledgements and agreements in subclauses 5.7(c)(i) and 5.7(c)(ii) and in the Deed of Disclaimer and the Tender Form.

(d) The Managing Contractor releases and indemnifies the Principal from and against:
(i) any claim against the Principal by, or liability of the Principal to, any person; or

(ii) (without being limited by subclause 5.7(d)(i)) any costs, expenses, losses or damages suffered or incurred by the Principal,

arising out of or in any way in connection with:

(iii) the provision of, or the purported reliance upon, or use of the information data or documents (including the Information Documents), as referred to in subclauses 5.7(b) and 5.7(c)(i), by the Managing Contractor or any other person to whom the information data or documents (including the Information Documents) are disclosed;

(iv) any breach by the Managing Contractor of the warranties in this subclause 5.7; or

(v) the information, data or documents (including the Information Documents) 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 and misleading" (within the meaning of those terms in section 18 and section 29 (respectively) of the of the Australian Consumer Law, or any equivalent provision of State or Territory legislation).

6. ASSIGNMENT, NOVATION AND SUBCONTRACTING

6.1 Assignment

The Managing Contractor cannot assign its rights or liabilities under the Contract without the prior written consent of the Principal and except on such terms and conditions as are determined in writing by the Principal.

6.1A Novation

(a) The Principal may at any time, without the consent of the Managing Contractor, novate the Contract to an Other Contractor.

(b) If the Principal elects to novate the Contract, the Managing Contractor must execute a deed of novation in the form set out in Annexure Part X to give effect to the novation within 5 Business Days.

6.2 Subcontracting

The Managing Contractor Activities are subject to the following restrictions which the Managing Contractor must ensure are complied with:

(a) Package 1 Works: the Managing Contractor must:
(i) obtain the prior written consent of the Principal's Representative before entering into any subcontract relating to Managing Contractor Activities in connection with Package 1 Works if and to the extent the subcontract:

(A) relates to work or services described in Item 14A of Annexure Part A; or

(B) is of an estimated value of $50,000 or more;

(ii) provide the Principal's Representative with a copy of the proposed subcontract to be approved under paragraph (a)(i);

(iii) once executed, provide the Principal's Representative with a copy of the executed subcontract; and

(iv) unless otherwise notified by the Principal's Representative, include in any subcontract for the Package 1 Works (whether or not that subcontract is subject to prior written consent of the Principal's Representative under subclause 6.2(a)(i)):

(A) clauses to the effect of those set out in Annexure Part H; and

(B) the Form of Subcontractor Deed which is included in Annexure Part G to be executed by the subcontractor selected to undertake the activities under the subcontract;

(b) Package 2 Works and Package 3 Works: all Reimbursable Works (Packages 2 & 3), other than the Managing Contractor Work (Packages 2 & 3), must, unless otherwise agreed by the Principal's Representative in writing, be performed under Approved Subcontract Agreements in respect of Reimbursable Works (Packages 2 & 3) which will be made between the Managing Contractor and subcontractors:

(i) in the case of:

(A) minor subcontracts with an estimated value of less than $50,000.00; or

(B) subcontracts relating to non-contestable works of Utility providers, or other categories of subcontracts, as notified by the Principal's Representative to the Managing Contractor from time to time,

in accordance with such procedure as may be requested by the Managing Contractor (or required by a Utility provider) and approved in writing by the Principal's Representative; or

(ii) otherwise in accordance with the procedure in subclauses 6.3 to 6.9;
(c) the Managing Contractor must not include any of the activities which form part of the Services (Packages 1 & 2) or Services (Package 3) in the scope of any part of the activities to be performed by the subcontractors; and

(d) without limiting the foregoing, the Managing Contractor must not subcontract any part of the Works to any person who is Prohibited Subcontractor.

6.3 Subcontract Proposal (Packages 2 & 3)

(a) Subject to subclause 6.2(b) and without limiting subclauses 7.2 and 7.3, the Managing Contractor must, before entering into any subcontract for the performance by another person of Reimbursable Works (Packages 2 & 3), issue a document titled "Subcontract Proposal (Packages 2 & 3)" to the Principal's Representative which sets out particulars of:

(i) the work to be the subject of a proposed subcontract agreement;

(ii) the amount included for this work in the relevant Portion Cost Plan (Packages 2 & 3); and

(iii) the maximum rate of damages (whether liquidated or otherwise) the Managing Contractor proposes to include in the proposed subcontract agreement and any methods for calculating such damages.

(b) After the Principal's Representative has approved the Subcontract Proposal (Packages 2 & 3), the Managing Contractor must:

(i) prepare the Subcontract Tender Documentation (Packages 2 & 3) and in doing so:

(A) use the relevant parts of the design documentation which it is entitled to use for construction purposes pursuant to subclauses 3.4 and 5.4 and any Portion Proposal Agreement (Package 3);

(B) use conditions of subcontract approved by the Principal's Representative which must include clauses to the effect of those set out in Annexure Part H; and

(C) include the Form of Subcontractor Deed, which is included in Annexure Part G, to be executed by the subcontractor selected to undertake the work;

(ii) submit a copy of the Subcontract Tender Documentation (Packages 2 & 3) to the Principal's Representative for his or her approval at least 10 Business Days before tenders are to be invited; and

(iii) subsequently amend the Subcontract Tender Documentation (Packages 2 & 3) as required by the Principal's Representative.
6.4 Calling tenders – Reimbursable Works (Packages 2 & 3)

The Managing Contractor must:

(a) recommend to the Principal’s Representative only those persons who, in the Managing Contractor’s opinion, are suitable for inclusion in the tender list for the applicable Reimbursable Works (Packages 2 & 3) to be subcontracted (which must not include any person who is Prohibited Subcontractor);

(b) subsequently finalise the tender list in consultation with the Principal’s Representative who may (in his or her absolute discretion, without the necessity to give reasons) remove or add any person from or to the tender list;

(c) call tenders from the persons in the tender list finalised with the Principal’s Representative in sufficient time to avoid delays or disruption to the progress of the work required to be undertaken to complete the Package 2 Works or the Package 3 Works (as the case may be); and

(d) if so requested by the Principal’s Representative, promptly provide a copy of each tender to the Principal’s Representative.

6.5 Reviewing tenders – Reimbursable Works (Packages 2 & 3)

(a) In respect of tenders for Reimbursable Works (Packages 2 & 3) to be subcontracted, the Managing Contractor must:

   (i) examine and analyse all tenders received;

   (ii) recommend to the Principal’s Representative which tenderer, if any, should be accepted by the Managing Contractor;

   (iii) submits together with any such recommendation:

      (A) the work to be covered and executed under the proposed subcontract agreement;

      (B) the time for commencement and completion of that work and confirmation that these times are in accordance with the then current program under clause 21;

      (C) the proposed subcontract price and the amounts tendered by other tenderers;

      (D) any proposed amendments to the subcontract agreement contained in the Subcontract Tender Documentation (Packages 2 & 3) approved by the Principal’s Representative under subclause 6.3; and

      (E) any other details which may be required by the Principal’s Representative; and
(iv) comply with, and ensure that subcontractors comply with, the NSW Code and NSW Guidelines.

(b) If required by the Principal’s Representative, the Managing Contractor must conduct post tender negotiations with the tenderers, which must, if the Principal’s Representative so requires, be held in the presence of the Principal’s Representative.

6.6 Recommended tenderer – Reimbursable Works (Packages 2 & 3)

(a) The Principal’s Representative will consider the recommended tenderer submitted under subclause 6.5 and approve or reject the Managing Contractor’s recommendation without any obligation to give reasons for the approval or rejection. If the Principal’s Representative approves the Managing Contractor’s recommended tenderer, the Managing Contractor must:

(i) promptly enter into an agreement with the approved tenderer on the basis of:

(A) the subcontract agreement contained in the Subcontract Tender Documentation (Packages 2 & 3) approved by the Principal’s Representative under subclause 6.3 with only such amendments as the Principal’s Representative may have approved in writing; and

(B) the subcontract price approved by the Principal’s Representative; and

(ii) provide the Principal’s Representative with a copy of the executed subcontract agreement including the design documentation relevant to that agreement.

(b) If the Managing Contractor wishes to claim an extension of time in respect of the Principal’s Representative’s rejection of the Managing Contractor’s recommended tenderer, the Managing Contractor must do so if and to the extent permitted by clause 23 (including subclause 23.2(b)).

6.7 Co-ordination of subcontractors

The Managing Contractor must:

(a) administer, supervise, inspect, co-ordinate and control the work of all subcontractors engaged by it;

(b) provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control all subcontractors engaged by it;

(c) administer the Approved Subcontract Agreements in accordance with:
(i) the terms of the Approved Subcontract Agreements; and

(ii) the directions of the Principal's Representative; and

(d) at all times co-ordinate the performance of the Services (Packages 1 & 2), the Services (Package 3) and the Reimbursable Works (Packages 2 & 3) and ensure execution and completion of the Approved Subcontract Agreements in a proper and workmanlike manner according to:

(i) the relevant design documentation; and

(ii) the obligations of the respective subcontractors.

6.8 Changes to subcontractor's work - Reimbursable Works (Packages 2 & 3)

In respect of Reimbursable Works (Packages 2 & 3), the Managing Contractor must:

(a) not vary the work which is the subject of an Approved Subcontract Agreement unless:

(i) the Principal's Representative has directed a variation under clause 24 and that variation relates directly to the work the subject of the Approved Subcontract Agreement; or

(ii) the Managing Contractor makes a written request to the Principal's Representative to authorise it to issue a direction to a subcontractor to vary the work, and the Principal's Representative gives its written consent to this request (such consent not to be unreasonably withheld or delayed where the Managing Contractor's request to issue such a direction is required to co-ordinate the work of subcontractors with the work of Other Contractors); and

(b) not otherwise give any direction to the subcontractor which may delay the subcontract or increase the amount payable to the subcontractor, unless directed to do so by the Principal's Representative.

6.9 Related companies of Managing Contractor

The Managing Contractor or a related body corporate of the Managing Contractor may not itself carry out any part of the Reimbursable Works (Packages 2 & 3) other than the Managing Contractor Work (Packages 2 & 3) unless:

(a) the express written approval of the Principal's Representative is obtained; and

(b) the Managing Contractor and the Principal's Representative agree upon a fixed price or rates, or a combination of a fixed price and rates, for the work prior to the Managing Contractor or the related body corporate of the Managing Contractor commencing the work.
6.10 Managing Contractor Work (Packages 2 & 3)

(a) The Managing Contractor must not commence any part of the Managing Contractor Work (Packages 2 & 3) until written approval is received from the Principal's Representative.

(b) Prior to receiving approval from the Principal's Representative the Managing Contractor must provide to the Principal's Representative the following particulars in writing:

(i) a detailed scope of the proposed work to be undertaken as part of the Managing Contractor Work (Packages 2 & 3);

(ii) a detailed methodology addressing the following:

(A) a description of the resource methodology that will be used to undertake the proposed works;

(B) details of how the Managing Contractor will ensure that the quality of the proposed works complies with the Contract;

(C) a statement as to how the Managing Contractor will ensure the proposed works are carried out in an efficient manner; and

(D) a description of the information and particulars the Managing Contractor will provide to the Principal's Representative supporting any progress claim made by the Managing Contractor for carrying out the proposed works;

(iii) the target budget (including contingency) for the proposed works broken down into sufficient detail and reconciled against the Cost Plan (Packages 2 & 3);

(iv) the cash flow for the proposed works;

(v) the time for commencement and completion of the proposed works and confirmation that these times are in accordance with the then current program under clause 21;

(vi) the proposed project team to undertake the proposed works including all construction workers, managerial and technical personnel;

(vii) the number of resources (man power) and the anticipated total hours to carry out the proposed works onsite and offsite;

(viii) the cost of any materials and equipment the Managing Contractor intends to purchase as part of the Managing Contractor Work (Packages 2 & 3) for use in the proposed works; and
(ix) the type and number of construction plant and the anticipated total hours/days the construction plant will be used to carry out the proposed works.

(c) If required by the Principal's Representative, the Managing Contractor must provide further particulars prior to the Principal's Representative giving approval for the proposed works to commence.

(d) In carrying out the Managing Contractor Work (Packages 2 & 3), the Managing Contractor must:

(i) carry out the Managing Contractor Work (Packages 2 & 3) in an efficient manner;

(ii) carry out the Managing Contractor Work (Packages 2 & 3) so as to avoid interfering with, disrupting or delaying the work of subcontractors and Other Contractors;

(iii) not vary the work which is the subject of the Managing Contractor Work (Packages 2 & 3) unless the Principal's Representative has directed a variation under clause 24 and that variation relates directly to the work the subject of the Managing Contractor Work (Packages 2 & 3); and

(iv) each week or as otherwise notified by the Principal, provide the Principal's Representative with details of all resources, labour and construction plant used by the Managing Contractor in the execution of the Managing Contractor Work (Packages 2 & 3) which identifies as a minimum:

(A) the part of the Reimbursable Works (Packages 2 & 3) being performed by the Managing Contractor;

(B) the name of each person performing the work for each part of the Managing Contractor Work (Packages 2 & 3) with details of their labour category, the time when the person started and finished work, the number of hours being claimed for each person and whether those hours are at normal time, time and a half or double time; and

(C) details of the type of plant being used for each part of the Managing Contractor Work (Packages 2 & 3) and the number of hours being claimed.

(e) The Principal's Representative may direct the manner in which the matters described in subclause 6.10(d) are to be recorded.

(f) Without limiting its obligations elsewhere in the Contract, the Managing Contractor represents and warrants to the Principal that it holds and will
continue to hold all relevant licences and other Approvals to legally execute the Managing Contractor Work (Packages 2 & 3).

(g) The Managing Contractor Work (Packages 2 & 3) must be undertaken on an "open book" basis and will be subject to an independent third party audit as required by the Principal's Representative. The Managing Contractor must cooperate in facilitating any such audit including by making available all necessary records and documents to the Principal's Representative and the auditor to enable an audit to be conducted of the amount properly incurred and payable pursuant to this subclause 6.10.

6.11 Managing Contractor's responsibility for subcontractors

(a) The Managing Contractor shall be liable to the Principal for the acts, defaults and omissions of subcontractors and employees and agents of subcontractors as if they were those of the Managing Contractor.

(b) Approval to subcontract shall not relieve the Managing Contractor from any liability or obligation under the Contract.

6.12 Disputes with subcontractors

If a Managing Contractor has a dispute with a subcontractor in respect of any aspect of the Managing Contractor Activities and either the Managing Contractor or the subcontractor pursues any court action or adjudication application under the SOP Act, then:

(a) the Managing Contractor will be responsible for carriage of the dispute, and it must:

(i) keep the Principal's Representative fully informed of all aspects of the dispute; and

(ii) act in accordance with the reasonable instructions of the Principal's Representative (including in respect of lodging any appeals against any decisions made in respect of the dispute);

(b) subject to the Principal's Representative prior written approval (which may be given or withheld at the Principal's Representative's absolute discretion), any external legal, expert or consultants' costs incurred by the Managing Contractor arising out of the defence of any court action or adjudication relating to the Package 2 Works or the Package 3 Works will form part of the Reimbursable Costs (Packages 2 & 3); and

(c) the Managing Contractor's own internal costs of administering that court action or adjudication application will not form part of the Reimbursable Costs (Packages 2 & 3).
6.13 **Co-ordination with Other Contractors**

The *Managing Contractor* must:

(a) permit *Other Contractors* to carry out their activities (including rectification of defective work and the provision of access to work sites);

(b) fully co-operate with *Other Contractors*;

(c) carefully co-ordinate and interface the performance of the *Managing Contractor Activities* and the activities of its *subcontractors* with the activities carried out or to be carried out by *Other Contractors*;

(d) carry out the *Managing Contractor Activities*, and ensure that the *subcontractors* carry out their activities, so as to avoid interfering with, disrupting or delaying the activities of *Other Contractors*; and

(e) without limiting clause 9.5(c), provide the *Principal* with an executed deed poll in favour of *OpCo* in the form set out in Annexure Part AA if the *Managing Contractor* is carrying out construction work on the SLR Site (as that term is defined in the *Project Deed*).

6.14 **Warranty**

(a) The *Managing Contractor* must, as a condition precedent to completion of each *Portion*, procure and provide the *Principal’s Representative* with those warranties described in Item 15 of Annexure Part A or elsewhere in the *Contract* from the relevant *subcontractors* undertaking or supplying the work or items the subject of the warranty.

(b) These warranties:

(i) must be in the form set out in Annexure Part T (or such other terms as may be agreed by the *Principal’s Representative*) and must be in favour of the *Principal* 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 *Managing Contractor* in respect of the subject matter of these warranties.

6.15 **Specialist Asbestos Removal Subcontractor**

(a) Without limiting the *Managing Contractor’s* obligations to comply with clause 9, where the *Managing Contractor* becomes aware of the existence of any asbestos at the *site* or of any material at the *site* which may contain asbestos (including in connection with any buildings), it must not disturb the asbestos or the material and must, in accordance with the procedures in this clause 6, engage:
(i) an occupational hygienist or asbestos consultant, who must be appropriately qualified and licensed, to conduct any audits and inspections and prepare any management plans required in relation to the asbestos; and

(ii) a licensed asbestos removal subcontractor who:

(A) is appropriately qualified;

(B) specialises in the removal of asbestos; and

(C) holds all appropriate licences, which licences are current (including from WorkCover NSW),

(specialist asbestos removal subcontractor) to carry out the removal of the asbestos.

(b) The work of the specialist asbestos removal subcontractor and the occupational hygienist (or asbestos consultant) must be subcontracted to separate persons who are independent of each other and where they are both corporations, neither may be a related body corporate of the other.

(c) The Managing Contractor must ensure that the occupational hygienist (or asbestos consultant) and the specialist asbestos removal subcontractor comply with all legislative requirements in respect of the asbestos and its removal, including and to the extent relevant:

(i) complying with the Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1988)];

(ii) obtaining all necessary certificates, licences, consents, permits, approvals;

(iii) complying with all notification requirements;

(iv) appropriately disposing of all asbestos wastes; and

(v) undertaking all required monitoring.

6.16 Prohibited Subcontractor

(a) The Principal may, in its absolute discretion, direct the Managing Contractor to terminate any subcontract (including any Approved Subcontract Agreement) if:

(i) that subcontractor; or

(ii) where the subcontractor is a company, any employee of that subcontractor working on the Managing Contractor Activities,
has been found to have engaged in corrupt conduct (as defined in the Independent Commission Against Corruption Act 1988 (NSW)) by the Independent Commission Against Corruption.

(b) Following receipt of a direction from the Principal under subclause 6.16(a), the Managing Contractor must terminate any such subcontract and ensure that a replacement subcontractor is appointed in accordance with the Contract.

7. INDUSTRIAL RELATIONS AND NSW GOVERNMENT GUIDELINES

7.1 General

The Managing Contractor must, in carrying out the Managing Contractor Activities:

(a) assume sole responsibility for and manage all aspects of industrial relations for the Managing Contractor Activities, including ensuring all subcontractors manage all aspects of industrial relations with their employees appropriately;

(b) negotiate and obtain approval from the Principal's Representative for a project agreement for the Managing Contractor's employees, the subcontractors and trade unions;

(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 (including statutes), for all employees engaged by any person in connection with the Managing Contractor Activities, are always observed in full; and

(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 Managing Contractor Activities, the subcontractors and Other Contractors' activities or the delivery of the Works.

7.2 NSW Code and NSW Guidelines

(a) In addition to terms defined elsewhere in the Contract, terms used in this subclause 7.2 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

(b) The Managing Contractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

(c) The Managing Contractor must notify the Construction Compliance Unit (CCU) and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.

(d) Where the Managing Contractor engages a subcontractor, the Managing Contractor must ensure that the contract with the subcontractor imposes on
the subcontractor or equivalent obligations to those in this subclause 7.2, including that the subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

(e) The Managing Contractor must not appoint or engage another party in relation to the Managing Contractor Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

(f) The Managing Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it and its subcontractors.

(g) The Managing Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

(i) enter and have access to sites and premises controlled by the Managing Contractor, including the site;

(ii) inspect any work, material, machinery, appliance, article or facility;

(iii) access information and documents;

(iv) inspect and copy any record relevant to the Managing Contractor Activities;

(v) have access to personnel; and

(vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by the Managing Contractor and its subcontractors.

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

(i) The Managing Contractor warrants that, at the date of the Contract, neither it, nor any related body corporate of the Managing Contractor, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.

(j) If the Managing Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.

(k) Where a sanction is imposed:
(i) it is without prejudice to any rights that would otherwise accrue to the parties; and

(ii) the State (through its agencies, Ministers and the CCU) is entitled to:

(A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and

(B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Managing Contractor, or any related body corporate of the Managing Contractor, in respect of work to which the NSW Code and NSW Guidelines apply.

(l) The Managing Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Managing Contractor is not entitled to make, and the Principal and the State of New South Wales will not be liable upon, any Claim against the Principal or the State of New South Wales arising out of or in any way in connection with the Managing Contractor's compliance with the NSW Code and the NSW Guidelines.

(m) Compliance with the NSW Code and NSW Guidelines does not relieve the Managing Contractor from its responsibility to perform the Managing Contractor Activities or any other obligation under the Contract, or from liability for any Defect or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.

(n) Where a variation is proposed that may be likely to affect compliance with the NSW Code and NSW Guidelines:

(i) the Managing Contractor must immediately notify the Principal of the change, or likely change, and specify:

(A) the circumstances of the proposed change;

(B) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and

(C) what steps the Managing Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to the Workplace Relations Management Plan); and

(ii) the Principal will direct the Managing Contractor as to the course it must adopt within 10 Business Days of receiving notice from the Managing Contractor.
7.3 Other New South Wales Government requirements

(a) Without limiting the Managing Contractor's obligations elsewhere in the Contract, the Managing Contractor must:

(i) provided these guidelines are not withdrawn (temporarily or otherwise), comply with all the requirements of the New South Wales Industrial Relations Management Guidelines (December 1999) or any substitute for, or update to, such guidelines;

(ii) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Managing Contractor as part of the Managing Contractor Activities;

(iii) not commence any work on the site until the Workplace Relations Management Plan prepared in accordance with the TNSW Standard Requirements has been submitted to the Principal's Representative and the Principal's Representative has not rejected it under subclause 5.4;

(iv) submit to the Principal's Representative, before beginning work on the site, a statement detailing:

(A) 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;

(B) the names of Federal or NSW awards that are likely to cover the Managing Contractor, subcontractors and Other Contractors involved in the Managing Contractor Activities; and

(C) the names of those responsible for co-ordinating industrial relations for the Managing Contractor Activities;

(v) not do, or omit to do, anything that is, or is likely to be, prejudicial to the delivery of the Managing Contractor Activities or the project;

(vi) before beginning work on the site, submit a statement on the Managing Contractor's letterhead and signed by an authorised person, attesting to the Managing Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:

(A) payment of remuneration to employees;

(B) annual leave provisions;

(C) long service leave payment scheme registration;

(D) workers' compensation insurance, including self-insurance arrangements;
(E) superannuation fund membership and contributions; and

(F) over-award payments such as redundancy fund contributions; and

(vii) continue to provide, during the execution of the Managing Contractor 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 Managing Contractor Activities.

(b) If the Managing Contractor engages an independent industry or employer association or other specialist organisation to audit service and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the Managing Contractor under subclause 7.3(e).

7.4 Other requirements

(a) The industrial relations requirements contained in the Contract, the NSW Guidelines and (if applicable) the NSW Government Industrial Relations Management Guidelines, December 1999:

(i) are in addition to, but are not in substitution for, any law, including any legislative requirement; and

(ii) do not limit the powers of the Principal or the liabilities and responsibilities of the Managing Contractor.

(b) The Managing Contractor must bear all the costs and expenses involved with complying with all the requirements of the Contract relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards and such costs shall not form part of the Reimbursable Costs (Packages 2 & 3).

7.5 Employment of Aboriginal and Torres Strait Islander people

The Managing Contractor must comply with the NSW Government Aboriginal Participation in Construction Guidelines as amended from time to time (as at the date of signing of this deed, the edition of the Guidelines applying to projects commencing after 1 January 2007).

7.6 Training management

(a) Subject to the express provisions of the Contract, the Managing Contractor must comply with the NSW Government "Training Management Guidelines", February 2009. The Guidelines are available at:

(b) Training management requirements specified in the Contract and the NSW Government *Training Management Guidelines* may be in addition to, but are not in substitution for, any training obligations of the Managing Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW law.

(c) Where applicable, at least 10 Business Days before starting any Managing Contractor Activities on the site the Managing Contractor must document and submit a Project Training Management Plan which complies with the NSW Government "Training Management Guidelines", February 2009.

(d) The Managing Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the Contract.

(e) The Managing Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this subclause 7.6.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Warranties and indemnities

(a) The Principal warrants that, unless otherwise provided in the Contract, the Principal’s project requirements, design, materials, documents and methods of working, each specified in the Contract or provided or directed by the Principal or Principal’s Representative, will not infringe any intellectual property right.

(b) The Managing Contractor warrants that the design documentation prepared by the Managing Contractor and any other documents and methods of working, each provided by the Managing Contractor, must not infringe any intellectual property right.

(c) Each party must indemnify the other against such respective infringements.

8.2 Intellectual property rights granted to Principal

(a) Copyright and property in the design documentation and in the Managing Contractor’s documents and methods of working for the Works hereby vest upon their creation in the Principal, and the Principal grants to the Managing Contractor an irrevocable licence to use such things for the Works.

(b) If any intellectual property rights in the design documentation or methods of working are not capable of being vested in the Principal because the
Managing Contractor itself does not own, and is unable at a reasonable cost to obtain ownership of, those intellectual property rights, the Managing Contractor grants to the Principal an irrevocable licence, which may be transferred and is not subject to the payment of any royalties, to use such design documentation and methods of working for purposes relating to the Works. Such licence must also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts) or additions or alterations to the Works and the copying of documents for such purposes.

(c) The Managing Contractor must do everything necessary to perfect such vesting.

(d) The Managing Contractor must ensure that the documents and methods of working are not copied, supplied nor reproduced for any purpose other than the performance of the Managing Contractor Activities.

9. LEGISLATIVE AND OTHER REQUIREMENTS AND POWERS OF AUTHORITIES

9.1 Compliance

(a) The Managing Contractor must comply with and satisfy (and, to the extent relevant, must ensure that all subcontractors satisfy) all legislative requirements necessary:

(i) to carry out the Managing Contractor Activities;

(ii) without limiting paragraph (i), to design and construct the Works and the Temporary Works; and

(iii) for the use, operation, maintenance and repair of the Works, except those in Item 16 of Annexure Part A, those in Annexure Part O or those directed by the Principal’s Representative to be satisfied by or on behalf of the Principal.

(b) The Managing Contractor, upon finding that a legislative requirement is at variance with the Contract (including the Principal’s project requirements), must promptly give the Principal’s Representative written notice thereof.

9.2 Approvals

Without limiting subclause 9.1, the Managing Contractor must obtain and maintain, and ensure that the subcontractors obtain and maintain, all Approvals required to perform the Managing Contractor Activities (other than those Approvals which the Contract expressly states that the Principal has obtained or requires the Principal to obtain or maintain).
9.3 Authorities

(a) The Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any legislation.

(b) The Managing Contractor acknowledges and agrees that:

(i) there are many Authorities and private Utility companies with jurisdiction over, or statutory rights in respect of, aspects of the Works, the execution of the Managing Contractor Activities, parts of the site and areas affecting and affected by the execution of the Managing Contractor Activities; and

(ii) such Authorities and private Utility companies may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the execution of the Works.

9.4 Exchange of information between government agencies

(a) The Managing Contractor authorises the Principal, its employees and agents to make information concerning the Managing Contractor available to NSW government departments or agencies. Such information may include any information provided by the Managing Contractor to the Principal or the Principal’s Representative and any information relating to the Managing Contractor’s performance under the Contract.

(b) The Managing Contractor acknowledges that:

(i) any information about the Managing Contractor from any source, including 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 Managing Contractor future opportunities for NSW government work; and

(ii) the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Managing Contractor’s performance under the Contract and that it will participate in the Principal’s “Managing Contractor Performance Reporting” process.

9.5 Principal Contractor

(a) In this subclause 9.5, construction project, principal contractor, workplace and construction work have the same meanings as in the WHS Legislation.
(b) Without limiting the Managing Contractor's obligations under any other provision of the Contract, the Principal, as a person conducting a business or undertaking that commissions a construction project:

(i) engages the Managing Contractor as the principal contractor in respect of all construction work forming part of the Managing Contractor Activities (and the Managing Contractor accepts that engagement), or, if the Principal is not able to validly engage the Managing Contractor as the principal contractor in respect of any construction work forming part of the Managing Contractor Activities, the Managing Contractor must exercise and fulfil the functions and obligations of a principal contractor under the WHS Legislation as if the Managing Contractor had been validly engaged as the principal contractor in respect of such construction work so as to ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and

(ii) authorises the Managing Contractor to have management and control of each workplace at which the Managing Contractor Activities are to be carried out and to discharge the duties of a principal contractor under the WHS Legislation, and

the Managing Contractor must exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged.

(c) Where, at any time the Managing Contractor is not the principal contractor of the site, the Managing Contractor must comply with any exercise by an Other Contractor or other person of such authority as is necessary to enable that Other Contractor or other person to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.

9.6 Liability under the NGER Legislation and EEO Act

(a) The Managing Contractor acknowledges and agrees that:

(i) if the Managing Contractor Activities constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and must comply with any obligations arising in respect of the Managing Contractor Activities under the NGER Legislation; and/or

(ii) if the Managing Contractor is part of a group (as defined in the NGER Legislation and/or the EEO Act) of which the controlling corporation (as defined in the NGER Legislation and/or the EEO Act) is registered under the NGER Legislation and/or the EEO Act, the Managing Contractor must use its reasonable endeavours to procure that the relevant controlling corporation complies with the NGER Legislation and/or the EEO Act in relation to the Managing Contractor Activities.
(b) If, despite the operation of subclause 9.6(a), the Principal incurs, or but for this clause would incur, a liability under or in connection with the NGER Legislation or the EEO Act as a result of or in connection with the Managing Contractor Activities, and the NGER Legislation or the EEO Act (as relevant) provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Managing Contractor, the Managing Contractor must, upon the written request of the Principal, do all things reasonably necessary to transfer the liability to the Managing Contractor.

(c) The Managing Contractor acknowledges and agrees that:

(i) if the Principal requests it, the Managing Contractor must provide Greenhouse Data to the Principal:

(A) 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 Managing Contractor or any other person has an obligation to comply with the NGER Legislation in connection with the Managing Contractor Activities; and

(B) otherwise as requested by the Principal from time to time;

(ii) the Managing Contractor must also provide to the Principal all Greenhouse Data and other information which the Managing Contractor provides to any other person under the NGER Legislation in connection with any of the Managing Contractor Activities, at the same time as the Managing Contractor provides that Greenhouse Data or other information to that other person;

(iii) the Managing Contractor must:

(A) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Managing Contractor to discharge its obligations under this subclause 9.6, and keep that Greenhouse Data for at least 7 years after the expiry or the earlier termination of the Contract; and

(B) 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);

(iv) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this
subclause 9.6 to any other person, and may otherwise use the 
Greenhouse Data and other information for any purpose as the 
Principal sees fit; and

(v) nothing in this subclause 9.6 is to be taken as meaning that the 
Principal has agreed to perform any statutory obligation that the 
Managing Contractor may have regarding the provision of Greenhouse 
Data to any authority.

(d) If the Managing Contractor is not part of a group (as defined in the EEO Act) 
of which the controlling corporation (as defined in the EEO Act) is registered 
under the EEO Act in relation to the Managing Contractor Activities, the 
Managing Contractor must:

(i) use its reasonable endeavours to register voluntarily under, and comply 
with, the EEO Act in relation to the Managing Contractor Activities; and

(ii) if the Managing Contractor is not able to register voluntarily under the 
EEO Act, comply with the requirements of the Principal as notified from 
time to time to the Managing Contractor.

10. CARE OF THE MANAGING CONTRACTOR ACTIVITIES AND REINSTATEMENT 
OF DAMAGE

10.1 Care of the Managing Contractor Activities and Portions

(a) Except as provided in subclause 10.3, the Managing Contractor shall be 
responsible for care of:

(i) the whole of a Portion and Managing Contractor Activities referable to 
that Portion from and including the date of commencement of the 
Managing Contractor Activities to 4:00 pm on the date of completion of 
the Portion, at which time responsibility for the care of the Portion 
(except to the extent provided in paragraph (b)) shall pass to the 
Principal; and

(ii) outstanding work and items to be removed from the site applicable to 
the Portion by the Managing Contractor after 4:00 pm on the date of 
completion for the Portion until completion of outstanding work or 
compliance with clause 20.

(b) Without limiting the generality of paragraph (a), the Managing Contractor shall 
be responsible for the care of unfixed items accounted for in a payment 
statement and the care and preservation of things entrusted to the Managing 
Contractor by the Principal or brought onto the site by subcontractors for 
carrying out the Managing Contractor Activities.
10.2 Reinstatement

(a) If loss or damage, other than that caused by an *Excepted Risk*, occurs to the *Works* or *Temporary Works* during the period of the *Managing Contractor*’s care, the *Managing Contractor* must, at its cost, rectify such loss or damage.

(b) In the event of loss or damage being caused by any of the *Excepted Risks* (whether or not in combination with other risks), the *Managing Contractor* must to the extent directed by the *Principal’s Representative*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *Excepted Risks* and other risks, the *Principal’s Representative* in pricing the *variation* shall assess the proportional responsibility of the parties.

10.3 Excepted risks

The *Excepted Risks* causing loss or damage are:

(a) any negligent act or omission of the *Principal’s Representative*, the *Principal* or its consultants, agents, employees or *Other Contractors*;

(b) any risk specifically excepted elsewhere in the *Contract*;

(c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;

(d) 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 *Managing Contractor* or its *subcontractors* or either’s employees or agents; and

(e) use or occupation of any part of the *Works* by the *Principal* or its consultants, agents or *Other Contractors*.

11. DAMAGE TO PERSONS AND PROPERTY AND INDEMNITIES

11.1 Protection

(a) Insofar as compliance with the *Contract* permits, the *Managing Contractor*, on behalf of the *Principal*, must effect the taking of measures:

(i) necessary to protect people and property;

(ii) to avoid unnecessary interference with the passage of people and vehicles; and

(iii) to prevent nuisance and unreasonable noise and disturbance.
(b) If the Managing Contractor fails to comply with an obligation under this clause, the Principal, after giving reasonable written notice to the Managing Contractor and in addition to the Principal’s other rights and remedies, may have the obligation performed by others. The costs incurred by the Principal in taking this action will be a debt due and payable by the Managing Contractor to the Principal.

11.2 Urgent action

(a) If urgent action is necessary to protect the Works, other property or people and the Managing Contractor fails to ensure the action is taken, in addition to any other remedies of the Principal, the Principal may cause the necessary action to be taken. The costs incurred by the Principal in taking this action will be a debt due and payable by the Managing Contractor to the Principal.

(b) If time permits, the Principal’s Representative must give the Managing Contractor prior written notice of the Principal’s intention.

11.3 Indemnities by Managing Contractor

(a) The Managing Contractor must indemnify the Principal and the Principal’s Associates against:

(i) loss of or damage to the property of the Principal or the Principal’s Associates (other than the Works); and

(ii) claims in respect of personal injury or death or loss of, or damage to, any other property, arising out of or as a consequence of the carrying out of the Managing Contractor Activities, but the indemnity shall be reduced proportionally to the extent that the act or omission of the Principal, the Principal’s Associates, the Other Contractors or the agents of the Principal, or other contractors (not being employed by the Managing Contractor) have contributed to the injury, death, loss or damage.

(b) Subclause 11.3(a) shall not apply to:

(i) the extent that the Managing Contractor’s liability is limited by another provision of the Contract;

(ii) exclude any other right of the Principal to be indemnified by the Managing Contractor; and

(iii) claims in respect of the Principal’s right to have the Works carried out.

(c) Without limiting subclauses 11.3(a) and (b) and to the extent permitted by law, the Managing Contractor must indemnify the Principal and the Principal’s Associates against any claim (including any claim made by a third party against the Principal or the Principal’s Associates), damage, expense, loss,
liability, fine or penalty suffered or incurred by the Principal or the Principal's Associates arising out of or in any way in connection with any:

(i) failure by the Managing Contractor to comply with any obligation under subclauses 7.6, 8.2, 9.5, 19.10, 19.11 or 19.12;

(ii) claim against the Principal or the Principal's Associates by the owner or occupier or other person having an interest in any Extra Land,

provided that the Managing Contractor's liability to indemnify the Principal or the Principal's Associates will be reduced proportionally to the extent that an act or omission of the Principal, the Principal's Associates, the Other Contractors or an agent of the Principal have contributed to the claim, damage, expense, loss, liability, fine or penalty.

(d) The Principal holds for itself and on trust for each of the Principal's Associates the benefit of each indemnity in this subclause 11.3 expressed to be for the benefit of that Principal's Associate. The trust created under this subclause 11.3(d) does not prevent or in any way restrict the parties' ability to amend the Contract or either party's ability to terminate the Contract or the exercise of any other right of the parties under the Contract or at law.

(e) For the purposes of this subclause 11.3, Principal's Associate means:

(i) any subsidiary or related entity of TfNSW; or

(ii) Railcorp, Roads and Maritime Services and the State.

12. PROFESSIONAL INDEMNITY INSURANCE

(a) Before commencing the Managing Contractor Activities, the Managing Contractor must effect and maintain professional indemnity insurance with levels of cover not less than stated in Item 17(a) of Annexure Part A.

(b) The insurance must be maintained until the final certificate is issued and thereafter for the period stated in Item 17(b) of Annexure Part A.

(c) The Managing Contractor must ensure that every subcontractor, if within a category stated in Item 17(c) of Annexure Part A, must effect and maintain professional indemnity insurance with levels of cover not less than stated in Item 17(c) of Annexure Part A applicable to that category.

(d) Each subcontractor's professional indemnity insurance must be maintained until the final certificate is issued and thereafter for the period stated in Item 17(d) of Annexure Part A.
13. **INSURANCE BY PRINCIPAL**

(a) The *Principal* must, from the *date of the Contract*, effect Material Damage Insurance and Third Party Liability Insurance on the terms of the insurance policies which appear as Exhibit C.

(b) 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 *Managing Contractor* acknowledges and agrees that it was provided with a copy of the insurance policies in Exhibit C prior to the *date of the Contract* and it reviewed and examined the terms of those insurance policies and:

(i) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;

(ii) must, if required by the *Principal*, take out at the *Managing Contractor's* expense any insurance to:

(A) insure any risks not insured by the insurance policies in Exhibit C; or

(B) cover any exclusions, conditions of excesses in the insurance policies in Exhibit C; and

(iii) 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 or exclusion in the insurance policies in Exhibit C and any such amounts will not form part of the *Reimbursable Costs (Packages 2 & 3)*.

(c) The *Principal* will maintain the policies in Exhibit C until the end of all *Defects Liability Periods*.

(d) The *Managing Contractor*:

(i) must satisfy itself of the nature and extent of the cover provided by the insurances referred to in clause 13(a); and

(ii) may, if it wishes to do so and at its own cost and without limiting its obligations under clauses 14 to 15 (inclusive), effect appropriate insurance for any risk or liability which is not covered by any of the insurances referred to in clause 13(a).

14. **INSURANCE OF EMPLOYEES**

(a) Before commencing the *Managing Contractor Activities*, the *Managing Contractor* must insure against statutory and common law liability for death of or injury to persons employed by the *Managing Contractor*. The insurance cover must be maintained in accordance with all **legislative requirements** until completion of all of the *Works*. 
(b) Where permitted by law, the insurance policy or policies must be extended to provide indemnity for the Principal's statutory liability to the Managing Contractor's employees.

(c) The Managing Contractor must ensure that all subcontractors have similarly insured their employees and have effected all required workers compensation insurance.

14A MOTOR VEHICLE THIRD PARTY INSURANCE

(a) If the Works or the Managing Contractor Activities require the use of motor vehicles or construction plant licensed for road use to transport items or substances, the Managing Contractor must take out or hold a policy of insurance for motor vehicles and such plant covering third party liability for property damage, extended specifically to cover transportation of such items or substances.

(b) The policy must be in the name of the Managing Contractor with the Principal noted for their respective rights and interests and cover their liabilities to third parties. The policy must be for an amount not less than stated in Item 18 of Annexure Part A for any one occurrence and must include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons covered and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons covered as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

(c) The policy must be effected with an insurer and in terms both approved in writing by the Principal's Representative which approval will not be unreasonably withheld. The policy must be effected before commencing work covered by the policy and be maintained until the issue of the final certificate under subclause 25.7.

(d) In addition the Managing Contractor must effect or hold compulsory third party insurance for bodily injury in accordance with legislative requirements.

14B INSURANCE OF CONSTRUCTION PLANT

(a) The Managing Contractor must, before the Managing Contractor commences the Managing Contractor Activities or as otherwise required by the Contract, effect and have in place an insurance policy covering loss or damage to the construction plant for an amount not less than the amount stated in Item 19 of Annexure Part A, with insurers and on terms satisfactory to the Principal's Representative.

(b) The Managing Contractor must ensure that the insurance policy covering loss or damage to the construction plant:
(i) covers the Principal, the Principal’s Representative, the Managing Contractor and all subcontractors and all of their employees and agents, for their respective rights and interests, and their liabilities to third parties and liability to each other; and

(ii) covers loss or damage to the construction plant in any way in connection with, the Works or the performance of the Managing Contractor Activities.

14C ASBESTOS LIABILITY INSURANCE

(a) If the Managing Contractor Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, the Managing Contractor must effect, or ensure that its specialist asbestos removal subcontractor effects, a policy of insurance with an insurer and in terms both approved in writing by the Principal’s Representative, covering the specialist asbestos removal subcontractor, the Managing Contractor, the Principal, the Principal’s Representative, private sector consultants engaged by the Principal, and all subcontractors and all of their employees and agents. The asbestos liability policy must provide asbestos liability cover of an amount not less than the amount stated in Item 20 of Annexure Part A with the premium payable by the Managing Contractor.

(b) The asbestos liability insurance must be in place at least 60 days prior to carrying out any work in respect of the asbestos and must be maintained for so long as there is a risk that an event covered by the insurance may occur in relation to the Works or the Managing Contractor Activities.

15. INSPECTION AND PROVISIONS OF INSURANCE POLICIES

15.1 Proof of insurance

(a) Before the Managing Contractor commences the Managing Contractor Activities and whenever requested in writing by the other party, a party liable to insure must provide satisfactory evidence that such insurance is effected and maintained.

(b) Insurance shall not limit liabilities or obligations under other provisions of the Contract.

15.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide satisfactory evidence of compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be moneys due and payable from the party in default. Where the defaulting party is the Managing Contractor, the Principal may refuse payment until such evidence is produced by the Managing Contractor.
15.3 Notices from or to insurer

The Managing Contractor must ensure that each insurance policy it is required to effect pursuant to the Contract contains provisions acceptable to the Principal which:

(a) require the Managing Contractor to inform both parties, whenever the insurer gives a party or a subcontractor a notice in connection with the policy;

(b) provide that a notice of claim given to the insurer by either party or a subcontractor must be accepted by the insurer as a notice of claim given by both parties and the subcontractor; and

(c) require the Managing Contractor, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

15.4 Notice of potential claims

(a) A party must, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 13 and must keep the other party informed of subsequent developments concerning the claim.

(b) The Managing Contractor must ensure that subcontractors in respect of their operations similarly inform the parties.

15.5 Cross liability

Any insurance required to be effected in joint names in accordance with the Contract must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

16. PRINCIPAL'S REPRESENTATIVE'S ROLE

16.1 Principal's Representative

(a) The Principal must ensure at all times from the date of the Contract until the expiry of the last Defects Liability Period or earlier termination of the Contract that a person is appointed as the Principal's Representative.

(b) The Principal's Representative may give a direction orally but must as soon as practicable confirm it in writing.

(c) The Principal's Representative will give directions and carry out all its other functions under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).
16.2 Principal's Representative's delegates

The Principal's Representative may from time to time appoint individuals to exercise delegated Principal's Representative's functions, provided that:

(a) no aspect of any function shall at any one time be the subject of delegation to more than one delegate;

(b) delegation shall not prevent the Principal's Representative exercising any function; and

(c) the Principal's Representative gives the Managing Contractor written notice of respectively:

(i) the appointment, including the delegate's name and delegated functions; and

(ii) the termination of each appointment.

17. MANAGING CONTRACTOR'S REPRESENTATIVE AND MANAGING CONTRACTOR KEY PERSONNEL

17.1 Managing Contractor's representative

(a) The Managing Contractor must ensure that there is always a Managing Contractor's Representative.

(b) Matters within the Managing Contractor's Representative's knowledge (including directions received) shall be deemed to be within the Managing Contractor's knowledge.

(c) The Managing Contractor must not replace the Managing Contractor's Representative without the Principal's approval (which will not be unreasonably withheld).

17.2 Managing Contractor Key Personnel

(a) The Managing Contractor must employ as a minimum in regard to the Managing Contractor Activities the persons listed in Item 1 of Annexure Part A for the roles stated in Item 1 of Annexure Part A. Unless otherwise agreed in writing by the Principal's Representative, the Managing Contractor Key Personnel must be based on site and, as a minimum, be employed to carry out the Managing Contractor Activities for the periods nominated in Item 1 of Annexure Part A and otherwise on a full time basis in respect of the Managing Contractor Activities.

(b) The Managing Contractor must not replace or substitute any of the Managing Contractor Key Personnel or alter their roles without justification and then only after receiving written approval to do so from the Principal's Representative.
c) If the Managing Contractor wishes to replace or substitute any of the Managing Contractor Key Personnel or alter their roles, the Managing Contractor must, as a minimum, provide to the Principal’s Representative CVs for a minimum of two alternative persons whom have similar qualifications as the Managing Contractor Key Personnel member(s) they are intended to replace or substitute together with details as to their availability in respect of the Managing Contractor Activities.

18. MANAGING CONTRACTOR’S EMPLOYEES AND SUBCONTRACTORS

The Principal’s Representative may direct the Managing Contractor to have removed, within a stated time, from any activity of the Managing Contractor Activities or the Works, any person involved in the carrying out of the Managing Contractor Activities or the Works who:

(a) in the Principal’s Representative's opinion, is incompetent, negligent or guilty of misconduct; or
(b) has been found to have engaged in corrupt conduct (as defined in the Independent Commission Against Corruption Act 1988 (NSW)) by the Independent Commission Against Corruption.

Where the Principal’s Representative is relying on one of the grounds in paragraph (a), the Managing Contractor may, within 2 Business Days respond to the Principal’s Representative objecting to the direction and providing reasons for its objection. The Principal’s Representative shall consider the Managing Contractor’s objections and reasons and either withdraw or confirm its direction.

19. SITE

19.1 General

(a) Subject to subclauses 19.2 and 19.8, the Principal must provide the Managing Contractor with access to only that part of the site contemplated in paragraphs (a) and (b) of the definition of “site” in subclause 1.1. The Managing Contractor acknowledges and agrees that access to such part of the site will be provided progressively to the Managing Contractor as set out in Annexure Part P (if applicable) and the Portion Proposal Agreement (Package 3) (if applicable).

(b) Subject to subclauses 19.2, 19.8 and any other provision of the Contract affecting access, the Principal must:

(i) give, or ensure the Managing Contractor has, access to relevant parts of the site by the dates set out in Annexure Part P (if applicable) and the Portion Proposal Agreement (Package 3) (if applicable) for the relevant part (and if a period is specified in relation to a part of the site, then by the last day of that period); and
(ii) once access to a part of the site is provided to the Managing Contractor, thereafter continue to allow, or ensure that the Managing Contractor is continued to be allowed, access to that part of the site for the times or periods set out in Annexure Part P (if applicable) and the Portion Proposal Agreement (Package 3) (if applicable) for that part of the site.

19.2 Managing Contractor's acknowledgements

The Managing Contractor acknowledges and agrees that:

(a) access to the site or any part thereof will only confer on the Managing Contractor a right to such control and use as is necessary to enable the Managing Contractor to execute the Managing Contractor Activities or otherwise for the duration contemplated in Annexure Part P (if applicable);

(b) the Principal is not obliged to give the Managing Contractor access under subclause 19.1 until the Managing Contractor has:

(i) complied with subclause 2.7;

(ii) effected the insurance policies required under clauses 14, 14A, 14B and 14C;

(iii) submitted the Managing Contractor's Environmental Management Plan and Project Safety Management Plan required by the TINSW Standard Requirements to the Principal's Representative under subclause 5.4 and the Principal's Representative has not rejected the proposed Managing Contractor's Environmental Management Plan or Project Safety Management Plan within 15 Business Days after such submission in accordance with subclause 5.4(c); and

(iv) has done everything else that it is required to do under the Contract before it is entitled to such access;

(c) the Principal is not obliged to provide, and the Managing Contractor may not be given, exclusive access to the site;

(d) the Principal is not obliged to carry out any work or provide any facilities to the Managing Contractor which may be necessary to enable the Managing Contractor to obtain access to the site or carry out the Managing Contractor Activities;

(e) the Principal and others may engage Other Contractors to work upon or in the vicinity of the site at the same time as the Managing Contractor; and

(f) in the carrying out of Managing Contractor Activities relating to the Package 1 Works, the Managing Contractor.
(i) is responsible for, and assumes the risk of all increased costs and any
damage, expense, loss or liability it suffers or incurs in respect of the
physical conditions and characteristics of the site and its surroundings,
including:

(A) the existence of any contamination;

(B) the suitability or otherwise of any material on the site for use in
the carrying out of the Managing Contractor Activities; and

(C) water, atmospheric and subsurface conditions or characteristics;

and

(ii) has no entitlement to Claim, and the Principal has no liability in respect
of, any delay, additional costs or other effects on the Managing
Contractor Activities related to the conditions and characteristics
referred to in subclause 19.2 (f)(i).

19.3 Management and control of the site

At all times after being given access to the site or a part of the site (whether under
subclause 19.1 or otherwise arranged by the Managing Contractor) and until the date
of completion of the Portion for which the site or the relevant part of the site is
provided to the Managing Contractor, the Managing Contractor:

(a) without limiting any right of the Principal or the Principal’s Representative
under the Contract, and subject to subclause 9.5, will be responsible for the
management and control of the site;

(b) must control access to, and the security and maintenance of, the site or that
part, except where the Principal’s Representative advises otherwise in writing;

(c) must ensure public safety on and adjacent to the site or that part;

(d) must provide for the continuous safe passage of the public, road and railway
system users on existing roads, access ways and rail tracks affected by the
Managing Contractor Activities in accordance with the Contract;

(e) subject to subclauses 19.1 and 19.4 and the TfNSW Standard Requirements,
and any relevant legislative requirement, must 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 Managing
Contractor Activities; and

(f) must not impede access to, or Utilities relating to, private property without the
consent of the Principal’s Representative and the relevant owner or occupier;

and

(g) must ensure that existing buildings (including residences, whether occupied or
unoccupied) on the site are preserved and protected from damage (including
from theft and vandalism until (where relevant) they are due for demolition by
the Managing Contractor if such demolition forms part of the Managing Contractor Activities.

19.4 Principal's right to access and inspection

Subject to subclause 19.6, the Managing Contractor must:

(a) minimise disruption or inconvenience to:

(i) the Principal, Utility providers, occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the site or a part thereof in their occupation or use of, or attendance upon, any part of the site; and

(ii) others having a right of access to the site; and

(b) at all times:

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

(A) the Works;

(B) the site; or

(C) any areas off-site where the Managing Contractor Activities are being carried out,

including unobstructed vehicular access through the site; and

(ii) provide the Principal and the Principal's Representative with every reasonable facility necessary for the inspection, including reviewing, testing, surveillance and examination, of the Services (Packages 1 & 2) or the Services (Package 3), including the Managing Contractor's compliance with the legislative requirements.

19.5 Principal not in control

The Contractor and Principal acknowledge that nothing in the Contract (including the TfNSW Standard Requirements and the right to inspect pursuant to subclause 19.4 or any audit by the Principal or the Principal's Representative at any time) will be construed to mean or imply that:

(a) the Principal has any operational control over the Managing Contractor Activities or the site; or

(b) the Principal has any responsibility for any act or omission by the Managing Contractor or its subcontractors or agents including compliance or non-
compliance with any relevant legislative requirements or the TfNSW Standard Requirements.

19.6 Temporary Works

(a) The Managing Contractor must carry out all Temporary Works so that the Works is fit for their intended purposes.

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

(i) be given no later than 20 Business Days (or such shorter period as is agreed between the Managing 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 Managing Contractor must keep a register of all notices under subclause 19.6(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 Managing 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 Managing 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 Managing 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 subclause 19.6.

(f) The completion of all Temporary Works under this subclause 19.6 applicable to a Portion, including all work under subclause 19.6(e), is a condition precedent to completion of the Portion.
19.7 Notification of Latent Conditions (Packages 2 & 3)

(a) The Managing Contractor, upon becoming aware of a latent condition (Packages 2 & 3) while carrying out the Managing Contractor Activities, must promptly, and where possible before the latent condition (Packages 2 & 3) is disturbed and in any event within 5 Business Days of becoming so aware, give the Principal's Representative written notice of the general nature thereof.

(b) If required by the Principal's Representative, the Managing Contractor must, as soon as practicable and in any event within 7 Business Days of the Managing Contractor receiving such requirement, give the Principal's Representative a written statement of:

(i) the latent condition (Packages 2 & 3) encountered and the respects in which it differs materially;

(ii) the additional work, resources, time and cost which the Managing Contractor estimates to be necessary to deal with the latent condition (Packages 2 & 3 Works); and

(iii) other details relating to, or impacted by, the latent condition (Packages 2 & 3 Works) reasonably required by the Principal's Representative.

(c) In respect of any latent condition (Packages 2 & 3 Works), the following costs will not form part of the Reimbursable Costs (Packages 2 & 3):

(i) any costs incurred more than 5 Business Days before the date on which the Managing Contractor gave the notice, or should have given the notice, required by subclause 19.7(a); and

(ii) any costs incurred by the Managing Contractor in complying with its obligations under the Contract in respect of contamination.

19.8 Extra Land

(a) The Managing Contractor must procure for itself the occupation of, use of or relevant rights over any land or buildings in addition to the land made available by the Principal under subclause 19.1 which the Managing Contractor determines is, or is otherwise, necessary or desirable for the performance of the Managing Contractor Activities (Extra Land).

(b) The Managing Contractor acknowledges that:

(i) integration of the requirements for access to Extra Land is at the sole risk of the Managing Contractor; and

(ii) the Principal will not be liable upon any Claim by the Managing Contractor arising out of or in any way in connection with:
(A) identifying and obtaining access to Extra Land; or

(B) any delay, additional costs or other effects on the Managing Contractor Activities related to the ability of the Managing Contractor to obtain access to Extra Land.

(c) The Managing Contractor must ensure that:

(i) the use; and

(ii) the rehabilitation

of Extra Land is to the satisfaction of the owner of the land, any lessee of the land, the Principal and all relevant Authorities.

(d) Without limiting any other provision of the Contract, the Managing Contractor must comply with all directions of the owners, occupiers or persons providing access to the Extra Land, including in respect of any Utility.

(e) Without limiting subclause 19.8(c), as a condition precedent to completion of each Portion the Managing Contractor must:

(i) rehabilitate any Extra Land used in respect of that Portion in accordance with the requirements of all relevant Authorities and other relevant persons; and

(ii) unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate in the form of Annexure Part U (or otherwise on terms acceptable to the Principal) from the owner or occupier of the relevant Extra Land.

19.9 Artefacts

(a) All Artefacts discovered during the carrying out of the Managing Contractor Activities are, and will as between the Managing Contractor and the Principal be and remain, the property of the Principal.

(b) The Managing Contractor must:

(i) immediately notify the Principal's Representative if it discovers an Artefact during the carrying out of the Managing Contractor Activities;

(ii) ensure the Artefact is protected and not lost, removed, disturbed or damaged; and

(iii) comply with any directions of the Principal's Representative in relation to the Artefact.
19.10 Contamination

(a) The Managing Contractor acknowledges that:

(i) it is aware that there may be contamination on, in, under or migrating from the site including in surface soils generally and locations which have been filled;

(ii) it will rely entirely on its own enquiries and investigations regarding the site; and

(iii) the Principal does not make any representation or warranty (express or implied) as to the nature and extent of any contamination that may be present on, in or under the site.

(b) The Managing Contractor must provide for the management of any contamination that may be present on, in, under or migrating from the site in the Managing Contractor's Environmental Management Plan and the Project Safety Management Plan and take all measures required to protect workers and others in accordance with the law (including the WHS Legislation) and the TNSW Standard Requirements.

(c) Without limiting subclause 19.10(a), the Managing Contractor must, if it considers necessary, undertake any investigation to delineate the nature and extent of any contamination on, in, under or migrating from the site prior to commencing any part of the Managing Contractor Activities on the site in order to identify the steps necessary to deal with any contamination as part of the Managing Contractor Activities.

(d) Without limiting any obligation of the Managing Contractor to comply with all Approvals, the Managing Contractor must:

(i) notify the Principal’s Representative in writing immediately upon becoming aware of the existence of any contamination on, in, under or migrating from the site, and thereafter provide the Principal’s Representative with such further written details as the Principal’s Representative may request;

(ii) promptly, after providing a notice under subclause 19.10(d)(i), submit a notice to the Principal’s Representative containing:

(A) details of the steps which the Managing Contractor proposes to take to:

1) investigate, remEDIATE, dispose OF, manage, monitor, contain or otherwise deal with the contamination so that the site is remediAted to a standard suitable for the proposed use of the site (Remediation Steps);
(2) dispose of contamination off-site to a licensed waste disposal facility in accordance with subclause 19.10 if:

a) this is more economically viable than remediating and or otherwise dealing with the contamination in situ; or

b) the Principal's Representative has directed the Managing Contractor to do so; and

(3) report to all relevant Authorities if required to do so, in each case in accordance with any relevant legislative requirements and any written direction from a relevant Authority;

(B) a plan documenting the Remediation Steps determined pursuant to the criteria in subclause 19.10(d)(ii)(A) (Remediation Action Plan);

(iii) only after the Principal's Representative has had the period referred to in subclause 5.4(d) (or such shorter period as the Principal's Representative may advise to the Managing Contractor in writing) and has not rejected the Managing Contractor's notice which was provided under subclause 19.10(c)(ii), implement the Remediation Action Plan in accordance with relevant legislative requirements and any direction of a relevant Authority where applicable; and

(iv) in dealing with any contamination:

(A) take all measures necessary to protect workers and others in accordance with law, including the WHS Legislation;

(B) take all reasonable steps to ensure that the contamination is quarantined from other in-situ or excavated materials so as to prevent cross-contamination;

(C) provide waste classification reports and documents demonstrating that cross-contamination has not occurred; and

(D) provide the Principal with all necessary information that substantiates that contamination has been handled and disposed of in accordance with all relevant legislative requirements.

19.11 Waste disposal

(a) Without limiting the Managing Contractor's obligations under subclause 9.1, the Managing Contractor must remove from the site and dispose of any waste pursuant to its obligations under the Contract.
(b) The Managing Contractor must dispose of all contaminated materials to a licensed waste facility in accordance with all relevant legislative requirements.

(c) The Managing 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 Approvals that are necessary or desirable; and

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

(d) The Managing 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 legislative requirements.

19.12 No interference to the Sydney Light Rail

The Managing Contractor must ensure that the Managing Contractor Activities do not in any way interfere with, delay or otherwise adversely affect any:

(a) aspect of the Sydney Light Rail mass public transit system from Central Station, Sydney to Lilyfield and the "inner west extension" from Lilyfield to Dulwich Hill; and

(b) without limiting subclause 19.12(a), any activities of Transdev Sydney Pty Ltd (trading as Veolia Transport Sydney) in regard to that system.

19.13 Safety Interface Agreement

(a) The Managing Contractor must ensure that in carrying out the Works and Services the Managing Contractor complies with any obligations it may have under the Rail Safety National Law (NSW) and Rail Safety National Law National Regulations 2012, including any requirement to enter into an interface agreement (as defined under the Rail Safety National Law (NSW)).

(b) The Managing Contractor's compliance with the requirements of subclause 19.13(a) is a condition precedent to any obligation of the Principal to pay the Managing Contractor any amount under the Contract.

19A THIRD PARTY AGREEMENTS

(a) The Managing Contractor:

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

(ii) must, unless otherwise expressly specified in Annexure Part N or in any Portion Proposal Agreement (Package 3), comply with, satisfy, carry
out and fulfil 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;

(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 Annexure Part N or in any Portion Proposal Agreement (Package 3);

(iv) 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;

(v) must, in carrying out the Managing Contractor Activities ensure that no act or omission of the Managing Contractor or its subcontractors constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement;

(vi) 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 Annexure Part N or in any Portion Proposal Agreement (Package 3), the Managing Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to the Principal in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in the Contract; and

(vii) 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 Managing Contractor agrees that the Principal similarly makes no representation to the Managing 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 the Contract.

(b) The parties acknowledge that:

(i) as at the date of the Contract:

(A) the terms and conditions of the Third Party Agreements identified in Exhibit F as "Draft" have not been finalised between the Principal and the relevant Third Party (each a Draft Third Party Agreement); and
(B) there may be additional *Third Party Agreements* which the *Principal* may, in its absolute discretion, enter into (each an *Additional Third Party Agreement*);

(ii) the *Managing Contractor* has reviewed the *Third Party Agreements* executed at the *date of the Contract* and the *Draft Third Party Agreements*;

(iii) following:

(A) finalisation of any *Draft Third Party Agreement*; or

(B) the execution of any *Additional Third Party Agreement*;

after the *date of the Contract*, the *Principal* must promptly give the *Managing Contractor* a copy of the:

(C) executed version of the *Draft Third Party Agreement* or the *Additional Third Party Agreement* (as applicable); and

(D) amendments (if any) to Exhibit F arising out of the execution of the *Draft Third Party Agreement* or the *Additional Third Party Agreement* (as applicable).

(c) The *Managing Contractor* must carry out its obligations under the *Contract*:

(i) on the basis of the executed version of the *Draft Third Party Agreement* or *Additional Third Party Agreement*; and

(ii) without any adjustment to the *management fee* or any entitlement to make any other *Claim* arising out of or in any way in connection with the *Third Party Agreements*.

(d) The *Managing Contractor* must indemnify the *Principal* from and against:

(i) any claim by a *Third Party* against the *Principal*; or

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

arising out of or in any way in connection with a *Third Party Agreement* to the extent that the claim or liability arises out of or in any way in connection with the *Managing Contractor Activities*, provided that the *Managing 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.
20. QUALITY

20.1 Quality assurance

(a) The Managing Contractor must:

(i) plan, establish and maintain a conforming quality system in accordance with the TfNSW Standard Requirements; and

(ii) ensure that the Principal’s Representative has access to the quality systems of the Managing Contractor and subcontractors so as to enable monitoring and quality auditing.

(b) Any such quality system must be used only as an aid to achieving compliance with the Contract and to document such compliance. Such systems shall not discharge the Managing Contractor’s other obligations under the Contract.

20.2 Defects

The Managing Contractor must ensure all Defects are corrected in a timely manner (whether by procuring subcontractors to correct Defects or otherwise), regardless of whether or not they are identified and notified by the Principal’s Representative.

20.3 Defect notification

If, prior to the expiration of the last Defects Liability Period in respect of a Portion, the Principal’s Representative discovers or believes that there is a Defect in respect of that Portion, the Principal’s Representative may give the Managing Contractor a direction specifying the Defect and doing one or more of the following:

(a) requiring the Managing Contractor to correct the Defect (or any part of it) and specifying the time within which this must occur;

(b) requiring the Managing 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;

(c) advising the Managing Contractor that the Principal will accept the work, or any part of it, despite the Defect; or

(d) where it is not practicable for the Principal’s Representative to give a direction under subclause 20.3(a) or 20.3(b), or where a direction has been given under either subclause 20.3(a) or 20.3(b) but which has not been complied with by the Managing Contractor within the time specified in the direction under either of those subclauses, advising the Managing Contractor that an Other Contractor will rectify the Defect, or any part of it, or carry out a variation to overcome the Defect, or any part of it, provided however that that variation may not be used to enhance the Works.
20.4 Correction of Defect or variation

(a) If a direction is given under subclause 20.3(a) or 20.3(b), the Managing Contractor must correct the Defect, or carry out the variation

(i) within the time specified in the Principal's Representative's direction; and

(ii) if after the relevant date for completion, at times approved by the Principal's Representative.

(b) If the Managing Contractor does not comply with this subclause 20.4, the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Managing Contractor with respect to the Defect, give the Managing Contractor a direction under subclause 20.3(d) and have the correction or variation work carried out at the Managing Contractor's expense, and the cost of the correction or variation work incurred by the Principal will be a debt due from the Managing Contractor to the Principal.

20.5 Claim for correction of Defect

The Managing Contractor will not be entitled to make a Claim against the Principal for correcting a Defect (or part of a Defect), including where a direction is given under subclause 20.3(a).

20.6 Extension of Defects Liability Period

If:

(a) the Principal's Representative gives the Managing Contractor a direction under subclause 20.3(a) or 20.3(b) during the Defects Liability Period; and

(b) the Managing Contractor corrects the Defect (or the relevant part) or completes the variation work,

the Defects Liability Period will be extended for the work required by the direction by the period set out in Item 21 of Annexure Part A, commencing upon completion of the correction of the Defect (or the relevant part) or completion of the variation.

20.7 Rights not affected

Neither the Principal's rights, nor the Managing Contractor's liabilities, whether under the Contract or otherwise according to law in respect of Defects, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

(a) the rights conferred upon the Principal or the Principal's Representative by this clause 20 or any other provision of the Contract;

(b) the failure by the Principal or the Principal's Representative to exercise any such rights; or
21. **PROGRAMMING**

(a) The *Managing Contractor’s Program* is not a *Contract* document.

(b) The *Managing Contractor* must submit to the *Principal’s Representative* for approval a program within 15 *Business Days* of the *date of the Contract (Managing Contractor’s Program)* which must:

(i) be based on the *Managing Contractor’s* tender program included in Annexure Part Z; and

(ii) set out details of the *Managing Contractor Activities*, including:

(A) details of the *Services (Packages 1 & 2)* and, if known at that time, any *Services (Package 3)* to be undertaken by the *Managing Contractor*;

(B) time for the submission of *design documentation* for the purpose of subclause 3.3; and

(C) a separate subprogram for each *Portion*.

(c) The *Managing Contractor* must, if the *Managing Contractor’s Program* is rejected by the *Principal* (in the *Principal’s* absolute discretion), submit an amended *Managing Contractor’s Program* within the time required by the *Principal*.

(d) Once the *Managing Contractor’s Program* is approved by the *Principal*, the *Managing Contractor* must submit an updated *Managing Contractor’s Program* to the *Principal’s Representative* on the second *Business Day* of each month until the *date of completion* of the last *Portion* to achieve *completion* and otherwise as required by subclause 2.1B(c), which program must:

(i) illustrate the progress of the *Managing Contractor Activities*;

(ii) take account of *variations* to the *Managing Contractor Activities*; and

(iii) include all such other matters as the *Principal’s Representative* may require.

(e) The form of, and detail contained within, any *Managing Contractor’s Program* prepared in accordance with this clause must be to the satisfaction of the *Principal’s Representative* and meet the requirements of the *TfNSW Standard Requirements*.

(f) The *Managing Contractor* must not, except as permitted under clause 23, depart from the *Managing Contractor’s Program*. 

(c) any *direction* of the *Principal’s Representative* under subclause 20.3.
22. **SUSPENSION**

22.1 **Principal's Representative's suspension**

The Principal's Representative may direct the Managing Contractor to suspend the carrying out of the whole or part of the Managing Contractor Activities for such time as the Principal's Representative thinks fit.

22.2 **Managing Contractor's suspension**

If the Managing Contractor wishes to suspend the carrying out of the whole or part of the Managing Contractor Activities, otherwise than pursuant to subclause 27.9 or as permitted under the SOP Act or otherwise at law, the Managing Contractor must obtain the Principal's Representative's prior written approval. The Principal's Representative may approve the suspension and may impose conditions of approval.

22.3 **Recommencement**

(a) As soon as the Principal's Representative becomes aware that the reason for any suspension no longer exists, the Managing Contractor must recommence suspended Managing Contractor Activities as soon as reasonably practicable.

(b) The Managing Contractor may recommence the Managing Contractor Activities suspended pursuant to subclause 22.2 or 27.9 at any time after reasonable notice to the Principal's Representative.

22.4 **Cost**

(a) The Managing Contractor must bear the cost of any suspension:

(i) required due to an act, default or omission of the Managing Contractor, a subcontractor or either's employees or agents; or

(ii) pursuant to subclause 22.2,

and any such costs shall not form part of the Reimbursable Costs (Packages 2 & 3).

(b) In the case of any other suspension directed under subclause 22.1 and subject to subclause 22.4(c), any increase or decrease in costs:

(i) associated with the Reimbursable Works (Packages 2 & 3) as a result of the suspension will:

(A) in the case of Reimbursable Works (Packages 2 & 3) performed by a subcontractor under an applicable Approved Subcontract Agreement, be included in the Reimbursable Costs (Packages 2 & 3) to the extent provided for in the relevant Approved Subcontract Agreement; and
(B) in the case of Reimbursable Works (Packages 2 & 3) performed by the Managing Contractor (as agreed by the Principal’s Representative in accordance with subclause 6.9), be included in the Reimbursable Costs (Packages 2 & 3); and

(ii) associated with the carrying out of the Package 1 Works as a result of such suspension incurred by the Managing Contractor will result in an appropriate adjustment to the applicable contract sum (Package 1 Works) as reasonably determined by the Principal’s Representative.

(c) The Managing Contractor must take all reasonable steps to mitigate the extra costs incurred by it and its subcontractors as a result of a suspension by the Principal’s Representative under subclause 22.1.

23. TIME, PROGRESS AND COMPLETION

23.1 Delay

(a) The Managing Contractor must perform the Managing Contractor Activities and design and construct the Works so as to ensure that each Portion achieves completion by the relevant date for completion.

(b) If the Managing Contractor becomes aware of anything which may cause delay to the Managing Contractor Activities it must promptly, and in any event within 5 Business Days of becoming so aware, give the Principal written notice of that cause and the estimated delay.

23.2 Claim

The Managing Contractor shall be entitled to an extension of time (EOT) to the date for completion of a Portion, if:

(a) the Managing Contractor is or will be delayed in reaching completion of the Portion by a qualifying cause of delay; and

(b) the Managing Contractor:

(i) gives the Principal’s Representative a written claim for an EOT evidencing the facts of causation and of the delay (including extent) within 5 Business Days of the occurrence of the qualifying cause of delay; and

(ii) if the effects of the delay continues beyond the period of 5 Business Days of the occurrence causing the delay and the Managing Contractor wishes to claim an extension of time in respect of the further period, submit a further written claim to the Principal’s Representative:

(A) every 5 Business Days after the first written claim until 5 Business Days after the end of the effects of the delay; and
(B) containing the information required by paragraph (b) of this subclause 23.2.

23.3 EOT

(a) Subject to subclause 23.4, if the Managing Contractor is entitled to an EOT in accordance with subclause 23.2 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 Managing Contractor within 20 Business Days after receiving the Managing Contractor’s claim for an EOT.

(b) A failure of the Principal’s Representative to grant a reasonable EOT to any date for completion or to grant an EOT to any date for completion within the relevant 20 Business 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 Managing Contractor to damages.

23.4 Reduction in EOT

The Principal’s Representative will reduce any EOT to the relevant date for completion it would otherwise have determined under subclause 23.3 to the extent that the Managing Contractor:

(a) contributed to the delay; or

(b) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

23.5 Unilateral extensions of time

(a) Whether or not the Managing Contractor has made, or is entitled to make, a claim for an EOT to any relevant date for completion, or is entitled to be, or has been, granted an EOT to any relevant date for completion, under subclause 23.3, 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 Managing Contractor, unilaterally extend any date for completion of a Portion by any period specified in a notice to the Managing Contractor.

(b) The Principal’s Representative is not required to exercise its discretion under this subclause 23.5 for the benefit of the Managing Contractor.

(c) Without limiting subclause 16.1, the discretion to grant an EOT under this subclause 23.5 may only be exercised by the Principal’s Representative and:

(i) the Principal’s Representative may or may not (as the case may be) exercise this discretion in accordance with the instructions of the Principal; and
(ii) the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a dispute pursuant to clause 30 or in any other way opened up, reviewed or exercised by any other person in any forum (including by any expert, arbitration or litigation proceedings).

23.6 Delay costs

(a) For every day the subject of an EOT due to:

(i) a breach of the Contract by the Principal;

(ii) a variation the subject of a direction by the Principal's Representative under subclause 24.1, except where the variation is directed in the circumstances described in subclause 20.3(b); or

(iii) the event described in paragraph (g) of the definition of qualifying cause of delay,

which extends the date for completion of a Portion and for which the Managing Contractor gives the Principal’s Representative a claim for additional remuneration pursuant to subclause 29.1, the Managing Contractor will be entitled to the extra costs reasonably incurred by the Managing Contractor as a direct result of the delay the subject of that EOT, as determined by the Principal’s Representative.

(b) Notwithstanding any other provision of the Contract, the amount payable pursuant to this subclause 23.6 will be a limitation upon the Principal's liability to the Managing Contractor for any delay or disruption that:

(i) the Managing Contractor encounters in carrying out the Managing Contractor's Activities; and

(ii) arises out of, or in any way in connection with, the breach of the Contract by the Principal,

and the Managing 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 subclause 23.6.

23.7 Extension of time in Approved Subcontract Agreements

Without limiting subclause 6.7, the Managing Contractor must not approve an extension of time or unilaterally grant an extension of time to any subcontractor to an Approved Subcontract Agreement in respect of Reimbursable Package 2 Works (Packages 2 & 3) unless:

(a) the subcontractor is entitled to such extension of time under the terms of the Approved Subcontract Agreement;
(b) the Managing Contractor has given notice of the proposed extension of time to the Principal's Representative; and

(c) the Principal's Representative has given its written approval to the extension of time, such written approval to be issued promptly and not to be unreasonably withheld.

23.8 Completion

(a) The Managing Contractor must give the Principal's Representative at least 10 Business Days' written notice of the date upon which the Managing Contractor anticipates that completion of a Portion will be reached.

(b) When the Managing Contractor is of the opinion that completion of a Portion has been reached, the Managing Contractor must give the Principal's Representative a certificate of completion in the form of Annexure Part L together with a written request for the Principal's Representative to issue a notice of completion. Within 10 Business Days after receiving the request, the Principal's Representative must give the Managing Contractor either a notice of completion evidencing the date of completion or written reasons for not doing so.

(c) If the Principal's Representative is of the opinion that completion has been reached, the Principal's Representative may issue a notice of completion even though no request has been made.

23.9 Part of a Portion

(a) If a part of a Portion has reached completion but another part of the 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 Managing Contractor is given written notice by the Principal's Representative, occupy or use any part of the Portion although the whole of the Portion has not reached completion.

(b) If the Principal's Representative gives a notice under subclause 23.9(a):

(i) the Principal must allow the Managing Contractor reasonable access to the part of the Portion referred to in the notice and being occupied or used by the Principal, to enable the Managing Contractor to bring the Portion of which the area being occupied or used forms part to completion; and

(ii) this will not otherwise limit or affect the obligations of the parties under the Contract, including the obligation of the Managing Contractor to achieve completion of the Portion of which the area being occupied or used forms part, by the relevant date for completion.
23.10 **Interpretation**

The interpretations of the terms *date for completion*, *date of completion* and *completion*, and clauses 10, 19.8, 20, 23, 24.2(b)(i) and 27.5, will apply separately to each *Portion* and references therein to the *Works* and to the *Managing Contractor Activities* will mean so much of the *Works* and the *Managing Contractor Activities* as is comprised in the relevant *Portion*.

23.11 **Liquidated damages**

(a) If the *Managing Contractor* fails to reach *completion* of a *Portion* by the *date for completion* of that *Portion*, the *Managing Contractor* must pay the *Principal* liquidated damages at the applicable rate stated in Item 21A of Annexure Part A or in the relevant *Portion Proposal Agreement (Package 3)* (as the case may be) for every day after the relevant *date for completion* to and including the earlier of:

(i) the *date of completion* for that *Portion*; and

(ii) the termination of the *Contract*.

(b) The amount of liquidated damages is an agreed genuine pre estimate of the *Principal's* damages if the *date of completion* does not occur by the *date for completion*.

(c) The amount payable under this subclause 23.11 will be a debt immediately due from the *Managing Contractor* to the *Principal*.

23.12 **General damages**

If subclause 23.11 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 *Managing Contractor* failing to achieve *completion* of a *Portion* by the *date for completion* of that *Portion*, but the *Managing Contractor's* liability for such damages (whether per day or in the aggregate) will not be any greater than the liability which the *Managing Contractor* would have had if subclause 23.11 had not been void, invalid or otherwise inoperative.

24. **VARIATIONS**

24.1 **Directing variations**

(a) The *Managing Contractor* must not vary the *Managing Contractor Activities* or the *Works* except as directed in writing by the *Principal's* Representative.

(b) The *Principal's* Representative may direct the *Managing Contractor* to carry out a *variation* provided, where such *variation* is an addition or increase to the
Works, it is of a character and extent contemplated by the provisions of the Contract.

(c) The Managing Contractor acknowledges that:

(i) the scope of the Managing Contractor Activities includes the production of all the design documentation, including in respect of the finalisation of the design documentation, and all negotiations in respect of Approved Subcontract Agreements; and

(ii) any work that the Managing Contractor, or any subcontractor is required to undertake in connection with the matters referred to in subclause 24.1(c)(i) will not constitute a variation.

(d) If a variation directed by the Principal’s Representative omits any part of the Works or other Managing Contractor Activities, the Principal may thereafter carry out the omitted works either itself or by engaging Other Contractors.

24.2 Proposed variations

(a) The Principal’s Representative may give the Managing Contractor written notice of a proposed variation.

(b) The Managing Contractor must, as soon as practicable and in any event within 5 Business Days after receiving such notice, notify the Principal’s Representative of the Managing Contractor’s estimate of the:

(i) effect on the Managing Contractor’s Program (including the dates for completion); and

(ii) cost (including all warranties and time-related costs, if any) of the proposed variation.

(c) The Principal’s Representative may direct the Managing Contractor to give a detailed quotation for the proposed variation.

24.3 Valuation of variations

The Principal’s Representative must for each variation, as soon as possible, determine:

(a) a price for the impact of the variation upon the contract sum (Package 1 Works) or the Reimbursable Works (Packages 2 & 3) (as applicable) using the following order of precedence:

(i) prior agreement;

(ii) applicable rates or fees (excluding any margin for profit and overheads) in the Contract or the applicable Approved Subcontract Agreement;
(iii) rates or fees (excluding any margin for profit and overheads), even though not in the Contract documents or in the applicable Approved Subcontract Agreement, to the extent that it is reasonable to use them;

(iv) reasonable rates or fees (excluding any margin for profit and overheads); and

(v) the margins for profit and overheads set out in Item 8 of Annexure Part A,

and any deductions must include a reasonable amount for profit but not overheads using the margin in Item 8; and

(b) whether or not any adjustment is to be made to the applicable management fee in accordance with subclause 25.5.

24.4 Agreed Variation

(a) The Principal's Representative may, at any time prior to the Option End Date, give written notice to the Managing Contractor requiring the Managing Contractor to implement the Agreed Variation within the time specified in the notice.

(b) The Managing Contractor must implement the Agreed Variation in accordance with the notice provided by the Principal's Representative under clause 24.4(a).

(c) The Principal may set off the Agreed Variation Amount against any progress claims submitted by the Managing Contractor under clause 25.1 of the Contract after issue of the notice under clause 24.4(a) and to the extent the Principal is not able to set off all or any part of the Agreed Variation Amount, such amount will be a debt due and payable by the Managing Contractor to the Principal.

25. PAYMENT

25.1 Progress claims

(a) The Managing Contractor may only submit a progress claim to the Principal's Representative once every month upon the fifth Business Day of that month in respect of the Managing Contractor Activities performed in the previous month.

(b) It is a precondition to submitting a progress claim that it includes:

(i) detailed particulars for the value of the Managing Contractor Activities carried out including:

(A) the contract sum (Package 1 Works);
(B) the management fee in accordance with the provisions of Annexure Part B (where applicable); and

(C) the Reimbursable Costs (Packages 2 & 3);

(ii) a reconciliation of the amount of the Reimbursable Costs (Packages 2 & 3) previously paid to the Managing Contractor by the Principal (Amount A) against the amount paid by the Managing Contractor to its subcontractors in carrying out the relevant Reimbursable Works (Packages 2 & 3) (Amount B);

(iii) an explanation if Amount A is different to Amount B;

(iv) certified copies of all relevant documents to substantiate the value being claimed by it in the progress claim;

(v) the Managing Contractor's Certificate of Design Compliance in the form of Annexure Part J (if applicable to the month in question);

(vi) the Managing Contractor's Certificate of Construction Compliance in the form of Annexure Part K (if applicable to the month in question);

(vii) the monthly report prepared in accordance with the TfNSW Standard Requirements; and

(viii) the information required by clause 26.

The Managing Contractor agrees with the Principal that a progress claim submitted to the Principal's Representative under this clause 25 (including the final payment claim) is received by the Principal's Representative as agent for the Principal.

(d) If the Managing Contractor does not submit a progress claim in accordance with this subclause 25.1 then:

(i) the Principal's Representative will not be obliged to undertake any assessment of that purported progress claim; and

(ii) the Principal will not be obliged to make any payment in respect of that purported progress claim,

until a payment claim has been served in accordance with the requirements of this subclause 25.1.

(e) The Principal and the Managing Contractor agree that the date prescribed by subclause 25.1(a) as the date on which the Managing Contractor may serve the progress claim is, for the purposes of the SOP Act the "reference date".
25.2 Payment statements

(a) The Principal's Representative (as agent for the Principal) must, within 10 Business Days of receiving a progress claim which complies with the requirements of subclause 25.1, issue to the Managing Contractor a payment statement which identifies the progress claim to which it relates, and which sets out:

(i) its determination of the value of the Managing Contractor Activities carried out in accordance with the Contract;

(ii) the amount already paid to the Managing Contractor;

(iii) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;

(iv) the amount (if any) then payable by the Principal to the Managing Contractor on account of the contract sum (Package 1 Works), the management fee and the Reimbursable Costs (Packages 2 & 3) which the Principal proposes to pay to the Managing Contractor; and

(v) if the amount in paragraph (a)(iv) is less than the amount claimed in the progress claim:

(A) the reason why the amount in paragraph (a)(iii) is less than the amount claimed in the progress 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 or other activity nor will it be taken as an admission or evidence that the part of the Managing Contractor Activities or the Works covered by the payment statement has been satisfactorily carried out in accordance with the Contract.

(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 Managing 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 the Contract.

(d) The Principal's Representative may, in any payment statement, correct any error and modify any assumptions or allowances made in any previous payment statement issued by the Principal's Representative.
(e) The Managing Contractor agrees that the amount referred to in the payment statement in respect of subclause 25.2(d) is, for the purposes of sections 9 and 10 of the SOP Act, the amount of the "progress payment" (as defined in the SOP Act) calculated in accordance with the terms of the Contract to which the Managing Contractor is entitled in respect of the Contract.

25.3 Not used

25.4 Payment

(a) Subject to subclause 25.9 and clause 26, the Principal must pay the Managing Contractor the amount set out in the payment statement within 15 Business Days of the Managing Contractor submitting a payment claim in accordance with subclause 25.1.

(b) A payment of money shall not be evidence that the Managing Contractor Activities or the Works have been carried out satisfactorily. All payments shall be regarded as a payment on account only.

(c) Where any part of a payment to be made by the Principal to the Managing Contractor is in respect of work carried out by a subcontractor, that part of the payment (which excludes the management fee and any Reimbursable Costs (Packages 2 & 3) paid in connection with Managing Contractor Work (Packages 2 & 3)) must be held on trust by the Managing Contractor for the relevant subcontractor until the relevant amount is paid by the Managing Contractor to the subcontractor. Such amounts must be held in a separate bank account.

(d) Interest earned on any such amounts held on trust belongs to the Principal.

25.5 Adjustment to management fee

(a) The management fee is to be adjusted only in the circumstances set out below:

(i) the management fee (Package 3) is to be adjusted:
   (A) to the extent set out in any Portion Proposal Agreement (Package 3); and
   (B) to take account of any variation to the Services (Package 3);

(ii) the management fee (Packages 1 & 2) is to be adjusted to take account of any variation to the Services (Packages 1 & 2); and

(iii) the management fee (Packages 1 & 2) is to be increased to take account of the cost imposed by an Authority in relation to an Approval obtained by the Managing Contractor as required by subclause D.4(E) of Annexure Part D.
(b) Any adjustment under subclause 25.5(a) is to be made using the following order of precedence:

(i) prior agreement;
(ii) applicable rates in the *Contract*;
(iii) reasonable rates or fees, even though not in the *Contract* documents.

25.6 GST

(a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in the *Contract* are exclusive of GST.

(b) If GST is or becomes payable on a supply made by a party (*Supplier*) under or in connection with the *Contract*, the *Managing Contractor 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 subclauses 25.6(e) and (f), any amount payable under subclause 25.6(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 the *Contract* to reimburse or pay to the other party an amount (other than any payment on account of the *management fee*) 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 the *Contract*, a party will not be obliged to pay any amount in respect of GST to the other party (whether under this subclause 25.6 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 the *Contract*.

(g) If the GST payable in relation to a supply made by the *Supplier* under the *Contract* varies from the additional amount paid by the other party under this
subclause 25.6 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 subclause 25.6:

(i) GST or Goods and Services Tax means the tax payable on taxable supplies under the GST Legislation;

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

(iii) terms defined in GST Legislation have the meaning given to them in GST Legislation; and

(iv) 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.

25.7 Final payment and certificate

(a) Within 20 Business Days after the expiry of the last Defects Liability Period in respect of all Portions, the Managing Contractor must give the Principal’s Representative a certificate in the form of Annexure Part M, a written final payment claim, endorsed ‘Final Payment Claim’ being a progress claim together with all other claims whatsoever in connection with the subject matter of the Contract.

(b) Within 10 Business Days after the issue of the final payment claim, the Principal’s Representative must issue to the Managing Contractor and the Principal a final certificate evidencing the moneys finally due and payable between the Managing Contractor and the Principal on any account whatsoever in connection with the subject matter of the Contract (final certificate).

(c) Those moneys certified as due and payable must be paid by the Principal or the Managing Contractor, as the case may be, within 5 Business Days after the debtor receives the final certificate.

25.8 Interest

Interest in Item 22 of Annexure Part A shall be due and payable on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full.

25.9 Other moneys due

The Principal may deduct from moneys otherwise due to the Managing Contractor.
(a) any debt or other moneys due from the Managing Contractor to the Principal; or

(b) any claim to money which the Principal may make against the Managing Contractor whether for damages or otherwise,

whether under the Contract or otherwise at law.

25.10 SOP Act

(a) The Managing Contractor irrevocably chooses the Institute of Arbitrators and Mediators, Australia as the authorised nominating authority for the purposes of section 17.3 of the SOP Act.

(b) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Managing Contractor:

(i) the amount will be taken into account by the Principal’s Representative in issuing a payment statement under subclause 25.2; and

(ii) if it is subsequently determined pursuant to the Contract that the Managing Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal (overpayment), the overpayment will be a debt due and payable by the Managing Contractor to the Principal which the Managing Contractor must pay to the Principal upon demand and in respect of which the Managing Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.

(c) Without limiting subclause 25.9, the Principal and the Managing Contractor acknowledge and agree that where:

(i) the Principal receives a payment withholding request from a subcontractor; and

(ii) the Principal withholds, from any one or more payments to the Managing Contractor under the Contract, the amount set out in the payment withholding request,

then:

(iii) the Principal’s withholding of any payment or amount referred to in subclause 25.10(c)(ii) will not be a breach of the Contract;

(iv) subject to subclause 25.10(c)(v), the Principal will not be liable upon any Claim by the Managing Contractor arising out of or in any way connection with the Principal’s withholding of any payment or amount referred to in subclause 25.10(c)(ii), including any claim or action for interest on such payment or amount; and
(v) subclause 25.10(c)(iv) does not apply to any right, claim or action by the Managing Contractor arising under the SOP Act.

25.11 Cost tracking and audit

(a) The estimated monthly cash flow summary provided by the Managing Contractor as part of the Cost Plan (Packages 2 & 3) must be regularly updated by the Managing Contractor to reflect changes to the Managing Contractor’s Program and must be in a suitable form for use by the Principal’s Representative as a means of assessing costs incurred against the rate of progress of the Managing Contractor Activities.

(b) The Managing Contractor acknowledges that it is of paramount importance to the Principal that all commercial aspects of the Contract are administered in a transparent manner that clearly demonstrates that all payments made under the Contract are in accordance with the terms of the Contract.

(c) At any time until the issue of a Final Certificate, the Managing Contractor is required to provide the Principal and any third party engaged by the Principal the right to:

(i) audit, the process by which the Reimbursable Costs (Packages 2 & 3) are incurred and recorded by the Managing Contractor; and

(ii) have access at all reasonable times to the personnel and records of the Managing Contractor that are related to the Reimbursable Costs (Packages 2 & 3).

(d) The Principal and any third party engaged by the Principal will have the right to reproduce any of the records referred to in subclause 25.12(c).

(e) Due to the “open book” nature of the Contract, the Managing Contractor must provide to the Principal at its request copies of all records regarding Reimbursable Costs (Packages 2 & 3) or the Managing Contractor Activities. Copies of these Records must be provided progressively and no later than the issue of the Final Certificate.

25.12 Asset register and disposal of plant and equipment

(a) If, as part of the Works, the Managing Contractor purchases any item of plant or equipment which is paid for by the Principal, the Managing Contractor must maintain an asset register in respect of all such plant or equipment containing such details as may be reasonably required by the Principal’s Representative.

(b) Upon completion of each Portion:

(i) the Managing Contractor must undertake a reconciliation of all such plant and equipment providing a report to the Principal as to the status and condition of the plant and equipment and its recommendation as to
how to dispose of the plant and equipment to maximise the sale price for the plant and equipment; and

(ii) the Managing Contractor must dispose of all such plant and equipment as required by the Principal's Representative and the proceeds of such disposal must be paid by the Managing Contractor to the Principal.

26. PAYMENT OF WORKERS AND SUBCONTRACTORS

(a) As a condition precedent to any entitlement of the Managing Contractor to submit a payment claim under clause 25, including the final payment claim, or any obligation of the Principal to pay the Managing Contractor any amount under subclause 25.4 or subclause 25.7, the Managing Contractor must, with each progress claim under clause 25, including the final payment claim, provide to the Principal's Representative a statutory declaration by the Managing Contractor, or where the Managing Contractor is a corporation, by a representative of the Managing Contractor who is in a position to know the facts attested to, in the form of Annexure Part S (or such other form as the Principal may require), made out not earlier than the date of the relevant progress claim for which the payment is to be made or final payment claim.

(b) Nothing in this clause 26 limits or otherwise affects the Principal's rights under section 175B(7) of the Workers Compensation Act 1987 (NSW), Schedule 2 Part 5 of the Payroll Tax Act 2007 (NSW) or section 127(5) of the Industrial Relations Act 1996 (NSW).

27. DEFAULT OR INSOLVENCY

27.1 Preservation of other rights

If a party breaches (including repudiates) the Contract, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

27.2 Managing Contractor's default

(a) If the Managing Contractor commits a breach of the Contract which is capable of remedy, the Principal may, by hand or by registered post, give the Managing Contractor a written notice to remedy the breach.

(b) Breaches include:

(i) breach of a warranty in subclause 2.2;

(ii) failing to provide evidence of insurance;

(iii) failing to provide security as required by subclause 2.7;

(iv) failing to comply with subclause 25.11;
(v) wrongful suspension of the Managing Contractor Activities;

(vi) departure from the Managing Contractor's Program except as permitted under clause 23; and

(vii) where there is no Managing Contractor's Program, failing to proceed with due expedition and without delay.

27.3 Principal's notice to remedy

A notice under subclause 27.2 must state:

(a) that it is a notice under clause 27;

(b) the alleged breach; and

(c) the date and time by which the Managing Contractor must remedy the breach (which must not be less than 5 Business Days after the notice is received by the Managing Contractor).

27.4 Principal's rights

If the Managing Contractor fails to remedy the breach by the stated date and time in a notice under subclause 27.2 or if the Managing Contractor commits a breach of the Contract which is not capable of remedy, the Principal may by written notice to the Managing Contractor:

(a) take out of the Managing Contractor’s hands the whole or part of the Managing Contractor Activities or the Works remaining to be completed and suspend payment until an amount (if any) becomes due and payable pursuant to subclause 27.6; or

(b) terminate the Contract.

27.5 Take out

(a) The Principal may complete the Managing Contractor Activities and the Works taken out of the Managing Contractor’s hands in accordance with subclause 27.4(a) and may:

(i) use materials, equipment and other things intended for the Managing Contractor Activities and the Works or a Portion; and

(ii) without payment of compensation to the Managing Contractor:

(A) take possession of, and use, such of the design documentation, construction plant and other things on or in the vicinity of the site as were used by the Managing Contractor; and

(B) contract with such of the Managing Contractor’s subcontractors,
as are reasonably required by the Principal to facilitate completion.

(b) If the Principal takes possession of construction plant, the Temporary Works or other things, the Principal must maintain them and, subject to subclause 27.6, on completion of the Managing Contractor Activities taken out, must return such of them as are surplus.

(c) The Principal’s Representative must keep records of the cost of completing the Managing Contractor Activities and the Works taken out.

27.6 Adjustment on completion of the Managing Contractor Activities taken out

(a) When the Managing Contractor Activities and/or the Works or a Portion taken out of the Managing Contractor’s hands have been completed, the Principal’s Representative must assess the cost thereby incurred and must certify as moneys due and payable accordingly the difference between that cost (showing the calculations thereof) and the amount which would otherwise have been paid to the Managing Contractor if the Managing Contractor Activities and the Works or a Portion had been completed by the Managing Contractor.

(b) If the Managing Contractor is indebted to the Principal, the Principal may retain the construction plant, the Temporary Works or other things taken under subclause 27.5 until the debt is satisfied. If after reasonable notice, the Managing Contractor fails to pay the debt, the Principal may sell the construction plant, the Temporary Works or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess must be paid to the Managing Contractor.

27.7 Principal’s default

(a) If the Principal commits a substantial breach of the Contract which is capable of remedy, the Managing Contractor may, by hand or by registered post, give the Principal a written notice to remedy the breach.

(b) Substantial breaches include failing to:

(i) produce evidence of insurance; or

(ii) make a payment due and payable pursuant to the Contract.

27.8 Managing Contractor’s notice to remedy

A notice given under subclause 27.7 must state:

(a) that it is a notice under clause 27;

(b) the alleged substantial breach; and
27.9 Managing Contractor’s rights

(a) If the Principal fails to remedy the breach by the stated date and time or if the Principal commits a breach of the Contract which is incapable of remedy, the Managing Contractor may, by written notice to the Principal, suspend the whole or any part of the Managing Contractor Activities.

(b) The Managing Contractor must remove the suspension if the Principal remedies the breach.

(c) The Managing Contractor may, by written notice to the Principal, terminate the Contract, if within 20 Business Days of the date of suspension under this subclause the Principal fails:

(i) to remedy the breach; or

(ii) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Managing Contractor.

(d) The Managing Contractor shall be entitled to recover the actual necessary costs reasonably incurred by the Managing Contractor by reason of the suspension.

27.10 Termination

(a) If the Contract is terminated pursuant to subclause 27.4(b) or 27.9, the parties’ remedies, rights and liabilities shall be the same as they would have been under the law governing the Contract had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

(b) Subclause 28.2 applies upon termination of the Contract.

27.11 Insolvency

(a) If:

(i) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the Contract;

(ii) execution is levied against a party by a creditor;

(iii) a party is an individual person or a partnership including an individual person, and if that person:

(A) commits an act of bankruptcy;
(B) has a bankruptcy petition presented against him or her or presents his or her own petition;

(C) is made bankrupt;

(D) makes a proposal for a scheme of arrangement or a composition; or

(E) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cth) or like provision under the law governing the Contract; or

(iv) in relation to a party being a corporation:

(A) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;

(B) it enters a deed of company arrangement with creditors;

(C) a controller or administrator is appointed;

(D) an application is made to a court for its winding up and not stayed within 14 days;

(E) a winding up order is made in respect of it;

(F) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or

(G) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

(1) the Principal, the Principal may, without giving a notice under subclause 27.2, exercise the right under subclause 27.4(a) or subclause 27.4(b); or

(2) the Managing Contractor, the Managing Contractor may, without giving a notice under subclause 27.7, exercise the right under subclause 27.9.

(b) The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.
28. TERMINATION FOR CONVENIENCE OR FRUSTRATION

28.1 Termination for convenience

Without prejudice to any of the Principal’s other rights or entitlements or powers under the Contract, the Principal may:

(a) at any time for its sole convenience, and for any reason, by written notice to the Managing Contractor terminate the Contract effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Managing Contractor; and

(b) thereafter, at its absolute discretion, complete the uncompleted part of the Managing Contractor Activities either itself or by engaging Other Contractors.

28.2 Managing Contractor’s obligations

If the Contract is terminated, whether pursuant to clause 27, subclause 28.1 or otherwise, or is frustrated, the Managing Contractor must, without any entitlement to payment, immediately hand over to the Principal’s Representative all copies of:

(a) any documents provided by the Principal or the Principal’s Representative to the Managing Contractor;

(b) all documents and information prepared by or in the possession of the Managing Contractor, including any design documentation, to the date of termination or frustration (whether complete or not); and

(c) any other documents or information in existence that are to be provided to the Principal or the Principal’s Representative under the terms of the Contract.

28.3 Payment upon termination by frustration or for convenience

(a) If the Contract is frustrated or the Contract is terminated by the Principal under subclause 28.1, the Principal must pay the Managing Contractor:

(i) any amount then due to the Managing Contractor but unpaid for the Managing Contractor Activities;

(ii) the value of the Managing Contractor Activities executed in accordance with the Contract carried out to the date of termination or frustration which is not included in a previous payment claim;

(iii) the cost of materials and equipment reasonably ordered by the Managing Contractor or its subcontractors for the Works and which the Managing Contractor or its subcontractor is liable to accept, but only if they will become the Principal’s property upon payment; and
(iv) the reasonable cost of removal from the site of Temporary Works and other things used for the carrying out of the Managing Contractor Activities.

(b) The Managing Contractor must take all steps possible to mitigate the costs referred to in subclause 28.3(a).

(c) Any amount payable under subclause 28.3(a) must be calculated without any double counting.

(d) To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under subclause 2.7 when the Managing Contractor has complied with all its obligations under subclause 28.2.

29. NOTIFICATION OF CLAIMS

29.1 Communication of claims

(a) The prescribed notice is a written notice of the general basis and quantum of the Claim.

(b) As soon as practicable and in any event within 10 Business Days after the Managing Contractor becomes aware of any Claim in connection with the subject matter of the Contract, the Managing Contractor must give to the Principal and the Principal’s Representative either:

(i) the prescribed notice; or

(ii) a notice of dispute under subclause 30.1.

(c) If the Managing Contractor fails to provide sufficient particulars of the Claim to enable the Principal’s Representative to properly consider the matter, then within 10 Business Days after receipt of a prescribed notice the Principal’s Representative may request the Managing Contractor to provide further particulars of the Claim, and the Managing Contractor must provide such particulars within 10 Business Days of the request.

(d) This subclause shall not apply to any Claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the final payment claim), the communication of which is required by another provision of the Contract.

29.2 Liability for failure to communicate

The failure of the Managing Contractor to comply with the provisions of subclause 29.1 or to communicate a Claim in accordance with the relevant provision of the Contract shall bar and invalidate the Claim and the Principal will not have any liability in respect of the Claim.
29.3 Resolution

If within 20 Business Days of giving the prescribed notice, the Claim has not been resolved the prescribed notice shall be deemed to be rejected by the Principal’s Representative and will be deemed to be a notice of dispute under subclause 30.1.

30. DISPUTE RESOLUTION

30.1 Notice of dispute

(a) Any difference or dispute between the parties in connection with the subject matter of the Contract, including a dispute concerning a Claim, (together called a ‘dispute’) must be determined in accordance with the procedure in this clause 30.

(b) If a dispute arises, then either party must, by hand or by registered post, give the other a written notice of dispute adequately identifying and providing details of the dispute.

(c) If, in any notice given by the Managing Contractor under subclause 30.1(b), the Managing Contractor fails to provide sufficient particulars of the dispute to enable the Principal's Representative to properly consider the matter, then within 14 days after receipt of the notice of dispute (or of a prescribed notice being deemed to be a notice of dispute under subclause 29.3) the Principal's Representative may request the Managing Contractor to provide further particulars of the dispute.

(d) If within 10 Business Days after a request by the Principal's Representative under subclause 30.1(c), the Managing Contractor has not furnished the particulars sought, any Claim upon which the dispute is based will be barred and the Principal will not have any liability in respect of the Claim or the dispute.

(e) Notwithstanding the existence of a dispute, the parties must, subject to clauses 27 and 28, continue to perform the Contract.

30.2 Meeting of the representatives

(a) Within 10 Business Days after:

(i) receiving a notice of dispute provided in accordance with subclause 30.1(b); or

(ii) the Principal receiving the further particulars of a dispute requested in accordance with subclause 30.1(c),

whichever is later, the Principal's Representative and the Managing Contractor's Representative must confer to resolve the dispute. All aspects of every such conference except the fact of occurrence shall be privileged.
(b) If the dispute has not been resolved within 20 Business Days of service of the notice of dispute in accordance with subclause 30.1(b), either party may by notice in writing refer those parts of the dispute which remain unresolved to executive negotiation in accordance with subclause 30.3.

30.3 Executive negotiation

(a) Within 10 Business Days of either party receiving a notice under subclause 30.2(b), the Executive Negotiators must meet and undertake genuine and good faith negotiations with a view to resolving the dispute.

(b) If the Executive Negotiators cannot resolve the dispute within:

(i) 30 Business Days of one party receiving a notice of dispute provided in accordance with subclause 30.1(b); or

(ii) such other period as the parties may agree in writing,

then the dispute must be submitted to an expert determination in accordance with subclause 30.4.

30.4 Expert determination

(a) The expert determination is to be conducted by:

(i) an independent industry expert agreed by the Principal and the Managing Contractor; or

(ii) where the parties are unable to agree upon an independent industry expert within 30 Business Days after the period described in subclause 30.3(b)(i) or (ii) (as the case may be) or an independent industry expert appointed under subclause 30.4(a)(i):

(A) is unavailable;

(B) declines to act;

(C) does not respond within 10 Business Days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or

(D) does not make a determination within the time required by subclause 30.4(i)(ii),

an independent industry expert appointed by the person specified in Item 23 of Annexure Part A.

(b) An expert determination conducted under this subclause 30.4 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
(c) The expert determination must be made in accordance with the rules for the expert determination process in Annexure Part W or such other rules as the expert may in his or her absolute discretion require.

(d) The expert must:

(i) disclose to the parties any interest he or she has in the outcome of the determination; and

(ii) not communicate with one party to the determination without the knowledge of the other.

(e) Each party must:

(i) bear its own costs in respect of any expert determination; and

(ii) pay one-half of the expert’s costs.

(f) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

(g) The parties must enter into an agreement with the appointed expert on the terms prescribed by Annexure Part W or such other terms as the parties and the expert may agree.

(h) The determination of the expert:

(i) must be given to the parties in writing;

(ii) unless otherwise agreed between the parties, must be notified to the parties within the period set out in the agreement between the parties and the expert;

(iii) will be:

(A) substituted for the relevant direction of the Principal’s Representative; and

(B) final and binding on the parties, except where:

(C) the expert’s determination relating to a dispute is that one party shall pay to the other an amount, or carry out works or other activities to an amount, greater than the amount stated in Item 23 of Annexure Part A, or if no amount is stated, greater than $500,000; and

(D) a party gives notice of appeal to the other party within 15 Business Days of the determination being given,
in which case either party may commence court proceedings in respect of the dispute; and

(iv) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under any court proceedings.

30.5 Urgent relief

Nothing in this clause 30 shall prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief.

30.6 Continuation of Managing Contractor Activities

Despite the existence of a dispute between the parties, the Managing Contractor must:

(a) continue to carry out the Managing Contractor Activities; and

(b) otherwise comply with its obligations under the Contract.

31. LIMITATION OF LIABILITY

31.1 Limit of Managing Contractor’s liability

(a) Subject to subclause 31.1(b) and subclause 31.2, the liability of the Managing Contractor to the Principal, whether arising under or in connection with the Contract or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise) or on any basis in law, is limited to the amount set out in Item 24 of Annexure Part A.

(b) The liability of the Managing Contractor to the Principal under subclause 23.11 or subclause 23.12 is limited to the amount set out in Item 25 of Annexure Part A.

(c) The Managing Contractor’s limitation of liability under subclause 31.1(b) falls within the limitation of liability cap in subclause 31.1(a).

31.2 Qualification on limitation of liability

Subclause 31.1 does not apply to limit or restrict in any way:

(a) any liability to the extent to which the Managing Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;

(b) any liability for which, but for a failure by the Managing Contractor to comply with its obligations under the Contract under an insurance policy, the
Managing Contractor would have received payment or been indemnified under an insurance policy effected in accordance with the Contract;

(c) the Managing Contractor's liability:

(i) to indemnify the Principal under subclauses 5.7(d), 8.1(c), 11.3(a), 11.3(c)(i), 11.3(c)(ii) or 19A(d); or

(ii) for breach of subclause 8.1(b);

(d) the Managing Contractor's liability for costs, losses and damage caused by the malicious or fraudulent acts of employees of the Managing Contractor or its subcontractors or its agents;

(e) the Managing Contractor's liability for costs, losses and damage caused by the deliberate or intentional breach of the Contract by the Managing Contractor;

(f) liability which is otherwise limited by another provision of the Contract;

(g) the Managing Contractor's liability where the Managing Contractor wholly or substantially abandons the performance of the Managing Contractor Activities; and

(h) liability out of which by law the Managing Contractor cannot contract.

31.3 No circularity

(a) In determining:

(i) whether an insurance policy extends to cover the Contract in respect of any matters referred to in subclause 31.1 and the liability (if any) of the Managing Contractor arising out of or in connection with the matter; or

(ii) the amount recovered or recoverable by the Managing Contractor under an insurance policy in connection with a matter referred to in subclause 31.1,

(together the Determinable Matters), the limitation on the Managing Contractor's liability pursuant to subclause 31.1 will be disregarded and it must be assumed that the Managing Contractor has paid in full the amount of its liability to the Principal (unlimited by subclause 31.1) in a manner which entitles the Managing Contractor to claim under the relevant insurance policy.

(b) The Managing Contractor waives and disclaims any right or entitlement it may now or in the future have, but for this subclause 31.3, to:

(i) not disregard subclause 31.1, 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 subclause 31.1 is not to be disregarding in connection with the determination of the Determinable Matters.

(c) The parties agree that subclauses 31.3(a) and 31.3(b) may be pleaded in bar to any claim or assertion by:

(i) the Managing Contractor; or

(ii) any insurer;

in any Claim to the effect that subclause 31.1 is not to be disregarded as provided in clause 31.3(a).

(d) If for any reason in relation to a matter referred to in subclause 31.1:

(i) subclauses 31.3(a) to 31.3(c) (or any of them) are unenforceable, void, voidable or illegal, subclause 31.1 will be of no force or effect and will be treated as if they were severed from, and had never been terms of, the Contract; and

(ii) the Managing Contractor, or an insurer is for any reason not obliged to disregard, or is for any reason entitled to have regard to, subclause 31.1 in determining the Determinable Matters, then subclause 31.1 will treated as if it was severed from and had never been terms of, the Contract and as of no force or effect whatsoever as against the person(s) who is so not obliged, or who is so entitled.

32. GENERAL

32.1 Governing jurisdiction

The Managing Contractor irrevocably submits to and accepts, 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 may be brought at any time relating in any way to the Contract.

32.2 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 the Contract by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under the Contract.

(b) Any waiver or consent given by the Principal under the Contract will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.

(c) No waiver by the Principal of:

(i) a breach of any term of the Contract; or

(ii) any other failure by the Managing Contractor to comply with a requirement of the Contract, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of the Contract or failure to comply with any other requirement of the Contract.

32.3 Entire agreement

The Contract 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 the Contract and the Deed of Disclaimer; or

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

32.4 Joint and several liability

The rights, obligations and liabilities of the Managing Contractor, if more than one person, under the Contract, are joint and several. Where the Managing Contractor comprises more than one person, each person constituting the Managing Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of the Contract) of the other as if those acts or omissions were its own.
32.5 **Severability**

If at any time any provision of the *Contract* is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

(a) the legality, validity or enforceability in that jurisdiction of any other provision of the *Contract*; or

(b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of the *Contract*.

32.6 **Survival clauses**

(a) Each indemnity in the *Contract* is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the *Contract*.

(b) Nothing in this subclause 32.6 prevents any other provision of the *Contract*, as a matter of interpretation also surviving the termination of the *Contract*.

(c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by the *Contract*.

(d) Without limiting the foregoing, subclauses 5.5, 8.2, 25.11, 27.10, 28.2 and 28.3 and clauses 30 and 31 survive the expiry or earlier termination of the *Contract*.

32.7 **Taxes**

Without limiting subclause 9.1 but subject to subclause 25.6, the *Managing Contractor* must pay all *Taxes* that may be payable in respect of the *Managing Contractor Activities*, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the *Managing Contractor Activities*.

32.8 **Principal may act**

The *Principal* may, either itself or by a third party, perform an obligation under the *Contract* that the *Managing 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 *Managing Contractor* to the *Principal*.

32.9 **No partnership, joint venture or other fiduciary relationship**

Nothing in the *Contract* will be construed or interpreted as constituting the relationship between the *Principal* on the one hand and the *Managing Contractor* on the other hand as that of partners, joint venturers or any other fiduciary relationship.
32.10 Amendments

The Contract may only be amended by a document signed by or on behalf of both the Principal and the Managing Contractor.

32.11 Civil Liability Act

(a) It is agreed that to the extent permitted by law the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations and liabilities under the Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

(b) Without limiting the generality of subclause 32.11(a) it is further agreed that the rights, obligations and liabilities of the Principal and the Managing Contractor (including those relating to proportionate liability) are as specified in the Contract and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

(c) The Managing Contractor further agrees that:

(i) in each subcontract into which it enters for the carrying out of the Managing Contractor Activities, it will include provisions that, to the extent permitted by law, effectively exclude the operations of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities under each subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or in tort or otherwise; and

(ii) it will require and ensure that each subcontractor will include in any further contract that it enters into with others for the carrying out of the Managing Contractor Activities, provisions that, to the extent permitted by law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities under such further contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, in tort or otherwise.

32.12 PPS Law

(a) By signing the Contract, the Managing Contractor acknowledges and agrees that if the Contract and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (Security Interest), the Managing Contractor must do anything (including amending the Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
(i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;

(ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or

(iii) enabling the Principal to exercise rights in connection with the Security Interest and the Contract.

(b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Managing 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 Managing Contractor:

(i) acknowledges that the Security Interests created under or pursuant to the Contract relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);

(ii) acknowledges that, to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest, and

(iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.

(d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.

(e) The Managing 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.