Wynyard Walk
Design and Construction Contract (WW-01-D&C)

Transport for NSW
Thiess Pty Ltd
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TfNSW Deed

Date: 7th September 2012

Parties

1. Transport for NSW (ABN 18 804 239 602), a corporation established by section 3C of the Transport Administration Act 1988 (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (Principal).

2. Thiess Pty Ltd (ACN 010 221 486), registered in Queensland, of 179 Grey Street, SOUTH BRISBANE QLD 4101 (the Contractor).

Recitals

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

B The Works comprise the design, construction, commissioning, integration, bringing to Operational Readiness and handover of a new western entrance to Wynyard Station, a pedestrian tunnel from Wynyard Station to Napoleon Street and a pedestrian bridge over Sussex Street.

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

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context otherwise indicates:

Abandonment means where the Contractor wholly or substantially abandons the performance of the Contractor’s Activities.

Act of Prevention means:

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

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

(i) directed in the circumstances described in clause 6.14;
(ii) directed in the circumstances described in clause 8.2(c); or
(iii) approved under clause 6.9(b).

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

Additional Contamination means Contamination the Contractor discovers on the Site which:

(a) was not described in, or was not reasonably able to be inferred from, the Contamination Report; and
(b) is not relating to or encountered whilst carrying out any demolition works.

AFC Design Documentation means the Design Documentation which:

(a) in the Contractor’s opinion, is sufficiently developed and complete that it can be used for the purpose of constructing the relevant part of the Works and may be submitted for review by the Principal’s Representative under clause 9.14;
(b) is submitted by the Contractor in accordance with clause 9.14(g)(i)(D) and in respect of which the preconditions to submission set out in clause 9.14(g)(ii) have been satisfied;
(c) where relevant, has received a Configuration Change Notice;
(d) is marked by the Contractor "AFC" or "Approved for Construction"; and
(e) is issued by the Contractor to the Principal for its records.

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

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

Asset Lands are the lands so identified in Schedule 22.

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

Ausgrid Services means Ausgrid's Services under Kent Street running between Pits 27208 and 27209.
Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes RailCorp), and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Works or the Contractor's Activities.

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

(a) carry out the Contractor's Activities including, for the avoidance of doubt, all things required for conducting work within the Rail Corridor or affecting rail operations and all things required for dealing with, transporting and disposing of Contamination or any other spoil or waste; or

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

and for the avoidance of doubt includes:

(c) the Planning Approval;

(d) the EPL; and

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

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

Canopy Tubes means those of the canopy tubes forming part of Portion 6 that are, or will be, in the immediate vicinity of the Ausgrid Services.

Change in Authority Approval means:

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

(b) a change in an Authority Approval which is in existence as at the date of this Deed, which occurs after the date of this Deed.

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

(a) a change in the Codes and Standards which, as at the date of this Deed:
(i) was published or of which public notice had been given (even as a possible change in the Codes and Standards); or

(ii) a party experienced and competent in the delivery of works and services similar to the Works or the Contractor’s Activities (as applicable) would have reasonably foreseen or anticipated, in substantially the same form as the change in the Codes and Standards eventuating after the date of this Deed; and

(b) the circumstances referred to in clause 2.3(I)(iii).

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

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

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

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

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

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

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

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

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

(g) the amendments to the *Transport Administration Act 1988* (NSW) effected or to be effected by Schedule 3 of the *Transport Legislation Amendment Act 2011* (NSW)).
Claim includes any claim for an increase in the Contract Sum, for payment of money (including damages), for an extension of time to a Date for Completion or for any other form of relief:

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

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

(c) otherwise at Law including:

(i) under or for breach of any statute;

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

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

Codes and Standards means:

(a) the relevant building codes (including the Building Code of Australia), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Deed (including the Disability (Access to Premises - Buildings) Standards 2010);

(b) the Code of Practice for Procurement (January 2005), Aboriginal Participation in Construction Implementation Guidelines (January 2007), Industrial Relations Management Guidelines (December 1999), Environmental Management Systems Guidelines (2nd edition) (September 2009), Occupational Health & Safety Management Systems Guidelines (4th edition) (June 2004), Guidelines for Auditing Project OHS Management Plans (June 2004), Training Management Guidelines (February 2009), Waste Reduction and Purchasing Policy (WRAPP) and any other NSW Government guidelines and requirements specified or required by this Deed; and

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

Commencement Date means the date identified in Schedule 1.

Commissioning has the meaning given to that term in the TfNSW Standard Requirements and is:

(a) comprised of stages 1 (factory acceptance tests), 2 (installation / operational checks), 3 (Site acceptance tests), 4 (system integration tests and commissioning), 5 (integration with RailCorp network) and 6
(acceptance tests) of Commissioning and Operational Readiness, as described in the TfNSW Standard Requirements; and

(b) a part of Commissioning and Operational Readiness.

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

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

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

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

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

(ii) that can be rectified without prejudicing the convenient intended use of the Works or the Portion; and

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

(b) the Contractor has:

(i) carried out and passed all tests that:

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

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

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

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

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

(B) that are to be handed over to the Principal's Representative before Completion of the Works or a Portion;
(iv) complied with all performance requirements that this Deed requires to be verified before Completion of the Works or a Portion;

(v) provided the Principal's Representative with:

(A) in respect of a particular Portion (other than the last Portion to reach Completion), the Contractor's Certificate of Portion Completion in respect of the relevant Portion and the Designers' Certificates of Portion Completion in respect of the relevant Portion; and

(B) in respect of the last Portion to reach Completion, copies of all Contractor's Certificates of Portion Completion and the Designers' Certificates of Portion Completion for all Portions; and

(vi) in respect of the Works (or the last Portion to reach Completion), completed all Commissioning and Operational Readiness in accordance with this Deed; and

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

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

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

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

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

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

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

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

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

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

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

*Contamination Report* means, collectively, the following reports:

(a) the report titled "Wynyard Walk Phase 1 Site Contamination Report BPL-R-GE-028" compiled by PBH dated 16 September 2011;

(b) the report titled "Soil and Groundwater Contamination Report" compiled by Douglas Partners;

(c) the report titled "Hazardous Materials Survey Report, Transport Construction Authority NSW, Wynyard Walk Project Stage 1, Wynyard Station, Sydney NSW" compiled by Noel Arnold & Associates dated January 2012;

(d) the report titled "Hazardous Materials Survey Report, Transport Construction Authority NSW, Wynyard Walk Project Stage 2, Wynyard Green, York Street, Sydney NSW" compiled by Noel Arnold & Associates dated January 2012;


(g) the report titled "North West Metro Contract 136 Contamination Assessment Report, Central Station to Rouse Hill, NSW Technical Advisor Preliminary Site Investigation & Geological Advice" compiled by Coffey Geotechnics, dated 27 February 2009, reference GEOTLCOV23558AA-CN;

(h) the report titled "East Darling Harbour Geotechnical and Environmental Investigation, Summary of Findings, Sydney Harbour Foreshore Authority" compiled by ERM dated September 2006, reference "04432RP03 Final";

(i) the draft report titled "Preliminary Sediment Screening Works at East Darling Harbour, Adjacent to Barangaroo, NSW, Sydney Harbour..."
Foreshore Authority' compiled by ERM dated August 2008, reference “0086172R01_Draft Rev03”; 

(j) the report titled “Additional Investigation Works at Barangaroo, Hickson Road, Millers Point, NSW, for Sydney Harbour Foreshore Authority" compiled by ERM dated July 2008, reference “0080637R03”; and 

(k) the report titled “Environmental Site Assessment, East Darling Harbour, Sydney, NSW, Final Report – Revision 1, Sydney Harbour Foreshore Authority" compiled by ERM dated 21 June 2008, reference “0044432RP02 Rev 01 Final”,

which each form part of the Information Documents and Materials.

Contemporaneous Work means work carried out:

(a) by Other Contractors on or after the date of this Deed;
(b) on or adjacent to the Site; and
(c) upon or by which the proper execution of the Contractor’s Activities is dependent or may be appreciably affected by it being unsuitable, unsatisfactory or detrimental in any way.

Contract Control Group means the group described in clause 9.7.

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

(a) all Design Documentation; and
(b) all plans, manuals, programs and other documents.

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

Contract Particulars means Schedule 1.

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

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

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

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

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

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

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

Contractor's Outline Design means Exhibit C.

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

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

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

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

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

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

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

**Deed** means the General Conditions, Schedules 1 to 35 and Exhibits A to J, however Exhibits D, E, F and I only form part of this Deed to the extent necessary for the proper operation of the relevant provisions of the General Conditions and Schedules 1 to 35.

**Deed of Disclaimer** means Exhibit F.

**Defect** means any:

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

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

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

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

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

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

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

(a) the most senior member of the Designer's Team (and where there is more than one design discipline involved in the relevant package or element, then the most senior member in each relevant discipline); and
(b) where relevant, each of those members of the Designer’s Team who hold Engineering Authority,

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

Designers’ Certificates of Design Compliance means the certificates from:

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

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

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

Designers’ Certificates of Portion Completion means the certificates from:

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

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

in the form provided for in clause 7.2 of Schedule 7 certifying that Completion of a Portion has been achieved in accordance with this Deed.

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

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

Dispute Resolution Board means the board consisting of:

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

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

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

or their replacements, referred to in clause 15.

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

DRB Agreement means the agreement which appears in Schedule 28.
Electronic Portal means the electronic portal or document management system notified by the Principal's Representative under clause 16.1(a).

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

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

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


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

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

Existing Services Plan means the report described as "M74 WW-1102-02-05-02 – H&F survey 115091 Services_10 7-8-12 (2035683_1)", which forms part of the Information Documents and Materials.

Extra Land means the land or buildings referred to in clause 3.4(b)(i).
**Final Completion** means the stage in the execution of the Contractor's Activities when:

(a) all Defects Rectification Periods (including any extension under clause 8.6) have expired;

(b) the Contractor has:
   
   (i) carried out and passed all tests which:
       
       (A) are required under this Deed to be carried out and passed before the Works reach Final Completion; or
       
       (B) must necessarily be carried out and passed to verify that the Works are in the condition this Deed requires them to be in at Final Completion;

   (ii) obtained all Authority Approvals that it is required under this Deed to obtain which:
       
       (A) were not obtained before Completion of the last Portion to reach Completion; or
       
       (B) are to be obtained prior to Final Completion,
       
       and provided such Authority Approvals to the Principal’s Representative;

   (iii) given to the Principal's Representative all other documents or information referred to in this Deed:
       
       (A) which are required for the use, operation, maintenance and repair of the Works but which were not obtained before Completion of the last Portion to reach Completion; or
       
       (B) which are required to be handed over to the Principal’s Representative before Final Completion; and

   (iv) complied with all performance requirements under this Deed that must be verified before Final Completion; and

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

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

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

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

**General Conditions** means clauses 1-18 of this Deed.

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

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

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

**Incident** means:

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

(i) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;

(ii) loss of containment, escape of or migration of Contamination off-site and into the Environment;

(iii) any fire or dangerous event on the Site, a Remote Site or Extra Land;

(iv) a security breach;

(v) any unauthorised removal of trees;

(vi) a non-compliance with an Authority Approval or Third Party Agreement; or

(vii) any public complaint; or

(b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

(c) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and

(d) "occurrences" and "notifiable occurrences" under the WHS Legislation and *Rail Safety Act 2008* (NSW).
Industrial Relations Management Plan means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TfNSW Standard Requirements.

Information Documents and Materials means:

(a) the items specified in Schedule 17; and

(b) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor unless expressly identified as forming part of this Deed,

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

Insolvency Event means when:

(a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;

(b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;

(c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or

(d) in relation to a corporation any one of the following:

(i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);

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

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

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

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

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

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

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

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

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

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

**Interface Agreement** means the Third Party Agreement of that name substantially in the form of the draft that is set out in Exhibit I.

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

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

**Latent Condition** means:

(a) adverse geotechnical conditions on the Site which differ materially from the geotechnical conditions:

(i) described in or reasonably able to be inferred from the Information Documents and Materials; and
(ii) which a competent and experienced contractor could reasonably have been expected to anticipate as at the date of this Deed if it had:

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

(B) inspected the Site and its surroundings;

(b) any Service on the Site the existence of which:

(i) is not identified in or reasonably able to be inferred from the Information Documents and Materials; and

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

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

(B) inspected the Site and its surroundings,

excluding any Service:

(iii) within existing buildings (other than any high voltage electrical service, being of 11kV or greater);

(iv) relating to or encountered whilst carrying out any demolition works; or

(v) that forms any part of the Ausgrid Services;

(c) any Service on the Site disclosed in the Existing Services Plan the actual location of which as encountered by the Contractor differs materially from that described in or reasonably able to be inferred from the Existing Services Plan, excluding any Service:

(i) within existing buildings (other than any high voltage electrical service, being of 11kV or greater);

(ii) relating to or encountered whilst carrying out any demolition works; or
(iii) that forms any part of the Ausgrid Services; or

(d) adverse conditions of structural elements of level B2 of Railway House/Transport House which differ materially from the conditions:

(i) described in or reasonably able to be inferred from the Information Documents and Materials; and

(ii) which a competent and experienced contractor could reasonably have been expected to anticipate as at the date of this Deed if it had:

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

(B) inspected the Site and its surroundings,

but excludes Contamination.

In sub-paragraph (c) a Service will not differ materially from that described in or reasonably able to be inferred from the Existing Services Plan unless it differs by more than the greater of the following away from the location described in or reasonably able to be inferred from the Existing Services Plan:

(e) 300 mm; and

(f) the “Accuracy” attribute documented in the relevant Existing Services Plan for that Service.

Law means:

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

(b) principles of law or equity established by decisions of courts; and

(c) Authority Approvals (including any condition or requirement under them).

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

Monument has the meaning given to that term in the Surveying and Spatial Information Regulation 2006 (NSW).
Nominated Subcontractor means a Subcontractor identified in Schedule 1 to whom the Contractor must subcontract the relevant Nominated Subcontract Work.

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

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

OH&S means occupational health and safety.

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

Operational Readiness has the meaning given to that term in the TfNSW Standard Requirements and is:

(a) comprised of stages 7 (accreditation of new infrastructure), 8 (pre-commercial operations and RailCorp staff training), 9 (handover of assets from the Principal to RailCorp), and 10 (setting to work for commercial operation) of Commissioning and Operational Readiness, as described in the TfNSW Standard Requirements; and

(b) a part of Commissioning and Operational Readiness.

Option means an option referred to in Schedule 25.

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

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

Other Contractor Work means the works to be undertaken by an Other Contractor on part of the Site during any period in which the Contractor has been engaged as principal contractor in respect of that part of the Site.

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

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

Payment Schedule means Schedule 2.

Performance and Compliance Incentive Payment Table means the table set out in Schedule 27.
Performance Category means each of the categories identified in column 1 of the Performance and Compliance Incentive Payment Table.

Planning Approval means:
(a) the Project Approval and any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning and Infrastructure (acting in their capacity as determining authority under the Environmental Planning and Assessment Act 1979 (NSW)) in respect of the Works; and
(b) any Mitigation Measures and statement of commitments that are required to be complied with or fulfilled in the documents referred to in paragraph (a).

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

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

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

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

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

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

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

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

**Project Approval** means the approval granted by the Deputy Director General of Transport for NSW on 16 July 2012 and includes the following documents: the Wynyard Walk Review of Environmental Factors dated April 2012, the Wynyard Walk Submissions Report dated July 2012 and the Wynyard Walk Determination Report dated July 2012, copies of which are set out in Exhibit E, as may be modified from time to time.

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

(a) set out in adequate detail the procedures the Contractor will implement to manage the Works and the performance of the Contractor’s Activities from a work health and safety perspective;

(b) describe how the Contractor proposes to ensure the Works and Contractor’s Activities are performed consistently with Law in relation to work health and safety; and

(c) address the matters specified in Schedule 1.

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

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

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

**Railway House/Transport House** means the buildings adjacent to Wynyard Station known as Railway House and Transport House.

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

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

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

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

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

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

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

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

Security Interest has the meaning given to that term in clause 16.29(a).

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

Site means:

(a) the Asset Lands, Temporary Lands, and other places described in Schedule 22; and

(b) any other lands and places made available to the Contractor by the Principal for the purpose of this Deed,

and excludes the Remote Sites and Extra Land.

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

(a) surface water, ground water, ground water hydrology and the effects of any de-watering;

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

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

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

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

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

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


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

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

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

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

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

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

Taxes means income, stamp, indirect or other taxes, levies, impost, deductions, charges, duties (including import duty), compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.
TfNSW Standard Requirements or TSR's means the documents which appear as Exhibit A to this Deed.

Temporary Lands are the lands so identified in Schedule 22.

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

Tenancy Agreement means an agreement for the lease, or the grant of a lease, over the Works or any part of the Works.

Tenant means any person:
(a) who has entered into a Tenancy Agreement, or
(b) otherwise notified by the Principal or the Principal's Representative to the Contractor in writing.

Tenant Works means any work (including fitout works and installation of a Tenant’s fixtures) that a Tenant may or must carry out, or that the Principal may or must carry out for or on behalf of a Tenant, under a Tenancy Agreement.

Tenant Works Contractor means any contractor, consultant, artist, tradesperson or other person engaged to carry out Tenant Works.

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

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

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

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

Third Party Agreements means:
(a) the agreements referred to in Schedule 1 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 I; and
(b) each Replacement Third Party Agreement.

Track Possession means a period during which the Contractor has access to Rail Track for the purpose of carrying out the Contractor’s Activities including for the purpose of rectifying Defects.
Valuable Find means any and all:
(a) valuable minerals, fossils, or coins;
(b) articles or objects of value or antiquity; and
(c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological, or other special interest,

found on or under the surface of the Site.
Variation means:
(a) any change to the Works or the Temporary Works including:
   (i) any addition or increase to, or decrease, omission or deletion from, the Works or the Temporary Works;
   (ii) any change to the character or quality, or demolition or removal, of any material or work; or
   (iii) any change to the levels, lines, positions or dimensions of any part of the Works or the Temporary Works; or
(b) any changes to the boundaries of the Asset Lands or the Temporary Lands (or both),
but for the avoidance of doubt excludes:
(c) any changes to the Works or the requirements of the Works Brief that are required solely as a result of the exercise of an Option by the Principal's Representative under clause 6.3;
(d) any changes to the Works or the Temporary Works or the requirements of the Works Brief that are required to ensure the Contractor complies with its obligations under this Deed; and
(e) any Provisional Sum Work.
Variation Order means a written document titled "Variation Order" issued under clause 6.2.
WHS Legislation means:
(a) the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW); and
(b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works.
Witness Point means a point identified in the TfNSW Standard Requirements where the Principal’s Representative, or the relevant person nominated in the...
TfNSW Standard Requirements, may review, witness, inspect, or undertake tests on any component, method, or process of the Contractor's Activities.

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

(a) any changes to the Works that are required solely as a result of the exercise of an Option by the Principal's Representative under clause 6.3;
(b) all Variations to the Works;
(c) all Remote Works; and
(d) Principal Supplied Items once made available to the Contractor by the Principal,

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

**Works Brief** means Exhibit B.

**Worksites** means those parts of the Site identified in clause 22.2 of Schedule 22.

### 1.2 Interpretation

In this Deed unless the context otherwise requires:

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

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

(ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
(e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) a reference to any legislation or to any section or provision of it includes:
   (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
   (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;

(g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;

(h) headings are for convenience only and do not affect the interpretation of this Deed;

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

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

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

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

(m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:
   (i) any extension of time to any Date for Completion stated in days; or
   (ii) any reference to "day", will include only those days indicated in Schedule 1, or otherwise approved by the Principal's Representative, as working days;
(n) for all purposes (other than as set out in clauses 1.2(l) and 1.2(m), or where otherwise designated as a Business Day), "day" means calendar day;

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

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

(q) a reference to "direction" in the definition of Claim in clause 1.1 or in any of clauses 7.1(a)(i)(B), 9.1, 9.14(k), 15 and 16.30 will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document (as defined in clause 9.14(a)) under clause 9.14;

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

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

(t) any reference:

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

(ii) to "intended purpose", including in clauses 1.4(c), 2.1, 2.3, 3.2, 4.1, 5.1, 5.7, 7.1, 11.8 or 12.3,

will be read as referring to the intended use or intended purpose as stated in, reasonably contemplated by, or reasonably ascertainable from, the terms of this Deed and any other documents provided by the Principal to the Contractor under or pursuant to this Deed, including:

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

(iv) the requirement that the Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; and

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

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

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

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

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

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

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

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

1.4 Order of Precedence

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

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

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

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

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

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

(c) The Contractor:

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

(ii) acknowledges and agrees that:

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

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

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

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

1.7 Deed Commencement Date

(a) This Deed will not commence until the Commencement Date, except for the provisions contained in:
   (i) clause 1 (Definitions and Interpretation);
   (ii) clause 2.2 (Subcontracts);
   (iii) clause 2.8 (Unconditional Undertakings and Parent Company Guarantee);
   (iv) clause 3.7 (Information Documents and Materials);
   (v) clause 9.16 (Exchange of information between Government Agencies);
   (vi) clause 13 (Care of the Work, Risks and Insurance);
   (vii) clause 14 (Default or Insolvency);
   (viii) clause 15 (Disputes);
   (ix) clause 16 (General); and
   (x) clause 17 (Notification of Claims),
   which will all commence on the date of this Deed.

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

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

2. Contractor's Obligations

2.1 General

The Contractor:

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

(b) warrants that the Works and each Portion will upon Completion:
   (i) be fit for their intended purposes; and
(ii) be capable of remaining at all relevant times fit for their intended purposes;

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

(d) unless the context otherwise requires:

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

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

(A) Contractor:

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

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

(B) Principal makes no representation as to:

(1) the quality of the specified product;

(2) the availability of the specified product; or

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

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

2.2 Subcontracts

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

(b) The Contractor:

(i) must:

(A) not enter into any Subcontract with a Prohibited Subcontractor; and
(B) enter into a Subcontract with each of those Nominated Subcontractors specified in Schedule 1 in respect of the relevant Nominated Subcontract Work;

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

(A) Contractor:

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

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

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

(1) quality of work;

(2) timeliness of work;

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

(4) creditworthiness;

(iii) may only enter into a Subcontract with:

(A) a Designer; or

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

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

(iv) agrees that any request by the Contractor for approval to subcontract under clauses 2.2(b)(iii)(A) or 2.2(b)(iii)(B) must be in writing and include such details as may be required by the Principal's Representative, including details of the proposed Subcontract conditions, and the proposed Subcontractor's capacity to undertake the relevant work, past performance in undertaking similar work, safety (including work health, safety and rehabilitation), environmental compliance (including any environmental management system) and other performance management systems and proposed safe working procedures;
(v) acknowledges that, within 14 days after a request by the Contractor for approval, the Principal’s Representative will advise the Contractor whether the request is approved (and, if approved, any relevant conditions) or not and, where it is not approved, the reasons why approval is not given;

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

(A) a person:

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

   (2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or

(B) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;

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

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

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

(i) effects and maintains professional indemnity insurance which:

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

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

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

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

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

(d) The Contractor will be:

(i) fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and

(ii) vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities.

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

(f) The Contractor must:

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

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

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

(iv) procure that each of its Subcontractors:

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

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

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

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

These warranties:

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

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

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

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

(i) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Deed);
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(ii) limit or otherwise affect the Principal’s rights against the Contractor (including those arising out of any warranties given under this Deed); or

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

2.3 Compliance with Law

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

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

(ii) comply with all applicable Law;

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

(iv) give the Principal’s Representative copies of all documents (including Authority Approvals and other notices) that an Authority issues to it;

(v) at all times conform and comply with, and ensure that the Works conform and comply with (subject to clause 2.3(b)), all Codes and Standards; and

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

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

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

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

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

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

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

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

(c) The Contractor must:

(i) obtain all Authority Approvals required for the:

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

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

except for those Authority Approvals specified in Schedule 15;

(ii) prepare and submit:

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

(B) to the Principal copies of:

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

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

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

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

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

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

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

(iv) comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in Schedule 11 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2.3(c)(iii);

(v) in respect of any:

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

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

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

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

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

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

(B) complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Deed (including obtaining the approval of any person for anything); and
(C) obtained and supplied to the Principal's Representative certification that the Works or the Portion, as designed and built, comply with the requirements of the Building Code of Australia to the extent applicable, including for the avoidance of doubt any Authority Approvals, conditions or requirements which must be obtained, carried out or fulfilled to enable the Principal and RailCorp to occupy and use the Works or Portion for its intended purpose.

(d) If:

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

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

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

then in response to any request from the Contractor:

(iv) the Principal's Representative may:

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

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

(v) the Contractor:

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

(B) must (at its own cost):
(1) promptly obtain or satisfy the relevant Authority Approval;
(2) comply with any conditions imposed by the Principal's Representative under clause 2.3(d)(iv)(B); and
(3) otherwise comply with its obligations under clause 2.3(c)(vii),
when notified by the Principal's Representative that the Interface Work or Contemporaneous Work has been completed.

(e) The Contractor:

(i) acknowledges that:
   (A) only the Principal can apply for a modification to the Planning Approval;
   (B) the Principal may, in its absolute discretion refuse to seek such a modification or discontinue or withdraw or change an application for such a modification at any time; and
   (C) the Principal need not apply for any modification to the Planning Approval on behalf of the Contractor unless the Contractor first submits its proposal for modification to the Principal's Representative for its review under clause 9.14;

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

(iii) must pay the Principal all fees, costs and expenses arising out of, or in any way in connection with, such modification.

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

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

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

the Contractor:

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

(A) requested by the Principal's Representative;

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

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

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

(g) Where there is a Change in Law:

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

(A) details of the Change in Law; and

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

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

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

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

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

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

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

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

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

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

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

(ii) otherwise, within 14 days of the Change in Authority Approval taking effect,

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

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

(i) does not necessitate a Variation;

(ii) would not have been reasonably foreseen or anticipated as at the date of this Deed by a party experienced and competent in the delivery of works and services similar to the Works or the Contractor’s Activities (as applicable) in substantially the same form as the Change in Authority Approval; and
(iii) does not arise out of or in any way in connection with an act or omission by the Contractor,

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

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

(i) any Change in Authority Approval;

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

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

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

(v) any:

(A) assumptions the Contractor makes; or

(B) failure by the Contractor to adequately satisfy itself, as to what work methodologies and Temporary Works might be permissible under all Authority Approvals.

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

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

(ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the Work Health and Safety Act 2011 (NSW) applies;

(iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the Work Health and Safety Act 2011 (NSW) applies;

(iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the Work Health and Safety Act 2011 (NSW) applies; or

(v) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the Work Health and Safety Act 2011 (NSW) applies.
the Contractor shall comply with the applicable obligations under the WHS Legislation.

(I) Notwithstanding any other provision of this Deed, the Contractor acknowledges and agrees that the Contractor:

(i) is aware of the proposed establishment of the Asset Standards Authority;

(ii) has made due allowance in the Original Contract Price and each Date for Completion for all codes, standards, specifications, guidelines, rules, procedures or other publications or requirements published, administered, implemented or imposed by RailCorp or any other Authority as at the date of this Deed; and

(iii) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:

(A) the establishment of the Asset Standards Authority; or

(B) the codes, standards, specifications, guidelines, rules, procedures or other publications or requirements published, administered, implemented or imposed by RailCorp or any other Authority as at the date of this Deed; and

2.4 Legal Challenge to Approval

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

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

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

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

(iv) any other Law.
the Contractor must continue to perform its obligations under this Deed unless, as a result of that legal challenge, proceedings or action, it is otherwise:

(v) ordered or directed by an Authority;

(vi) ordered by a court or tribunal; or

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

2.5 Services

(a) The Contractor must:

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

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

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

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

(A) damaged or destroyed; or

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

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

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

(vi) indemnify the Principal against any claim, damages, expense, costs, loss, liability, fine or penalty the Principal suffers or incurs arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to, any Service arising out of or in any way in connection with the Contractor’s Activities, provided that the Contractor’s liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.
(b) Subject to clause 3.6 and clause 6.14, the Contractor agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities.

2.6 Crown Building Work

(a) The Contractor must, in relation to any part of the Works that is a Crown Building Work, certify (on behalf of the Principal) as required by section 109R of the *Environmental Planning and Assessment Act 1979* (NSW).

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

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

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

2.7 Principal Contractor

(a) In this clause 2.7 the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation and the word "Control" has the same meaning as in Schedule 22.

For the purpose of the WHS Legislation and this Deed, the Works and any Other Contractor Work is taken to be part of the same 'construction project'.

(b) During any period:

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

(ii) that the Principal’s Representative directs the Contractor to be, in Control of any part of the Site and to the extent that the Contractor’s Activities or any Other Contractor Work includes construction work:

(iii) the Principal engages the Contractor as the principal contractor in respect of the Contractor’s Activities and all Other Contractor Work carried out on that part of the Site;

(iv) the Principal authorises the Contractor to have management and control of each workplace at which the Contractor’s Activities and the Other Contractor Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
(v) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.

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

(d) Where the:
   (i) Contractor is not specified in Schedule 22 as being; or
   (ii) the Principal's Representative has not directed that the Contractor is to be,
   in Control of a part of the Site, the Contractor:
       (iii) acknowledges that the person who is specified in Schedule 22 as being in Control of that part of the Site is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that part of the Site during the period during which that person is in Control of that part of the Site;
       (iv) must comply with any exercise by the person referred to in sub-paragraph (iii) of such authority as is necessary to enable that person to discharge the responsibilities imposed on a principal contractor by the WHS Legislation; and
       (v) without limiting clause 2.15, expressly acknowledges and agrees that a reference in clause 2.15 to an act or omission by a person includes an act or omission by a person in the exercise of its authority as principal contractor as referred to in sub-paragraph (iii).

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

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

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

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

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

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

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

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

(i) within 28 days after the Date of Completion of the last Portion to reach Completion, release so much of the unconditional undertakings provided by the Contractor under clause 2.8(b) as may be then held by the Principal, so that it then holds 2.5% of the Original Contract Price;

(ii) within 28 days after the expiration of all the Defects Rectification Periods (excluding any extensions under clause 8.6), release so much of the unconditional undertakings provided by the Contractor under clause 2.8(b) as may be then held by the Principal, to such amount as the Principal's Representative determines to be reasonable, having regard to the work to which the remaining Defects Rectification Periods (including any extensions under clause 8.6) apply; and

(iii) within 28 days after the Date of Final Completion, release the balance of the unconditional undertakings provided by the Contractor under clause 2.8(b) as may be then held by the Principal.
(e) The Principal:

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

(ii) is not obliged to pay the Contractor interest on:
   (A) any unconditional undertaking; or
   (B) the proceeds of any unconditional undertaking if it is converted into cash; and

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

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

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

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

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

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

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

(a) The Contractor:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.11 Contemporaneous Work

The Contractor must:

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

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

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

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

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

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

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

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

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

If the Contractor fails to:

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

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

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

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

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

2.12 Third Party Agreements

(a) The Contractor:

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

(ii) must:

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

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

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

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

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

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

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

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

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

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

(b) The parties acknowledge that:

(i) as at the date of this Deed:

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

(B) certain Third Party Agreements may need to be replaced with new agreements on different terms (each a Replacement Third Party Agreement);

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

(iii) following:

(A) finalisation of any Draft Third Party Agreement; or

(B) the execution of any Replacement Third Party Agreement, after the date of this Deed, the Principal must promptly give the Contractor a copy of the:

(C) executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable), together with (in the case of a Replacement Third Party Agreement) details of the Third Party Agreement that is replaced; and
(D) amendments (if any) to Schedule 11 arising out of the execution of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable) (Revised Allocation);

(iv) within 28 days of receipt of an executed copy of a Draft Third Party Agreement or a Replacement Third Party Agreement (as applicable), and the associated Revised Allocation, the Contractor must inform the Principal’s Representative in writing if any terms and conditions of:

(A) the executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); or

(B) the associated Revised Allocation,

are substantially more onerous than those contained in:

(C) the relevant Draft Third Party Agreement or the Third Party Agreement being replaced by the relevant Replacement Third Party Agreement; and

(D) Schedule 11,

(Difference in Conditions) and:

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

(F) where the Difference in Conditions or Revised Allocation will result in additional physical works:

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

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

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

(G) where the Difference in Conditions or Revised Allocation alters the Contractor’s risk profile under this Deed and creates a contingent liability which the Contractor did not previously bear and which may convert to an actual liability on the happening of another event (Trigger Event), details of the altered risk profile, contingent liability and Trigger Event and a notice of intention to claim;
if the Principal does not receive a notice from the Contractor under clause 2.12(b)(iv) within the 28 day period:

(A) Schedule 11 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:

(1) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and

(2) Revised Allocation,
under clause 2.12(b)(iii); and

(B) the Contractor must carry out its obligations under this Deed on the basis of:

(1) the executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (rather than the Third Party Agreement that is replaced) (as applicable); and

(2) the Revised Allocation,
without any adjustment to the Contract Sum or any entitlement to make any other Claim;

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

(A) Schedule 11 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:

(1) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and

(2) Revised Allocation,
under clause 2.12(b)(iii);

(B) the Contractor must carry out its obligations under this Deed on the basis of:

(1) the executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (rather than the Third Party Agreement that is replaced) (as applicable); and

(2) the Revised Allocation;
(C) the Principal's Representative must:

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

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

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

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

direct the Contractor to carry out such physical work as a Variation under clause 6.2; and

(D) where the Contractor has provided the details referred to in clause 2.12(b)(iv)(G), the Principal's Representative's obligation to make a determination in relation to the altered risk profile or contingent liability referred to in clause 2.12(b)(iv)(G) is deferred until the Trigger Event occurs;

(vii) if:

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

(B) during the implementation of:

(1) the executed Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and

(2) the Revised Allocation.
a Trigger Event occurs,

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

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

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

(A) avoid the Trigger Event; and

(B) avoid or minimise the extra costs resulting from such circumstances.

(c) The Contractor:

(i) must indemnify the Principal from and against:

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

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

arising out of or in any way in connection with a Third Party Agreement (including a Draft Third Party Agreement or a Replacement Third Party Agreement executed after the date of this Deed) to the extent that the claim or liability arises out of or in any way in connection with a breach by the Contractor of this Deed; and

(ii) agrees that it:

(A) bears the full risk of complying with the obligations under this clause 2.12; and

(B) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the risks referred to in clause 2.12(c)(ii)(A) or any acts or omissions of Third Parties.
2.13 Co-operation with Interface Contractors

The Contractor:

(a) acknowledges that:

(i) the Interface Work forms part of the Wynyard Walk;

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

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

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

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

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

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

(b) must at all times:

(i) without limiting clause 2.19, permit Interface Contractors to execute the Interface Work on the applicable parts of the Site, Remote Sites or Extra Land or on any adjacent property to the Site, Remote Sites or Extra Land:

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

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

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

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

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

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

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

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

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

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

(C) monitor the progress of the Interface Work;

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

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

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

perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
(vi) be responsible for coordinating the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative (in accordance with clause 2.13(b)(vii)) work method statements for those parts of the Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;

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

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

(ix) work in accordance with:

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

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

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

(B) the TfNSW Standard Requirements;

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

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

(xii) ensure that any written notice given under sub-paragraph (xi) provides the Interface Contractor with the longest possible time for the provision of the information;

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

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

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

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

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

(A) the provision of information;

(B) the obtaining of information;

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

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

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

(F) technical issues with the information provided to, or received from, Interface Contractors;
must, in the event that despite using its best endeavours, and working closely and iteratively with the Interface Contractors, the Contractor and any Interface Contractor fail to resolve a problem between them:

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

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

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

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

2.14 Interface Disputes

(a) Where the Contractor has complied with all its obligations in clause 2.13 and clause 2.19, the Contractor must promptly give the Principal’s Representative written notice of any interface issue or dispute with any Interface Contractor.

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

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

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

2.15 No Claims Arising out of Interface Work

The Contractor:

(a) acknowledges and agrees that:

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

(ii) except where the Principal’s Representative directs a Variation in circumstances where the Contractor has fully complied with clause 2.13 and clause 2.19, the Principal will not be liable upon any
Claim by the Contractor arising out of or in any way in connection with:

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

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

(b) warrants that the Original Contract Price and the Contractor Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under clause 2.13, this clause 2.15 and clause 2.19, including the cost of all the design iterations required to accommodate Interface Work.

2.16 Incident Management

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

(b) Should an Incident occur which:

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

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

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

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

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

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

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

(f) Without prejudice to the Principal’s other rights under this Deed, the Principal’s Representative may issue a direction under clause 10.14(a) requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor’s Activities in the event:

(i) of any Incident involving:
   (A) a significant spill of Contamination;
   (B) any accident or release of Contamination which it believes may pose a danger to health, life or property; or
   (C) any actual damage or harm to the Environment or a significant risk of harm to the Environment; or

(ii) any safety incident occurs which leads to, or had the potential to lead to, a fatality or injury to person (including any incident which must be reported to New South Wales WorkCover Authority) or damage to property.

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

(iii) any suspension due to a direction to suspend issued, or for a failure to issue a notice to suspend, in the circumstances set out in this clause 2.16(f); or

(iv) complying with a direction issued under clause 2.16(g).

(g) If the Principal’s Representative issues a notice to suspend in the circumstances set out in clause 2.16(f), the Contractor may not recommence the Contractor’s Activities in respect of the part of the Contractor’s Activities to which the notice relates until the Principal’s Representative issues a direction to the Contractor permitting the Contractor to recommence the Contractor’s Activities affected by the notice to suspend.
If the Principal’s Representative issues a notice to suspend in the circumstances set out in clause 2.16(f), the Principal’s Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal’s Representative will issue a direction pursuant to clause 10.14(a) permitting the Contractor to recommence the Contractor’s Activities affected by the notice to suspend. In these circumstances the Contractor must, at its cost, comply with the direction of the Principal’s Representative, and only once the Principal’s Representative is satisfied that the Contractor has complied with the requirements of the direction issued under this clause 2.16(g) will the Principal’s Representative issue a direction to the Contractor permitting the Contractor to recommence the Contractor’s Activities affected by the notice to suspend.

(h) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal’s Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 2.16(f) due to the Contractor’s, its agents’ or its Subcontractors’ acts or omissions in performing the Contractor’s Activities as a debt due from the Contractor to the Principal.

2.17 Working Days and Hours of Work

The Contractor must observe:

(a) all relevant Law; and

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

2.18 Commissioning and Operational Readiness

The Contractor acknowledges that:

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

(b) Commissioning and Operational Readiness must be completed for Completion to occur; and

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

2.19 Tenant Works

Without limiting clauses 2.13, 2.14, 2.15 and 7.4, the Contractor:
(a) acknowledges and agrees that under Tenancy Agreements, the Principal is or may be required to provide Tenants and others with access to the Site, including the Works, to undertake Tenant Works; and
(b) must comply with the requirements of Schedule 9.

3. The Site and Location of the Works

3.1 Access

(a) The Contractor acknowledges and agrees that:

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

(ii) Exhibit H contains drawings of the Site.

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

(i) give, or ensure the Contractor has, access to the Site in accordance with Schedule 22 and by the dates set out in Schedule 22 (and if a period is specified in relation to access to a part of the Site, then by the last day of that period); and

(ii) once access to a part of the Site is provided to the Contractor, thereafter continue to allow, or ensure that the Contractor is continued to be allowed, access to that part of the Site.

(c) The Contractor acknowledges and agrees that:

(i) access to the Site or any part thereof will confer on the Contractor a right to such management and control as is necessary to enable the Contractor to execute the Contractor’s Activities in accordance with this Deed and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor;

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

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

(B) submitted the Project Safety Management Plan, the Construction Environmental Management Plan and the Construction and Site Management Plan, as required by the TfNSW Standard Requirements, to the Principal’s Representative for review under clause 9.14 and:
(1) the Principal's Representative has issued the notice referred to in clause 9.14(d)(iii)(C) in respect of each of them; or

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

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

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

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

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

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

(A) exist under any Third Party Agreement;

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

(C) are specified in Schedule 22;

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

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

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

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

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

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

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

3.2 Temporary Works

(a) The Contractor must carry out all Temporary Works required to execute the Contractor's Activities so that the Works and each Portion will upon Completion:

(i) be fit for their intended purposes; and

(ii) be capable of remaining at all relevant times fit for their intended purposes.

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

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

(ii) specify the intended commencement and completion dates.

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

(d) Upon being given access to any property for the purpose of carrying out any Temporary Works, the Contractor must promptly carry out those Temporary Works in a manner which:
(i) minimises inconvenience and disruption to the owners, occupiers and users of the property; and

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

(e) The Contractor must:

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

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

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

3.3 Management and Control of the Site

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

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

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

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

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

(v) must, subject to clauses 2.13, 3.1(c), 3.11 and 7.4 and the TfNSW Standard Requirements, and any relevant Law, limit access to the Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Site as part of the Contractor's Activities;
(vi) must not impede access or Services to private property without the consent of the Principal’s Representative and the relevant owner or occupier; and

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

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

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

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

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

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

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

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

3.4 Remote Sites and Extra Land

(a) The Contractor acknowledges and agrees that:

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

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

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

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

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

(vi) it will comply with all directions of the owners, occupiers or persons providing access to the respective Remote Sites or Extra Land, including in respect of any Service connection points; and

(vii) it will not be entitled to make, and the Principal will not be liable upon, any Claim in respect of any Remote Works, Remote Sites or Extra Land.

(b) The Contractor must:

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

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

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

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

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

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

3.5 Locating Ausgrid Services

Without limiting clause 3.6, the Contractor must:

(a) prior to commencing the design of the tunnel layout as part of the Contractor's Activities, determine (including by carrying out potholing and other investigation work as may be necessary) the actual location (including reduced levels) of the underside of the lowest conduit containing Ausgrid Services in the immediate vicinity of the Canopy Tubes; and

(b) promptly issue a written notice to the Principal's Representative setting out the actual location of the underside of the lowest conduit containing Ausgrid Services in the immediate vicinity of the Canopy Tubes, together with such supporting information as the Principal's Representative may require (including such information as may be necessary for the Principal's Representative to verify the correctness of the Contractor's notice).

3.6 Site Conditions

(a) Without limiting or otherwise affecting clause 3.7(c), the Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this Deed the Contractor:

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

(ii) was given the opportunity prior to the date of this Deed to itself undertake, and to request others to undertake, tests, enquiries and investigations:

(A) relating to the subject matter of Information Documents and Materials and the Site Conditions; and

(B) for design purposes and otherwise;

(iii) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this Deed, the Deed of Disclaimer, the Information Documents and Materials, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender, the performance of its obligations and its potential liabilities under this Deed; and
(iv) undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this Deed and assume the obligations and potential risks and liabilities which it imposes on the Contractor.

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

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

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

(iii) the feasibility or fitness for purpose of the Contractor's Outline Design including, in respect of the constructability of the Contractor's Outline Design, having regard to the physical conditions and characteristics of the Site, Remote Sites or Extra Land.

(c) Subject to clauses 3.6(d) to 3.6(f), clause 3.9(h) and clause 6.14 (if they apply), the Contractor accepts:

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

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

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

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

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

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

(vi) whatever may be the condition or characteristics (including all sub-surface conditions) of:

(A) the Site, Remote Sites or any Extra Land, the Environment or their surroundings; or

(B) any structure or other thing on, above or adjacent to, or under the surface of, the Site, Remote Sites or any Extra Land, the Environment or their surroundings; and

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

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

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

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

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

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

(i) promptly; and

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

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

(iii) the conditions encountered and in what respects the Contractor considers they constitute a Latent Condition;
(iv) the additional work and additional resources which the Contractor estimates to be necessary to deal with the conditions;

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

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

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

(e) If a Latent Condition:

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

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

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

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

3.7 Information Documents and Materials

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

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

(i) the Information Documents and Materials or part thereof do not form part of this Deed and that clause 3.7(c) applies to the Information Documents and Materials or part thereof; and
(ii) where Information Documents and Materials or any part thereof form an Exhibit to this Deed, they do so only for the purposes of identification of that document or part thereof.

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

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

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

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

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

(c) The Contractor:

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

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

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

(ii) warrants that it enters into this Deed based on its own investigations, interpretations, deductions, information and determinations; and
(iii) acknowledges that it is aware that the Principal has entered into this Deed relying upon the warranties, acknowledgements and agreements in clauses 3.7(c)(i) and 3.7(c)(ii) and in the Deed of Disclaimer and the Tender Form.

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

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

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

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

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

(v) the Information Documents and Materials being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), or any equivalent provision of State or Territory legislation.

(e) The acknowledgements, warranties, releases and indemnities referred to in clauses 3.7(a) to 3.7(d) do not affect the Contractor's rights under clauses 3.6(d) to 3.6(f) and clause 3.9.

### 3.8 Valuable Finds

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

The Contractor must:

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

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

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

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

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

(e) the Contractor will be entitled to make a claim for an extension of time
under clause 10.7 in respect of any delays the Contractor suffers in
complying with the Principal's Representative's directions,

but only to the extent that the Valuable Find could not have been reasonably
anticipated by a competent and experienced contractor having done those things it
is deemed to have done by clause 3.6(a), as determined by the Principal's
Representative.

3.9 Contamination

(a) The parties acknowledge and agree that:

(i) the Contractor has been provided with the Contamination Report;

(ii) the Contamination Report identifies particular Contamination on, in,
under or migrating from the Site including in areas under Tracks,
surface soils generally and locations which have been filled;

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

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

(v) subject to clause 3.9(h), part of the Contractor's Activities include
taking the appropriate steps referred to in this clause 3.9:

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

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

(C) regardless of whether the Contractor provides the notice and
report referred to in clause 3.9(d) and that Contamination
was referred to in (or was reasonably able to be inferred from) the Contamination Report.

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

(c) Without limiting clauses 2.3(a)(i) and 3.9(a), the Contractor may undertake any other investigations it considers reasonable or necessary to delineate the nature and extent of any Contamination on, in, under or migrating from the Site prior to commencing any part of the Contractor's Activities on the Site in order to identify the steps necessary to deal with any Contamination as part of the Contractor's Activities.

(d) Without limiting any obligation of the Contractor to comply with all Authority Approvals, the Contractor must, in respect of all Contamination (whether described in or reasonably able to be inferred from the Contamination Report, Additional Contamination or otherwise):

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

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

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

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

(2) such further written information as the Principal's Representative may require including (in accordance with clause 3.9(d)(ii)) any investigation report prepared pursuant to clause 3.9(c);
must provide for the purposes of clause 3.9(d)(i) (unless otherwise directed by the Principal's Representative), the number and form of copies of the report and any additional reports and information requested by the Principal's Representative specified in Schedule 1; and

(iii) must, only after:

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

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

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

(e) Without limiting any obligation of the Contractor to comply with all Authority Approvals, the Contractor agrees that in preparing any report under clause 3.9(d)(i)(B)(1) it will adopt the following order of priority for deciding what remediation action is to be taken in respect of all Contamination on, in, under or migrating from the Site:

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

(ii) if it is not technically feasible or permitted by Law to incorporate the Contamination into the Works in accordance with clause 3.9(e)(i):

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

(B) disposal of the Contamination off-site to a licensed waste disposal facility in accordance with clause 3.14 and, where required, replacing it with fill,

in each case in accordance with any relevant Laws, Authority Approvals, and any written direction from a relevant Authority.
The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause 3.9, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractors or an agent of the Principal contributed to the claim, damage, expense, loss, liability, fine or penalty which shall not, for the avoidance of doubt, include the selection of the Site for the Works or the provision of access to the Site.

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

(i) for complying with this clause 3.9;

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

(iii) in respect of any costs incurred in the incorporation of Contamination into the Works;

(iv) in respect of the cost of disposing of Contamination off-site and, where required, replacing it with fill;

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

(vi) for any costs incurred arising out of or in any way in connection with any delay or disruption to the Contractor's Activities resulting from the presence of any Contamination on, in, under or migrating from the Site, Remote Sites or Extra Land including arising out of or in any way in connection with complying with its obligations under this clause 3.9 regardless of whether the Contamination was referred to in (or reasonably able to be inferred from) the Contamination Report or otherwise; or

(vii) for remediation on the Site, Remote Sites or Extra Land.

Where:

(i) there is Additional Contamination;

(ii) the Contractor has complied with its obligations under clause 3.9(d)(i);
(iii) it is not technically feasible or permitted by Law to incorporate that Additional Contamination into the Works as contemplated by clause 3.9(e)(i); and

(iv) the Contractor has disposed of the Additional Contamination off-site to a licensed waste disposal facility in accordance with clause 3.14, the Contract Sum will be increased by the Principal's Representative's determination of the additional costs reasonably incurred by the Contractor as a result of such disposal together with the percentage referred to in Schedule 1 in respect of clause 6.4(b)(i)(C) applied to those additional costs.

3.10 Not used

3.11 Principal's Right to Access and Inspect

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

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

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

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

(ii) at all times:

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

(1) the Works;

(2) the Site; or

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

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

(b) The Contractor acknowledges and agrees that:

(i) the Principal owes no duty or other responsibility to the Contractor to:
(A) inspect the Contractor's Activities; or
(B) review any design or construction for Defects (including errors and omissions) or compliance with the requirements of this Deed; and

(ii) no Inspection of the Contractor's Activities or review of any design or construction by the Principal or the Principal's Representative will:
(A) relieve the Contractor from or alter its liabilities or obligations under this Deed (including its warranties under clause 5.1 or clause 7.1) or otherwise according to Law; or
(B) limit or otherwise affect the Principal's rights against the Contractor whether under this Deed or otherwise according to Law.

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

3.12 Works to be Constructed on the Asset Lands

The Contractor must ensure that:

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

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

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

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

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

(c) Not used.

(d) The Condition Survey referred to in clause 3.13(b):

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

(ii) may only be performed after:

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

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

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

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

(v) may only be performed if the Principal’s Representative is:

(A) given no less than 14 days notice that a Condition Survey will be performed; and

(B) permitted to attend the performance of the Condition Survey; and
(vi) is subject to any conditions of access and use in clause 22.3 of Schedule 22.

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

3.14 Waste Disposal

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

(b) The Contractor must:

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

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

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

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

3.15 Principal not in Control

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

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

4. Compliance

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

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

4.3 Environmental Management
The Contractor must:
(a) hold and maintain an environmental management system which complies with the requirements of the TfNSW Standard Requirements for so long as any Contractor's Activities are carried out;
(b) as part of the Contract Management Plan, document, implement and maintain a contract specific Construction Environmental Management Plan for the management of environmental matters in accordance with the TfNSW Standard Requirements;
(c) carry out the Contractor's Activities in accordance with the Construction Environmental Management Plan;
(d) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and TfNSW Standard Requirements in relation to environmental management on the Site, Remote Sites and Extra Land; and
(e) use, and be able to demonstrate the use of, ecologically sustainable development principles in the design and construction of the Works, Temporary Works and all other Contractor's Activities.

4.4 OH&S Management
The Contractor must:
hold and maintain an OH&S management system for so long as any Contractor’s Activities are carried out that complies with the OH&S Guidelines and the TfNSW Standard Requirements;

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

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

(d) create a safe working environment for ensuring the safety of all authorised personnel on the Site, Remote Sites and Extra Land and that no unauthorised individual gains access to the Site; and

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

4.5 No Relief from Obligations

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

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

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

(c) any release, authorisation, approval or agreement by the Principal’s Representative, or any other person acting on behalf of the Principal or the Principal’s Representative, particularly those concerning or relating to the Contractor proceeding past any Hold Point or Witness Point or otherwise directed by the Principal’s Representative;

(d) any failure by the Principal, the Principal’s Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, particularly whilst participating in any Hold Point or Witness Point procedure, including where such a failure is the result of a negligent act or omission; or

(e) any Inspections arranged by the Principal’s Representative under the TfNSW Standard Requirements or any related discussions between the Contractor’s Representative and the Principal’s Representative.
5. Design and Design Documentation

5.1 Contractor's Design Obligations

The Contractor:

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

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

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

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

(b) warrants that:

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

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

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

(A) satisfy the requirements of the Works Brief, the Contractor's Outline Design and the other requirements of this Deed;

(B) subject to clause 5.2, not depart from the Contractor's Outline Design; and

(C) be fit for their intended purposes; and

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

5.2 Departures from the Contractor's Outline Design

(a) The parties acknowledge that the process of developing the design from the Contractor's Outline Design to the Design Documentation may (subject to this clause 5.2) result in departures from the Contractor's Outline Design.

(b) The Contractor must not make a departure referred to in clause 5.2(a) unless:

(i) the departure is:
(A) notified to the Principal’s Representative; and

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

(1) greater or higher requirement;

(2) greater or higher standard;

(3) greater or higher level of service; or

(4) greater scope;

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

(A) the departure complies with the Works Brief or has been submitted pursuant to clause 5.2(c) and in respect of which:

(1) the Principal’s Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

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

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

(1) capacity;

(2) durability;

(3) aesthetics of visible features;

(4) whole of life performance;

(5) functional performance;

(6) safety;

(7) security;

(8) community amenity;

(9) community benefits; or
5.3 Design Documentation

(a) The Contractor must submit all Design Documentation:

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

(ii) at the times set out in:

(A) the Works Brief; and

(B) the TfNSW Standard Requirements.

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

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

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

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

(v) a register of deficiency notices and evidence of their close out; and

(vi) a register of concessions (if any) granted for non-conforming Design Documentation.

5.4 Review of Design Documentation, Meetings, and Presentations

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

(b) Clause 9.14 applies to all Design Documentation.

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

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

(e) The Contractor must give the Principal’s Representative reasonable notice of the date and time of each design presentation to be made by the Contractor in accordance with clause 5.4(d) so as to enable the Principal’s Representative (and any other persons the Principal’s Representative reasonably requires) to attend the design presentations.

(f) At each design presentation referred to in clause 5.4(d), the Contractor must make available sufficient members of the Designer’s Team (as determined appropriately by the Contractor) and any other person reasonably requested by the Principal (or the Principal’s Representative), at the cost of the Contractor, to demonstrate:

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

(ii) the approach to interfaces with:

(A) existing structures and the surrounding environment; and

(B) Other Contractors (including Interface Contractors):
(iii) the status of review of design information and documents by the relevant Authorities;

(iv) how the current proposed design incorporates the Contractor's Outline Design; and

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

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

(h) Not used.

(i) Not used.

(j) Not used.

5.5 Copies of Design Documentation

(a) The Contractor must, in accordance with clause 5.3, progressively submit to the Principal's Representative the number of copies specified in Schedule 1 of all Design Documentation, whether complete or work in progress, which it intends to use for design or construction purposes.

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

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

(ii) all final Design Documentation.

5.6 Availability of Design Documentation

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

(a) on the Site, at least one complete set of all Design Documentation that the Contractor is entitled to use for construction purposes pursuant to clauses 5.3 and 9.14, and any construction related documents provided by the Principal; and

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

(a) The Contractor acknowledges that prior to the date of this Deed it prepared the Contractor's Outline Design. The Contractor agrees that it bears absolutely all risks howsoever that may arise as a result of the use by the Contractor of, or the reliance by the Contractor upon, the Contractor's Outline Design in performing the Contractor's Activities and that such use and reliance will not affect any of its obligations under this Deed.

(b) The Contractor is responsible for, and assumes the risk of any costs, losses or damages it suffers or incurs arising out of or in any way in connection with:

(i) the design and construction of the Works and Temporary Works in accordance with the Contractor's Outline Design costing more or taking longer than anticipated; and

(ii) any differences between the Works and the Temporary Works which the Contractor is required to design and construct (ignoring for this purpose any differences which are subject of a Variation Order issued under clause 6.2) and the Contractor's Outline Design including:

(A) differences necessitated by any Site Conditions encountered; and

(B) differences required to ensure that the Works and the Temporary Works will be fit for their intended purposes and satisfy the requirements of this Deed,

and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to any of the matters set out in the above paragraphs (i)-(ii) above.

5.8 Ownership of Contract Documentation and Methods of Working

(a) Subject to clause 5.8(c)(vii):

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

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

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

(c) The Contractor:

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

(ii) must indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property in connection with the Works, the Temporary Works, the Contractor's Activities or the Contract Documentation, except to the extent that such actual or alleged infringement arises as a direct result of:

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

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

(iii) must ensure that all Subcontracts between the Contractor and all Subcontractors for design and documentation contain provisions to the same effect as clause 5.8(a);

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

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

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

(vii) must, if it is unable to obtain the assignment referred to in clause 5.8(c)(vi), grant or have granted to the Principal an irrevocable licence:

(A) to use the Contract Documentation for the completion of the Works;
(B) which arises immediately upon the creation of the Contract Documentation;
(C) which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the Works; and
(D) which will survive the termination of this Deed on any basis; and

(viii) must ensure that the Intellectual Property created for the purposes of this Deed is not used, adapted or reproduced other than for the purposes of this Deed without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).

5.9 Delivery Up of Contract Documentation
If this Deed is frustrated or terminated the Contractor must:

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

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

(a) on terms reasonably satisfactory to the Principal (and terms generally consistent with and no more onerous on the supplier than the terms set out in the sample escrow deed set out in Schedule 32);
(b) to enable the Principal and its Subcontractors to use, maintain, support, operate and otherwise deal with the Intellectual Property in the Contract Documentation for the purposes of Wynyard Walk or in any way in connection with the Wynyard Walk; and
(c) in respect of any and all Source Code relating to any material forming part of the Works.

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

(a) The Contractor:

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

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

(b) For the purposes of clause 5.11(a), the Principal's use of the Contract Documentation includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or part of the Works to which the Contract Documentation or any other work provided by the Contractor under this Deed relates:

(i) with or without attribution of authorship;

(ii) in any medium; and

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

5.12 Design Working Group

(a) The Contractor and the Principal must establish a Design Working Group, comprising of at least 3 nominees from each party.

(b) The objectives of the Design Working Group will be to:

(i) facilitate discussion on all design issues relating to the Works;

(ii) informally exchange information regarding the development of design of the Works including when appropriate:

(A) the manner in which and times by which the Design Documentation is to be completed;

(B) number, names and outline of the content of documentation packages which will be submitted;

(C) types of documents to be included in each package;

(D) approximate numbers of drawings to be included in each package; and
(E) names of Authorities and other persons having jurisdiction over matters which may be relevant to each package;

(iii) set direction for future design processes and schemes;

(iv) meet regularly but in any event as required to keep the Principal informed regarding the progress of the Design; and

(v) consider the Principal's feedback on the design process.

(c) It is not intended that the Design Working Group will:

(i) avoid, replace, or supplant the operation of clause 9.14; or

(ii) generate presentation materials for subsequent consideration and formal evaluation.

(d) Without limiting any other provision of this Deed, nothing which occurs during a Design Working Group meeting or as part of the process for such meetings will:

(i) relieve the Contractor of its obligations, or constitute a waiver of any of the Principal's rights, under this Deed; or

(ii) be constructed as a direction or notice by the Principal to do or not to do anything and the parties confirm that all discussions, debates, disagreements and resolutions on any matters raised at meetings of the Design Working Group are only for the purpose of satisfying the objectives in clause 5.12(b) and will not give rise to any obligation on the part of the Contractor to comply with anything which the Principal or the Principal's advisers say or do as part of the process for such meetings.

(e) The Contractor:

(i) shall issue an agenda for each meeting of the Design Working Group and a written record of matters discussed at each such meeting; and

(ii) agrees that no such agenda or record shall be relied upon by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this Deed.

(f) The Principal is entitled to invite and have all third parties (and their consultants) attend and participate in Design Working Group meetings.
6. Variations

6.1 Proposed Variations

At any time prior to the Date of Completion of the last Portion to reach Completion (but without limiting clauses 8 and 13.3) the Principal’s Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering.

Within 10 Business Days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal’s Representative with a written notice in which the Contractor sets out:

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

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

(c) a statement that the proposed Variation:
   (i) does not conflict with or change the requirements of the Works Brief or the Contractor's Outline Design or involve changes other than those described in the notice; or
   (ii) changes the requirements of the Works Brief or the Contractor's Outline Design or involves changes other than those described in the notice, in which case the Contractor must explain all the changes and effects, including providing information on the:
       (A) scope and limits of the work changes;
       (B) design criteria and how they are to be addressed;
       (C) effect on relevant reports, drawings and studies;
       (D) assumptions;
       (E) Authority Approvals and Third Party Agreements affected; and
       (F) environmental and community impacts;
(d) sufficient details to allow the Principal to review the reasons, and, if desired, reconsider the need, for the Variation;

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

(f) where the relevant "Variation Proposal Request" was issued by the Principal's Representative in response to details of a proposed alternative Variation provided by the Contractor under clause 6.14(c)(ii)(B), details of the adjustment to the Contract Sum that the Contractor would have claimed if the Principal's Representative had instead issued a Variation Order referred to in clause 6.14(c)(ii)(A) in the relevant circumstances, with details of how the amount has been calculated; and

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

The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

6.2 Variation Orders

(a) Subject to clause 6.14(b) and clause 6.14(d), whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time prior to the Date of Completion of the last Portion to reach Completion (but without limiting clauses 8 and 13.3) direct the Contractor to carry out a Variation by issuing a Variation Order, in which the Principal's Representative will state one of the following:

(i) the proposed adjustments to the Contract Sum and the Payment Schedule set out in the Contractor's notice under clause 6.1(a) are agreed and the Contract Sum and Payment Schedule will be adjusted accordingly;

(ii) any adjustment to the Contract Sum will be determined under clause 6.4(b);

(iii) the Variation is to be carried out as daywork and any adjustment to the Contract Sum will be determined under clause 6.7; or
(iv) the Variation is a Variation referred to in clause 6.14(a) or clause 6.14(c)(ii)(A) (as applicable), and any adjustment to the Contract Sum will be determined under clause 6.4(d).

(b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Deed.

(c) The Contractor must comply with a Variation Order irrespective of:

(i) the nature, extent or value of the work the subject of the Variation;

(ii) the location or timing (including the impact on any Date for Completion) of the work involved in the Variation;

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

(iv) any Dispute related to the Variation.

(d) The Contractor's entitlement (if any) to an extension of time and delay costs arising out of a Variation directed under clause 6.2(a) will be dealt with under clause 10 and not this clause 6. The valuation of a Variation under clause 6.4 or clause 6.7 will exclude any amount for costs incurred by the Contractor as a result of any delay caused by the Variation.

6.3 Options

The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 25, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Deed on the basis that the Contract Sum, the Works Brief and the provisions of this Deed will be adjusted as set out in Schedule 25 for the relevant Option.

For the avoidance of doubt:

(a) the Principal is not under any obligation whatsoever to exercise; and

(b) the Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising, any Option.

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

The exercise of an Option by the Principal's Representative under this clause 6.3 will not:
(c) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Deed);
(d) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Deed); or
(e) entitle the Contractor to an extension of time, whether under this Deed or otherwise according to any Law.

6.4 Valuation

Subject to clauses 6.10, 8.4, 15 and 16.30, the Contract Sum and the Payment Schedule will be adjusted for all Variations that have been directed by the Principal's Representative by:
(a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order;
(b) to the extent that clause 6.2(a)(ii) or clause 6.4(d)(ii) applies:
   (i) subject to sub-paragraph (iii) and the remainder of this clause 6.4(b), an amount in respect of the Variation to be determined by the Principal's Representative on the basis of (where applicable or where it is reasonable to use them for valuing the Variation):
      (A) the prices and rates set out in Schedule 18; and
      (B) any other applicable data in this Deed,
which will be increased, to the extent that the amounts referred to in sub-paragraphs (A) and (B) are not already expressed to be inclusive of profit, by the following percentage or percentages of the total amount determined relevantly under sub-paragraphs (A) and (B):
(C) where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in Schedule 1 of the total amount determined relevantly under sub-paragraphs (A) and (B), which will be in total satisfaction of all the Contractor's profit; or
(D) where the adjustment to the Contract Sum is to be a decrease, the percentage set out in Schedule 1 of the total amount determined relevantly under sub-paragraphs (A) and (B) for profit;
   (ii) subject to sub-paragraph (iii) and the remainder of this clause 6.4(b), to the extent sub-paragraph (i) does not apply, an amount
determined by the Principal's Representative on the basis of reasonable prices and rates (which are to include amounts for any additional or reduced Overhead Costs (as applicable), but be exclusive of any amount for profit) to be agreed between the parties, or failing agreement, determined by the Principal's Representative, which will be increased by the following percentage of that amount:

(A) where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in Schedule 1, which will be in total satisfaction of all the Contractor's profit; or

(B) where the adjustment to the Contract Sum is to be a decrease, the percentage set out in Schedule 1 for profit; and

(iii) subject to the remainder of this clause 6.4(b), where the Variation is in respect of the provision of spare parts, an amount determined in accordance with Schedule 1,

provided however that where the Principal's Representative has issued a Variation Proposal Request, the Contractor's entitlement under this clause 6.4(b) will not be greater than any amount set out in the Contractor's notice under clause 6.1(a);

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

(d) to the extent that clause 6.2(a)(iv) applies, the amount determined as follows:

(i) where the relevant Variation Order directs the Contractor to raise or lower the finished floor level of the tunnel forming part of Portion 6 by a distance of 200 mm or less, an amount of $20,000 for each whole 50mm by which the Contractor is directed to raise or lower that finished floor level; and

(ii) where the relevant Variation Order directs the Contractor to raise or lower the finished floor level of the tunnel forming part of Portion 6 by a distance more than 200 mm, an amount to be agreed between the parties, or failing agreement, determined in accordance with clause 6.4(b)(ii).

6.5 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any part of the Works:
(a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work; and

(b) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any work being omitted or deleted from the Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work.

6.6 Daywork

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

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

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

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

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

(b) The Principal's Representative may direct the manner in which the matters referred to in clause 6.6(a)(ii) must be recorded.

6.7 Valuation of Daywork

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

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

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

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

(iii) determined by the Principal's Representative;

(b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the amount determined under clause 6.7(a);
(c) the reasonable amount of hire charges and associated fuel and other operating costs in respect of Construction Plant approved by the Principal's Representative for use on the work in accordance with such hiring rates and conditions as may be:

(i) agreed between the Principal's Representative and the Contractor;

or

(ii) failing agreement, determined by the Principal's Representative;

(d) the reasonable amounts paid by the Contractor for Subcontract work, including professional fees;

(e) the reasonable actual cost to the Contractor at the Site of all materials supplied and required for the daywork; and

(f) additional Overhead Costs,

to which will be added, to the extent that the rates set out in Schedule 18 are not already expressed to be inclusive of the Contractor's profit, the relevant percentage specified in Schedule 1 of the amounts determined under sub-paragraphs (a) to (e), which will be in total satisfaction of all the Contractor's profit.

6.8 Variations Requested by Contractor

The Contractor may, for its convenience, request the Principal's Representative to direct a Variation. Any such request must be in writing and must contain the following details of the Variation proposed:

(a) a full description of the proposed Variation;

(b) the additional or reduced cost or time involved in the Variation and any proposal for sharing any cost savings or increases with the Principal, including the amount;

(c) any benefits that would flow to the Principal;

(d) the expected effect upon the future cost of operating and maintaining the Works;

(e) the expected effect on the various Contractor's programs, including the Contractor Program and any Date of Completion; and

(f) a statement as required by clause 6.1(c).

6.9 Determination by Principal's Representative

If the Contractor makes a request in accordance with clause 6.8, the Principal's Representative may, in its absolute discretion, give a written notice to the Contractor:

(a) rejecting the request; or
(b) approving the request either conditionally or unconditionally.

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

6.10 Variation Approved by the Principal's Representative

If the Principal's Representative issues a written notice under clause 6.9 approving the Contractor's request under clause 6.8:

(a) unless otherwise agreed in the notice given under clause 6.9, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the Variation;

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

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

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

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

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

6.11 Contractor's Entitlements

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

6.12 No Variation or Claim

(a) Where the Contractor considers that any direction:

(i) constitutes or involves a Variation; or

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

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

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

(iv) Claim, the notice referred to in clause 17.2.
If the Contractor issues a notice under clauses 6.12(a)(iii) or 6.12(a)(iv), the Principal may:

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

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

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

(B) may issue a notice of dispute under clause 15.2;

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

(A) issue a notice of dispute under clause 15.2; and

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

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

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

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

6.13 Authority Approvals for Variations

(a) Subject to clause 6.13(b), the Contractor must apply for and obtain all:

(i) necessary amendments or modifications to any existing Authority Approval; and

(ii) new Authority Approvals that may be, required for the execution of a Variation.

(b) Where the amendment or modification to any Authority Approval required for the execution of the Variation relates to any Authority Approval specified in Schedule 15, the Contractor must:
(i) carry out and provide to the Principal all surveys, investigations, reports, studies:
   (A) requested by the Principal’s Representative;
   (B) to the standard directed by the Principal’s Representative; and
   (C) within the time directed by the Principal’s Representative; and
(ii) provide whatever other assistance and information the Principal’s Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Authority Approval.

(c) The Contractor must implement the Variation once the Authority Approvals referred to in this clause 6.13 have been amended, modified, or granted to permit the Variation to be implemented.

6.14 Variations for Location of Ausgrid Services

(a) Subject to clause 6.14(b), where any part of a Canopy Tube would, if constructed in accordance with the Contractor’s Outline Design, be more than 350mm below the underside of the lowest conduit containing Ausgrid Services in the immediate vicinity of the relevant Canopy Tube, the Principal’s Representative may issue a Variation Order directing the Contractor to carry out a Variation by raising the finished floor level of the tunnel forming part of Portion 6.

(b) The Principal’s Representative will not be entitled to issue a Variation Order referred to in clause 6.14(a) to the extent that the associated raising of the finished floor level of the tunnel forming part of Portion 6 would result in any part of a Canopy Tube being less than 300mm below the underside of the lowest conduit containing Ausgrid Services in the immediate vicinity of the relevant Canopy Tube.

(c) If:
   (i) any part of the Ausgrid Services are located at a reduced level that differs from that described in or reasonably able to be inferred from the Existing Services Plan; and
   (ii) any part of a Canopy Tube would, if constructed in accordance with the Contractor’s Outline Design, be less than 300mm below the underside of the lowest conduit containing Ausgrid Services in the immediate vicinity of the relevant Canopy Tube, the Contractor may:

request the Principal’s Representative to issue a Variation Order directing the Contractor to carry out a Variation by
lowering the finished floor level of the tunnel forming part of Portion 6 such that the relevant Canopy Tube will be at least 300mm below the underside of the lowest conduit containing Ausgrid Services in the immediate vicinity of the relevant Canopy Tube, following which the Principal's Representative must issue such a Variation Order; or

(B) provide the Principal's Representative with details of a proposed alternative Variation to that described in clause 6.14(c)(ii)(A), following which the Principal's Representative must issue a "Variation Proposal Request" under clause 6.1 in respect of that proposed alternative Variation.

(d) The Principal's Representative will not be entitled to issue a Variation Order referred to in clause 6.14(a) or clause 6.14(c)(ii)(A) that directs the Contractor to carry out a Variation by raising or lowering the finished floor level of the tunnel forming part of Portion 6 otherwise than in whole increments of 50mm.

7. Construction

7.1 Construction

(a) The Contractor must construct and handover to the Principal the Works and construct the Temporary Works:

(i) in accordance with:

(A) subject to clause 7.1(b), the Works Brief, the Contractor's Outline Design and any Design Documentation that has been prepared by the Contractor in accordance with the requirements of this Deed and, in respect of which:

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

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

(B) any direction of the Principal's Representative given or purported to be given under a provision of this Deed; and
(C) the other requirements of this Deed; and
(ii) so that:
(A) in respect of the Works, they are upon Completion:
   (1) fit for their intended purposes; and
   (2) capable of remaining at all relevant times fit for their intended purposes; and
(B) in respect of the Temporary Works, they are and will remain at all relevant times fit for their intended purposes.

The Contractor warrants that the Works or each Portion will upon Completion:
(iii) be fit for their intended purposes; and
(iv) be capable of remaining at all relevant times fit for their intended purposes.

(b) If there is any ambiguity, discrepancy or inconsistency between this Deed (including the Works Brief and the Contractor’s Outline Design) and any Design Documentation which has been prepared by the Contractor and not rejected by the Principal’s Representative under clause 9.14 then, unless otherwise directed by the Principal’s Representative, the requirements of this Deed will prevail.

(c) At monthly intervals during the construction work and at the Completion of each Portion, the Contractor must submit to the Principal’s Representative:
(i) the Contractor’s Certificate of Construction Compliance; and
(ii) Designers’ Certificates of Construction Compliance, identifying the work covered, with:
(iii) a register of management plans, method statements, and inspection and test plans;
(iv) a register of records of all compliance and other associated test records showing achievement of the acceptance criteria identified in the above inspection and test plans;
(v) a register of deficiency notices; and
(vi) a register of concessions granted for non-conforming work.

7.2 All Work Included

The Contractor:

(a) warrants it has allowed for the provision of;
(b) must undertake and provide; and

(c) will not be entitled to make, and the Principal will not be liable upon, any Claim except as otherwise provided for in this Deed, relating to the provision of,

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

7.3 Provisional Sum Work

(a) For each item of Provisional Sum Work, the Principal's Representative:

(i) may at any time:

(A) direct the Contractor to provide:

(1) a reasonable estimate of the Contractor's costs of carrying out the Provisional Sum Work, including sufficient information to support the estimate; and

(2) details of the amount by which the Contractor proposes the Contract Sum be adjusted; and

(B) agree (or negotiate an agreement) with the Contractor in respect of its proposed adjustment to the Contract Sum under clause 7.3(a)(i)(A) for the item of Provisional Sum Work, but nothing in this clause 7.3(a)(i)(B) obliges the Principal's Representative to agree on an adjustment to the Contract Sum with the Contractor prior to the Principal's Representative exercising its rights under clause 7.3(a)(ii); and

(ii) will give the Contractor a direction either:

(A) requiring the Contractor to proceed with the item of Provisional Sum Work; or

(B) deleting the item of Provisional Sum Work.

(b) Where the Principal's Representative gives the Contractor a notice requiring the Contractor to proceed with an item of Provisional Sum Work, the Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:

(i) the amount allowed for the item of Provisional Sum Work in Schedule 1; and
(ii) either:

(A) an amount agreed between the Contractor and the Principal's Representative under clause 7.3(a)(i) or otherwise; or

(B) if they fail to agree, an amount determined by the Principal's Representative:

(1) on the basis set out in clause 6.4(b); or

(2) if the Principal's Representative directs that the item of Provisional Sum Work is to be carried out as daywork, under clause 6.7,

as if the item of Provisional Sum Work were a Variation, provided that the amount determined under this clause 7.3(b)(ii)(B) will not include the percentages referred to in clauses 6.4(b)(i)(C) or 6.4(b)(ii)(A) or the last paragraph of clause 6.7 but will include the relevant percentage in Schedule 1 for the profit of the Contractor.

(c) Where the Principal's Representative gives the Contractor a direction deleting an item of Provisional Sum Work:

(i) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Schedule 1;

(ii) the Principal may thereafter either carry out the item of Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and

(iii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with the deletion of the item of Provisional Sum Work.

7.4 Co-operation with Other Contractors

Without limiting or being limited by clause 2.13 or clause 2.19, the Contractor must:

(a) permit Other Contractors to carry out their work;

(b) fully co-operate with Other Contractors;

(c) carefully coordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and

(d) carry out the Contractor's Activities so as to minimise any interfering with, disrupting or delaying the work of Other Contractors.
The Principal shall procure that each of its Other Contractors that undertakes Other Contractor Work on any part of the Site in relation to which the Principal engages the Contractor as the principal contractor pursuant to clause 2.7, executes a deed poll in favour of the Contractor, as principal contractor, and the Principal in the form set out in Schedule 35 prior to the commencement by that Other Contractor of Other Contractor Work on the relevant part of the Site. The Principal shall provide a copy of each such executed deed poll to the Contractor prior to the commencement by the relevant Other Contractor of Other Contractor Work on the relevant part of the Site.

7.5 Setting Out

The Contractor must:

(a) set out the Works in accordance with the requirements of this Deed, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the Contractor that are suitable for their purposes;

(b) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and

(c) for this purpose keep all survey marks in their true positions.

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

7.6 Survey

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

(a) for its review under clause 9.14 a Survey Plan for the Works or the relevant Portion that:

(i) has regard to the setback requirements in the Building Code of Australia;

(ii) has regard to any stratum lots whether above or below ground;

(iii) has regard to RailCorp's survey control requirements;

(iv) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;

(v) shows all internal title boundaries;
(vi) shows all easements; and
(vii) shows the location of the Works and all Services; and

(b) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the Surveying and Spatial Information Act 2002 (NSW) stating that:

(i) the whole of the Works or the Portion has been constructed within the boundaries of the Asset Lands;
(ii) the elements of the Works or the Portion are in the positions and within the tolerances required by Law;
(iii) the survey information included in the Asset Management Information provided pursuant to the TfNSW Standard Requirements complies with the requirements of this Deed; and
(iv) any other matter identified by the Principal's Representative, complies with the requirements of this Deed.

7.7 Cleaning Up

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

(a) keep the Site, Remote Sites, Extra Land and the Works clean and tidy and free of refuse;
(b) regularly remove rubbish, litter, graffiti and surplus material from the Site, Remote Sites and Extra Land; and
(c) as a condition precedent to Completion of the Works or a Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site, Remote Sites and Extra Land or the parts of the Site, Remote Sites and Extra Land relevant to the Portion.

7.8 Safety

(a) The Contractor must carry out the Contractor's Activities:

(i) safely and in a manner that does not put the health and safety of persons at risk; and
(ii) in a manner that protects property.

If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities, the Principal's Representative may direct the Contractor to change its manner of working or to cease working.

(b) The Contractor must:

(i) ensure that in carrying out the Contractor's Activities:
(A) it complies with all Law and other requirements of this Deed for work health, safety and rehabilitation management;

(B) all Subcontractors comply with the requirements referred to in this clause 7.8 and their respective obligations under the WHS Legislation; and

(C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

(ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;

(iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;

(iv) provide the Principal's Representative with the written assurances obtained pursuant to subparagraph (iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;

(v) provide the Principal's Representative with a written report at each meeting in accordance with clause 9.9, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.8), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;

(vi) cooperate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;

(vii) exercise a duty of the utmost good faith to the Principal in carrying out the Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;

(viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and

(ix) ensure its subcontracts include provisions equivalent to the obligations of this clause 7.8.
(c) Without limiting clause 16.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Works, the Environment, other property or the health or safety of people.

If the action taken by the Principal is action which the Contractor was required to take under this Deed but did not take, the amount of any penalty, fine, damage, expense, cost, loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:

(i) taking the action contemplated in this clause 7.8(c); or
(ii) the Contractor's failure to take that action,

will, except to the extent prohibited by Law, be a debt due from the Contractor to the Principal.

7.9 Construction Plant and Materials Removal

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

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

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

7.10 Track Possessions and Power Isolations

(a) The table in Schedule 14 identifies the available Track Possessions.
(b) The Principal will liaise with RailCorp to procure for the benefit of the Contractor the Track Possessions set out in Schedule 14.
(c) The Contractor acknowledges that it will not have exclusive access to any track the subject of a Track Possession and must:

(i) without limiting clauses 2.13 or 7.4, coordinate its activities with whoever else is sharing the relevant Track Possession; and
(ii) allow RailCorp and Other Contractors to pass through any track the subject of the relevant Track Possession.
(d) If the Contractor requires a Track Possession or power isolation in addition to the Track Possessions identified in subparagraph (a) for the performance of the Contractor's Activities (Additional Track Possession or Power Isolation) and requires the Principal to liaise with RailCorp in this regard, it must provide no less than:
(i) 26 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weekend; or

(ii) 20 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weeknight or which requires a power isolation only,

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

(e) Following receipt of a request for an Additional Track Possession or Power Isolation under subclause (d), the Principal may assist the Contractor to obtain the requested Additional Track Possession or Power Isolation, but is under no obligation to do so and in no way guarantees that the requested Additional Track Possession or Power Isolation will be granted by RailCorp.

(f) If an Additional Track Possession or Power Isolation is granted by RailCorp, the Contractor must:

(i) make the necessary arrangements for the Additional Track Possession or Power Isolation in accordance with clause 5.4 of the TfNSW Standard Requirements Prelude; and

(ii) pay the Principal within 20 Business Days after the relevant Additional Track Possession or Power Isolation the relevant amount (in respect of each Additional Track Possession or Power Isolation) set out in the table in Schedule 14.

(g) The Contractor must effectively and efficiently utilise each Track Possession.

(h) The Contractor acknowledges and agrees that:

(i) the Principal or RailCorp may alter or cancel any Track Possession, power isolation or Additional Track Possession or Power Isolation at any time; and

(ii) its only remedy for:

(A) any failure by the Principal to procure a Track Possession or power isolation referred to in clause 7.10(a); or

(B) cancellation of Additional Track Possession or Power Isolation once it has been obtained,

is set out in clauses 10.7 and 10.13.

7.11 Principal Supplied Items

(a) The Principal must:

(i) make available the Principal Supplied Items:
(A) at its own cost;
(B) at the respective places referred to in Schedule 34; and
(C) by the respective date referred to in Schedule 34; and

(ii) use its best endeavours to procure that the Contractor has the benefit of any warranty obtained by the Principal in respect of any Principal Supplied Item.

(b) The Contractor:
(i) agrees that, in respect of Principal Supplied Items, the:

(A) Contractor:

(1) warrants that it has reviewed the Works Brief and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Deed;

(2) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item except under clause 10 if a Principal Supplied Item is not made available by the relevant date set out in Schedule 34; and

(3) is not relieved from and remains liable for complying with, all of its obligations under this Deed, despite the Principal making available the Principal Supplied Items; and

(B) Sale of Goods Act 1923 (NSW) does not apply to the Principal's obligations under clause 7.11(b) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items; and

(ii) must:

(A) at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 34 to the Site, Remote Site or Extra Land (as applicable); and

(B) as part of the Contractor's Activities, incorporate each Principal Supplied Item into the Works.
8. Defects

8.1 Defects Liability

Subject to clause 8.2, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.

Without limiting the previous paragraph, the Contractor must rectify any Defects in the Works or any Portion existing at Completion of the Works or that Portion as soon as possible after Completion of the Works or that Portion.

When rectifying Defects which existed at Completion, the Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Works or Other Contractors as is reasonably possible.

8.2 Defect Notification

If at any time prior to the expiration of any Defects Rectification Period (including for the avoidance of doubt prior to Completion of the Works or any Portion), the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor a direction identifying the Defect and doing one or more of the following:

(a) requiring the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;

(b) requiring the Contractor to investigate and report on any Defect (or any part of it) with the Contractor's proposed methods and methodologies for rectification and specifying the form of the report and the time within which this must be carried out;

(c) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out;

(d) advising the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or

(e) in respect of any Defect:

(i) to which clause 8.3(d) applies; or

(ii) discovered during a Defect Rectification Period, whether or not a direction has first been given under clause 8.2(a) or 8.2(c), advising the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a Variation to overcome the Defect, or any part of it.
8.3 Rectification of Defect

(a) If:

(i) a direction is given under clauses 8.2(a), 8.2(b) or 8.2(c) (subject to clause 8.3(f)); and

(ii) the Contractor considers that the Defect referred to in the direction given under clauses 8.2(a), 8.2(b) or 8.2(c) is not a Defect,

then the Contractor must issue the notice referred to in clause 17.2 prior to complying with the direction.

(b) If the Contractor issues the notice referred to in clause 8.3(a), the Principal's Representative may:

(i) confirm that the direction entitles the Contractor to make a Claim (other than an Excluded Claim) by the giving of a notice under this clause 8.3(b)(i), which notice will also confirm that clause 8.3(c) applies;

(ii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(ii), which notice will also confirm that clause 8.3(c) applies, and the Contractor may issue a notice of dispute under clause 15.2;

(iii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(iii), in which case the Contractor must:

(A) issue a notice of dispute under clause 15.2; and

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

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

(2) the Principal's Representative subsequently gives notice to the Contractor that clause 8.3(c) applies; or

(iv) withdraw the direction by giving a notice under this clause 8.3(b)(iv).

(c) If the Principal's Representative gives a notice under clause 8.2(a), 8.2(b) or 8.2(c) (where clause 8.3(a)(ii) is not applicable) or clause 8.3(b)(i), 8.3(b)(ii) or 8.3(b)(iii)(B)(2), the Contractor must rectify the Defect (or the part of it notified), investigate and report or carry out the Variation work (as the case may be):

(i) within the time specified in the Principal's Representative's direction which will generally be limited to the periods during which the
operational needs from time to time of RailCorp will allow for access to the Works;

(ii) if after Completion of the Works or relevant Portion:

(A) at other times otherwise agreed with the Principal’s Representative;
(B) in accordance with the requirements of RailCorp and any other relevant Authority;
(C) so as to minimise the impact on the use of the Works or the Portion; and
(D) in a manner which causes as little inconvenience as possible to users of the Works or the Portion or the public, any Service or any access to the Works or the Portion; and

(iii) regardless of the existence of a Dispute as to whether the Principal’s Representative’s notice is valid or whether the subject matter of the notice is in fact a Defect.

(d) If the Contractor does not comply with clause 8.3(c), the Principal’s Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Deed or otherwise at Law, give the Contractor a direction under clause 8.2(e) and have the rectification or Variation work carried out at the Contractor’s expense, and the cost of the rectification or Variation work incurred by the Principal will be a debt due from the Contractor to the Principal.

(e) The Contractor acknowledges and agrees that:

(i) it is responsible for liaising with, and obtaining from, RailCorp any Track Possession that is necessary for the Contractor to:

(A) rectify Defects; or
(B) investigate and report in relation to any Defects;

(ii) due to RailCorp’s operational needs and/or other operational needs:

(A) the Contractor, in performing the activities set out in clause 8.3(e)(i), may be obliged to work in an electrified environment;
(B) access may be limited, delayed and rescheduled from time to time;
(C) the period of access may be compressed or limited to periods of line shutdown at night, on weekends or on public holidays; and
the Principal's Representative may direct the Contractor as to:

(1) the times and dates for; and

(2) the work method that must be employed in, carrying out Defect rectification works;

(iii) its obligation to rectify Defects survives the expiry of the Defects Rectification Period where it has received a direction under clause 8.2 prior to the expiration of any Defects Rectification Period; and

(iv) it will not be relieved of its liabilities or responsibilities whether under this Deed or otherwise according to Law by reason of the matters set out in this clause 8.3(e).

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

(i) the Principal's Representative has issued a notice under clause 8.3(b)(i); or

(ii) the Principal's Representative has issued a notice under clause 8.3(b)(ii), in which case any entitlement which the Contractor has is not affected by proceeding as directed under clause 8.3(c) before the determination of any Dispute.

8.4 Claim for Variation

Where a Variation to overcome a Defect has been directed under clause 8.2(c):

(a) the Principal's Representative will determine:

(i) the value of the Variation work in accordance with clause 6.4; and

(ii) the cost of rectifying the Defect (or the part notified), valued as if the work involved in the rectification of the Defect (or the part notified) were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applies;

(b) the Contract Sum will be adjusted by the difference between the valuations under sub-paragraphs (a)(i) and (a)(ii) as follows:

(i) if the value under sub-paragraph (a)(i) is greater than the cost under sub-paragraph (a)(ii), the Contract Sum will be increased by the difference; or
(ii) if the cost under sub-paragraph (a)(ii) is greater than the value under sub-paragraph (a)(i), the Contract Sum will be decreased by the difference; and

(c) the Contractor will not be entitled to an extension of time to any Date for Completion.

8.5 Acceptance of Work

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

(a) where the value to the Principal of the Works is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified), the Contract Sum will be reduced by the amount determined by the Principal’s Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Works; or

(b) where the value to the Principal of the Works increases because of the acceptance of the Defect (or the part notified):

(i) the Principal’s Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Works; and

(ii) the Contract Sum will:

(A) be reduced by the amount determined by the Principal’s Representative, where that amount is negative; and

(B) not be changed where the amount determined by the Principal’s Representative is positive.

8.6 Extension of Defects Rectification Period

(a) The Principal’s Representative may give the Contractor a notice under clauses 8.2(a) or 8.2(c) at any time prior to the expiration of any Defects Rectification Period.

(b) If the Contractor:

(i) rectifies a Defect (or the part notified) following receipt of a notice under clause 8.2(a);

(ii) completes the Variation work following receipt of a notice under clause 8.2(c); or

(iii) rectifies a Defect or completes a Variation to overcome a Defect in the absence of any notice from the Principal’s Representative under clause 8.2,
then the relevant Defects Rectification Period for the work required will be extended until the later of:

(iv) the date of expiry of the original Defects Rectification Period; and

(v) the date set out in Schedule 1.

8.7 Defect Rectification by Other Contractor

Where the Principal’s Representative advises the Contractor (under clause 8.2(e)) that an Other Contractor has or will be rectifying a Defect or any part of it, or has or will carry out a Variation to overcome the Defect or any part of it:

(a) without limiting or otherwise affecting clauses 2.13, 2.15 or 7.4, the Contractor must not impede the Other Contractor from having sufficient access to the Site, Remote Sites or Extra Land to rectify the Defect or carry out the Variation;

(b) any costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with, the Other Contractor rectifying the Defect or carrying out the Variation, will be a debt due from the Contractor to the Principal; and

(c) the Contractor acknowledges and agrees that:

(i) no act or omission by such Other Contractor in rectifying a Defect or carrying out the Variation will, whether or not it causes any delay or disruption to the Contractor’s Activities, constitute an Act of Prevention;

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

(A) the Other Contractor rectifying the Defect or carrying out a Variation to overcome the Defect; or

(B) any other act or omission of the Other Contractor; and

(iii) rectification of a Defect by an Other Contractor does not relieve the Contractor or otherwise affect any of its obligations under this Deed.

8.8 Rights Not Affected

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

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

9. Administration

9.1 Principal's Representative

The Principal must ensure that at all times until Final Completion there is a Principal's Representative. The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Deed as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

A discretion (including an absolute or sole discretion), or power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Deed if exercised or made (or if it is not exercised or made) by the Principal's Representative:
(a) independently;
(b) after consultation with the Principal and its advisers; or
(c) as directed by the Principal.

Any control or influence exercised by the Principal over the Principal's Representative does not:
(d) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
(e) entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.

The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Deed.

Except where this Deed otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.

9.2 Replacement of the Principal's Representative

The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the Contractor of that appointment.
Any substitute Principal's Representative appointed under this clause 9.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

9.3 Delegation of Functions

(a) The Principal's Representative may:

(i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this Deed;

(ii) not appoint more than one person to exercise the same function in the same location under this Deed; and

(iii) revoke any appointment under clause 9.3(a)(i) by notice in writing to the Contractor.

(b) The Principal's Representative may continue to exercise a function under this Deed despite appointing another person to exercise the function under clause 9.3(a)(i).

(c) All references in this Deed to the Principal's Representative include a reference to an appointee appointed under clause 9.3(a)(i).

9.4 Environmental Representative

The Contractor acknowledges and agrees that:

(a) the Principal has appointed the Environmental Representative as required by an Authority Approval;

(b) the Environmental Representative:

(i) is independent of the parties;

(ii) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;

(iii) shall advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and

(iv) shall have the authority and independence to:

(A) direct the Contractor as to; or

(B) advise the Principal's Representative to direct the Contractor as to,
reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts;
9.5 Contractor's Personnel

(a) The Contractor must:

(i) notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Deed is the relevant person listed in Schedule 1) and of any subsequent changes;

(ii) ensure that the Contractor's Representative is appointed and available on a full-time basis and provides due and proper supervision of the performance of the Contractor's Activities at all places (whether on the Site or otherwise) at which the Contractor's Activities are taking place;

(iii) provide personnel suitably qualified, knowledgeable, experienced and skilled in their roles in performing its obligations under this Deed; and

(iv) ensure that its personnel (including those referred to in clause 9.5(b)) as a team carry out the Contractor's Activities in a manner that is professional and co-operative, and recognises the interests and needs of the public and other stakeholders in the delivery of the Works.

(b) The Contractor must:

(i) either:

(A) employ the individuals nominated by the Contractor and listed in Schedule 1 in the positions specified in Schedule 1 or equivalent positions; or

(B) where no individuals are specified in Schedule 1 for a position specified in Schedule 1, submit to the Principal's Representative the names of the persons which the Contractor proposes to employ for the roles specified in Schedule 1 for the Principal's Representative's approval, such approval not to be withheld unreasonably. The
Contractor must ensure that the persons nominated are suitably qualified and experienced for the relevant position;

(ii) only replace the individuals referred to in clause 9.5(b)(i):

(A) if the individual:

(1) dies;

(2) becomes unable to continue in the positions due to illness;

(3) resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the Corporations Act 2001 (Cth)); or

(4) becomes the subject of a direction under clause 9.5(c);

(B) with personnel who are of at least equivalent experience, ability, knowledge and expertise; and

(C) with the Principal's Representative's prior written approval, which will not be unreasonably withheld; and

(iii) without limiting clauses 9.5(b)(i) and 9.5(b)(ii), ensure that the:

(A) positions specified in Schedule 1 as full-time, dedicated positions are full-time, dedicated positions; and

(B) individuals who occupy the positions specified in Schedule 1 apply themselves fully to the position to the exclusion of all other work,

until Completion of the last Portion to achieve Completion or such earlier time as may be approved by the Principal's Representative.

(c) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.5(a) or clause 9.5(b)) from the Site and the Contractor's Activities. The Contractor must then cease to engage that person in the Contractor's Activities and must appoint a replacement.

(d) The Contractor must ensure that any person the subject of a direction under clause 9.5(c) is not again employed in the Contractor's Activities or on the Site.
(e) Any direction under clause 9.1 will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.

9.6 Site Meetings

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

(i) prior to the Date of Completion of the Works or the last Portion to reach Completion (including during the design of the Works):

(A) weekly or such longer intervals; and

(B) at such other times,

as may be directed in writing by the Principal's Representative; and

(ii) at monthly intervals after the Date of Completion of the Works or the last Portion to reach Completion until all Defects Rectification Periods (including any extension under clause 8.6), have expired or at such other intervals as may otherwise be agreed.

(b) The Contractor must ensure that the Site meetings are attended by:

(i) the Contractor's Representative (or his or her delegate); and

(ii) any other person (including any Subcontractor) required by the Principal's Representative.

The Principal's Representative (or its delegate) will attend all Site meetings. The Principal's Representative must appoint the chairperson for the Site meetings.

(c) The chairperson of the Site meetings must prepare and give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting. The minutes of the meeting shall not be relied on by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this Deed.

(d) The purpose of the Site meetings will include:

(i) the receipt of reports on, and the review and consideration of, the matters set out in clause 9.8;

(ii) the receipt of reports on, and the review of the status and implementation of, the Contract Management Plan, Design...
Documentation and other plans and documents prepared by the Contractor under this Deed;

(iii) the consideration of corrective actions to prevent and rectify defective work;

(iv) the consideration of any other matter that the Principal's Representative requires; and

(v) review of the design of the Works and review of the Design Documentation.

9.7 Contract Control Group

The Contract Control Group will comprise:

(a) the Principal's Representative;

(b) the Contractor's Representative, a senior representative of the Contractor not involved in the day to day Contractor's Activities, and any of the Contractor's key personnel nominated by the Principal's Representative;

(c) representatives of any of the Contractor's Subcontractors that the Principal's Representative reasonably requires; and

(d) any other person the Principal's Representative reasonably requires from time to time.

9.8 Contract Control Group Functions

Contract Control Group functions will include the oversight and review of, and response to, reports on:

(a) the progress of the Contractor's Activities relative to the Contractor Program and Contractor's other programs, and the performance of the Contractor under this Deed;

(b) issues arising out of community liaison and community concerns;

(c) the Contractor's compliance or non-compliance with the Contract Management Plan and this Deed, and related and consequential issues;

(d) matters arising from the completion by the Contractor of the design of the Works and the Temporary Works and the Design Documentation, including any proposed design changes;

(e) value engineering opportunities and potential cost savings consistent with the maintaining of quality and minimising life cycle costs;

(f) environmental management issues;

(g) safety and safety management issues;
(h) disputes that have arisen, or are likely to arise, between the Principal and the Contractor or the Principal's Representative and the Contractor; and
(i) other matters as determined or directed by the Principal's Representative.

9.9 Contract Control Group Meetings

(a) The persons nominated in clauses 9.7(b), 9.7(c) and 9.7(d) must attend all Contract Control Group meetings.

(b) Contract Control Group meetings will be held on a:

(i) monthly basis prior to the Date of Completion of the Works or the last Portion to reach Completion; and

(ii) quarterly basis thereafter until Final Completion, or at such other intervals as the Principal and the Contractor agree in writing.

(c) The Principal's Representative (or his or her nominee) will attend and chair the Contract Control Group meetings.

9.10 Contractor's Reporting Obligations

The Contractor:

(a) must with each claim for payment under clause 11.2 or, where no claim for payment is made, at least 4 Business Days prior to the next monthly or quarterly (as the case may be) meeting of the Contract Control Group, give the Principal's Representative (in accordance with clause 9.10(b)) a written report containing the detailed information specified in the TfNSW Standard Requirements Prelude;

(b) must provide for the purposes of clause 9.10(a) (unless otherwise directed by the Principal's Representative), the number and form of copies of the written report specified in Schedule 1;

(c) acknowledges that it is not entitled to make, and the Principal will not be liable upon, any Claim in the written report referred to in clause 9.10(a);

(d) must provide and maintain a daily record of the status of the work and the conditions on the Site and other sites involved in the Contractor's Activities, including the resources employed on the Site and at other sites and the issues affecting the progress of the Contractor's Activities, and provide a copy of that record to the Principal's Representative for each week's Contractor's Activities;

(e) must provide a current projected cash flow, each three months or as required by the Principal's Representative, including a planned versus...
actual cash flow comparison (including the estimated versus actual value of work completed for each calendar month); and

(f) must promptly give the Principal's Representative, when requested to do so, any information that the Principal's Representative reasonably requires (including design calculations and other design details) in respect of the matters referred to in clause 9.10(a).

9.11 Complaints and Notification

(a) The Contractor must immediately notify the Principal in writing if any:

(i) complaint is made or any proceedings are instituted or threatened;

(ii) letter of demand is issued; or

(iii) order or direction is made,

by anyone (including any Authority or any landowner, lessee or licensee on or near the Site, Remote Sites or Extra Land) against the Contractor or any of its Subcontractors or their respective employees in respect of any aspect of the carrying out of the Contractor's Activities, including:

(iv) Contamination arising out of, or in any way in connection with, the Contractor's Activities;

(v) the Contractor's non-compliance with any Authority Approval (or any condition or requirement thereunder), any Third Party Agreement, the Contract Management Plan or any Law regarding the Environment;

(vi) the implementation of the Contract Management Plan, including the Contractor's community liaison plan;

(vii) the Contractor's use or occupation of the Site, Remote Sites or Extra Land; or

(viii) loss or damage of the kind referred to in clause 13.10.

(b) The Contractor must (at its own cost) respond to complaints and enquiries received regarding the Contractor's Activities and that of its Subcontractors in accordance with the TfNSW Standard Requirements.

9.12 Industrial Relations

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

(a) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;

(b) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
(c) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Contractor's Activities, are always observed in full;

(d) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities and Other Contractors' activities;

(e) without limiting clause 2.3(b), comply with all the requirements of the NSW Government Code of Practice for Procurement (January 2005), and the NSW Government Industrial Relations Management Guidelines (December 1999);

(f) conduct its industrial relations affairs in accordance with the Industrial Relations Management Plan developed and submitted by the Contractor as part of the Contract Management Plan, in accordance with the TfNSW Standard Requirements and clause 9.14;

(g) not commence any work on the Site, Remote Sites or Extra Land until the Industrial Relations Management Plan has been submitted to the Principal's Representative and:

(i) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

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

(h) submit to the Principal's Representative, before beginning work on the Site, Remote Sites or Extra Land, a statement detailing:

(i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;

(ii) the names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and

(iii) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;

before beginning work on the Site, Remote Sites or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:

(i) payment of remuneration to employees;
(ii) annual leave provisions;
(iii) obligations to register workers under the Building and Construction Industry Long Service Payments Act 1986 (NSW);
(iv) workers' compensation insurance, including self-insurance arrangements;
(v) superannuation fund membership and contributions; and
(vi) over-award payments such as redundancy fund contributions; and

continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.

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

The industrial relations requirements contained in this Deed and the NSW Government Industrial Relations Management Guidelines (December 1999):

(l) are in addition to, but are not in substitution for, any requirements of Law; and

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

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

9.13 Document Management and Transmission

The Contractor must manage and transmit documents, including using an electronic medium where required by the Principal's Representative, in
accordance with the processes, procedures and systems in the Contract Management Plan.

(b) Documents supplied to the Contractor will remain the property of the Principal and must be returned by the Contractor to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Contractor’s Activities.

(c) The Contractor must keep all the Contractor’s records relating to the Contractor’s Activities in a secure and fire proof storage.

(d) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 9.13.

(e) The Contractor must ensure that any Contract Documentation that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:

(i) permit access to or use of a computer system by a third person not authorised by the Principal; or

(ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

9.14 Submission for Review by the Principal

(a) The Contractor must submit the Contract Management Plan, the Design Documentation, the Contractor Program and any other document (each of which in this clause 9.14, will be referred to as a Document) which is required to be submitted for the review of the Principal or the Principal’s Representative under a provision of this Deed:

(i) progressively and in timely manner to ensure that the Contractor’s Activities are commenced, progressed and completed by the times required under this Deed, and by the times or within the periods:

(A) identified in the Contractor Program which is not rejected by the Principal’s Representative; or

(B) in the absence of a time or period in the Contractor Program, required by the Principal’s Representative; and

(ii) under cover of a written notice entitled “Submit for Review”, which identifies:

(A) the Document; and
(B) the provision of this Deed under which the Document is submitted.

(b) Where the Document being submitted under clause 9.14(a) is Design Documentation, it must:
   (i) be accompanied by the Contractor's Certificate of Design Compliance and the Designers' Certificates of Design Compliance; and
   (ii) where the design the subject of the Design Documentation must have Authority Approval prior to being implemented, then the Contractor must with the Document submit evidence (to the reasonable satisfaction of the Principal's Representative) of the relevant Authority Approval.

(c) A Document will be deemed not to have been submitted to the Principal's Representative unless and until:
   (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
   (ii) the Contractor has otherwise complied with this clause 9.14, in addition to any other requirement of this Deed relating to the submission of that Document.

(d) The Principal's Representative may:
   (i) direct that any Document the Contractor:
      (A) previously submitted is a Document that is to be reviewed under the provisions of this clause 9.14; and
      (B) is obliged to submit will be reviewed under the provisions of this clause 9.14;
   (ii) after the submission of a Document that satisfies the requirements of clause 9.14(c) and 9.14(b) (where applicable), review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and
   (iii) where a Document is submitted or resubmitted in accordance with a program that has not been rejected by the Principal's Representative:
      (A) reject the Document (and state its reasons) if in its opinion the Document (or any part) does not comply with the requirements of this Deed;
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(B) make comments on the Document, or request clarification or additional information; or

(C) notify the Contractor that it has no (or has no further) comments to make,

within relevantly, the later of:

(D) where a time or period is stated in the TfNSW Standard Requirements for a specific Document, that time or the expiry of that period; and

(E) 15 Business Days from submission for all other Documents.

(e) If any Document is:

(i) rejected or deemed to be rejected, the Contractor must submit an amended Document to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this clause 9.14 will re-apply; or

(ii) not rejected and the Principal's Representative responds to the submission with comments, or requests clarification or additional information, the Contractor must respond to the comments or request within 10 Business Days or such other period as may be directed by the Principal's Representative.

If the Contractor:

(iii) responds to the Principal's Representative's comments or request within the period referred to in sub-paragraph (ii) in a manner satisfactory to the Principal's Representative, the Principal's Representative will notify the Contractor that it has no (or no further) comments to make within 5 Business Days of that response; or

(iv) fails to respond to the Principal's Representative's comments or request within the period referred to in sub-paragraph (ii) in a manner satisfactory to the Principal's Representative, or the Principal's Representative does not give a notice under clause 9.14(e)(iii):

(A) the Document will be deemed to be rejected;

(B) the Principal's Representative shall, by notice in writing, confirm that the Document has been rejected; and

(C) clause 9.14(e)(i) will re-apply.

(f) Subject to clause 9.14(g), the Contractor must not commence construction of any part of the Works to which any Document (other than the Contractor Program) submitted to the Principal's Representative applies, unless:
(i) the Principal's Representative has notified the Contractor under clause 9.14(d)(iii)(C) that it has no (or has no further) comments to make; or

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

(g) The Contractor must, for each design package:

(i) sequentially submit documents capable of permitting the following reviews in the following order:
   (A) System Definition Review;
   (B) Preliminary Design Review;
   (C) Critical Design Review; and
   (D) Approved for Construction Review;

(ii) with the exception of the first submission of any design package, not submit any documents for review under clauses 9.14(g)(i)(B) to 9.14(g)(i)(D) until:
   (A) the Contractor has received the notice referred to in clause 9.14(d)(iii)(C) in respect of the documents submitted for the immediately preceding review; or
   (B) the relevant period of time in clause 9.14(d)(iii) has expired in respect of the documents submitted for the immediately preceding review and the Principal's Representative has not rejected the documents or made any comments on them (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e)); and

(iii) may not commence any construction of any part or element of the Works unless the AFC Design Documentation exists for that part or element of the Works.

(h) The Contractor must not amend for construction purposes any Document that has been submitted to the Principal's Representative and, in respect of which:
(i) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

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

unless the Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 9.14 will re-apply.

The Principal's Representative and the Principal do not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, a Document submitted by the Contractor, including for errors, omissions or non-compliance with this Deed. References in this Deed to "Approved for Construction" or "AFC" or their use by the Principal or the Principal's Representative or the processes referred to in this Deed involving those concepts occurring during development of the Design Documentation do not relieve the Contractor from its liability under this Deed in connection with the Design Documentation.

The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this Deed in any Document submitted.

No review of, approval of, comment upon or rejection of, or failure to review, approve, or comment upon or reject, a Document prepared by the Contractor, or any other direction (including any direction given under clause 9.14(l)(iii)) by the Principal's Representative in connection with the Document, will:

(i) constitute a direction to carry out a Variation pursuant to clause 6.2, unless it is in a Variation Order and describes the nature of the Variation in accordance with clause 6.2(a);

(ii) relieve the Contractor from or alter its liabilities or obligations, whether under this Deed or otherwise according to any Law; or

(iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to any Law.
(I) In considering, reviewing, commenting upon, or rejecting any Document, the Principal’s Representative may:

(i) consult with;
(ii) take into account any views or requirements of; and
(iii) direct the Contractor to comply with the lawful requirements of, any relevant Authority.

(m) The Contractor acknowledges and agrees that:

(i) it has made allowances in the Contractor Program for the time required for:
   (A) all relevant Authorities to review its design;
   (B) the submission, review, comment, rejection and all other design development processes contemplated by the Third Party Agreements; and
   (C) the issue of Configuration Change Notices during development of the design; and
(ii) other than as set out in clause 5.4(i), the Principal will not be liable upon any Claim by the Contractor arising out of or in any way connected with any delay in the design development process as contemplated by this clause 9.14(m).

(n) The restrictions on the commencement of any part of the Works in this clause 9.14 are in addition to any restrictions that exist elsewhere in this Deed, including under any Third Party Agreement.

(o) For the purposes of calculating time under this clause 9.14 the days between 24 December and 7 January shall not be counted.

(p) Unless otherwise directed by the Principal’s Representative, the Contractor must provide the number and form of copies specified in Schedule 1 of each Document which is submitted for review under this clause 9.14.

9.15 Work Method

Whether or not this Deed prescribes a particular work method or a work method is otherwise a part of this Deed or reviewed or approved (expressly or impliedly) by the Principal’s Representative, the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or without the approval of the Principal’s Representative, uses another work method will:
(a) not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
(b) not cause this Deed to be frustrated.

9.16 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor’s performance under this Deed.

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

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

10. Time and Progress

10.1 Rate of Progress

The Contractor must:
(a) regularly and diligently progress the Contractor’s Activities;
(b) proceed with the Contractor’s Activities with due expedition and without delay; and
(c) achieve Completion of the Works and each Portion by the relevant Date for Completion.

Without limiting clause 10.14(b) or the Contractor’s rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of the Contractor’s Activities except where permitted or required under this Deed.

Without limiting the next paragraphs of this clause 10.1 or clause 10.3, the Contractor must give the Principal’s Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor’s Activities in accordance with this Deed.
The Principal and the Principal’s Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal’s Representative, as the case may be, should reasonably have anticipated at the date of this Deed.

The Principal’s Representative may, by written notice expressly stated to be pursuant to this clause 10.1, direct in what order and at what time the various stages or parts of the Contractor’s Activities must be performed. If the Contractor can reasonably comply with the direction, the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must notify the Principal’s Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal’s Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1.

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

10.2 The Contractor’s Programming Obligations

The Contractor:

(a) acknowledges and agrees that:

(i) subject to clause 10.2(b), the First Hundred Day Program will form part of the Contractor Program;

(ii) it has made and will make adequate allowances in the Contractor Program for:

(A) the delays referred to in clause 10.6;

(B) all Hold Points and Witness Points;

(C) those parts of the Contractor’s Activities that may only be performed during a Track Possession; and

(D) the high degree of interface, interaction, and integration of the Contractor’s Activities with work being (or to be) performed by RailCorp during Commissioning and Operational Readiness; and
(iii) provision of the First Hundred Day Program does not affect the Contractor's other programming obligations under this clause 10.2;

(b) must prepare and provide a Contractor Program that complies with and includes the details required by this Deed, including the TfNSW Standard Requirements, and any requirements of the Principal's Representative;

(c) must submit the Contractor Program to the Principal's Representative for its review in accordance with clause 9.14 within the earlier of:

(i) 45 Business Days of the Commencement Date; or

(ii) any time required by the TfNSW Standard Requirements;

(d) must when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within 5 Business Days of receipt of such a direction;

(e) must update, revise and submit to the Principal's Representative an updated Contractor Program and First Hundred Day Program to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Completion, the actual progress made by the Contractor, Variations and any other changes to the Contractor's Activities but excluding claims for extensions of time to any Date for Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative:

(i) on a monthly basis (which is limited, in the case of the First Hundred Day Program to the periods covered by that program); or

(ii) whenever directed to do so by the Principal's Representative;

(f) must prepare and provide for the Principal's Representative's information only versions of all Contractor Programs prepared in accordance with clause 10.2(e) that also allow for those claims for an extension of time to any Date for Completion that have been made by the Contractor in accordance with clause 10.8 but to which the Principal's Representative has not yet responded in accordance with clause 10.10;

(g) must comply with the requirements of the Principal's Representative and its other obligations under this Deed in preparing and using programs, including the requirements in clause 9.14; and

(h) must not unreasonably depart from the current version of the First Hundred Day Program and the Contractor Program that have been submitted to the Principal's Representative for review under clause 9.14 and, in respect of which:
(i) the Principal’s Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or

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

Unless otherwise directed by the Principal’s Representative, for all programs and schedules provided in accordance with this clause, the Contractor must provide:

(iii) 1 colour printed A3 sized original;

(iv) 3 colour printed A3 copies; and

(v) an electronic version on CD in both pdf and unlocked native format (with all logic links intact and nothing hidden or protected) accompanied by all associated files so that they can be reproduced by the Principal’s Representative using Primavera P6.

10.3 Contractor Not Relieved

Without limiting clause 9.14, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Contractor Program) prepared by the Contractor, by the Principal’s Representative in connection with the program, will:

(a) relieve the Contractor from or alter its liabilities or obligations under this Deed, including the obligations under clause 10.1;

(b) evidence or constitute the notification of a delay or claiming of or the granting of an extension of time to any Date for Completion, or a direction by the Principal’s Representative to compress, disrupt, prolong or vary any, or all, of the Contractor’s Activities; or

(c) affect the time for the performance of the Principal’s or the Principal’s Representative’s obligations under this Deed.

10.4 Compression by Contractor

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

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

10.5 Importance of Completion on Time

The Contractor acknowledges:
(a) the importance of complying with its obligations under clause 10.1; and
(b) that a Date for Completion will only be extended in accordance with clause 10.10 or clause 10.12, or when so determined under clause 15.

10.6 Risk and Notice of Delay

(a) Except as expressly provided for in clause 10.10, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities and performance of its obligations under this Deed both before and after any Date for Completion.

(b) The Contractor must within 5 days of the commencement of an occurrence causing any delay, or which is likely to cause delay, give the Principal's Representative written notice of any delay or likely delay to the carrying out of the Contractor's Activities, details of the cause and how any Date of Completion is likely to be affected (if at all).

10.7 Entitlement to Claim Extension of Time

(a) If the Contractor is or will be delayed on or prior to the Date for Completion of the Works or a Portion by reason of:
   (i) an Act of Prevention;
   (ii) a cause so described in Schedule 1; or
   (iii) a direction to suspend that satisfies clause 10.14(a)(ii),
in a manner that will prevent it from achieving Completion of the Works or the Portion by the relevant Date for Completion, the Contractor may claim an extension of time to the relevant Date for Completion.

(b) If the Contractor is, or will be, delayed after the Date for Completion of the Works or a Portion by reason of an Act of Prevention in a manner which will delay it in achieving Completion of the Works or a Portion, the Contractor may claim an extension of time to the relevant Date for Completion.
10.8 Claim for Extension of Time

To claim an extension of time the Contractor must:

(a) within 14 days of the commencement of the occurrence causing the delay or such other period as may be approved by the Principal's Representative in writing, submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Completion, which:

(i) gives detailed particulars of the:
   (A) delay and the occurrence causing the delay; and
   (B) activities that are critical to the maintenance of progress in the execution of the Contractor's Activities; and
(ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:
   (A) conditions precedent to an extension of time in clause 10.9 have been met; and
   (B) occurrence will delay it in achieving Completion in the manner described in clause 10.7; and

(b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:

(i) every 28 days after the first written claim, or such other period as may be approved by the Principal's Representative in writing, until after the end of the effects of the delay; and
(ii) containing the information required by paragraph (a).

The Principal's Representative may, within 14 days of receiving the Contractor's claim or further claim for an extension of time for Completion, by written notice to the Contractor, request additional information in relation to the claim or further claim. The Contractor must, within 14 days of receiving such request, provide the Principal's Representative with the information requested.

10.9 Conditions Precedent to Extension of Time

Subject to clauses 10.16 and 10.17, it is a condition precedent to the Contractor's entitlement to an extension of time to any relevant Date for Completion that:

(a) the Contractor gives the notices and claims required by clauses 10.6(b) and 10.8 as required by those clauses;
the Contractor complies with any request for additional information under clause 10.8 within the time required;

(c) the cause of the delay is beyond the reasonable control of the Contractor;

(d) the Contractor is actually, or will be, delayed:
   (i) on or prior to the Date for Completion of the Works or the Portion,
       by reason of one or more of the causes set out in clause 10.7(a) in
       the manner described in clause 10.7(a); or
   (ii) after the Date for Completion of the Works or the Portion, by reason
       of an Act of Prevention in the manner described in clause 10.7(b); and

(e) the Contractor is not given a direction to compress under clause 10.15.

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

(f) the Principal will not be liable upon any Claim by the Contractor; and

(g) the Contractor will be absolutely barred from making any Claim against the
    Principal,

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

10.10 Extension of Time

(a) Subject to clauses 10.10(c), 10.16 and 10.17, if the conditions precedent in
    clause 10.9 have been satisfied, the relevant Date for Completion will be
    extended by a reasonable period determined by the Principal's
    Representative, and notified to the Principal and the Contractor within
    28 days after:
    (i) the latest of the:
        (A) Contractor's written claim under clause 10.8; and
        (B) provision by the Contractor of any additional information
            regarding the claim required under clause 10.8; or
    (ii) where the Principal's Representative has given the Contractor a
         direction to compress under clause 10.15 and subsequently issued
         a notice under clause 10.16 withdrawing the direction to compress
         given under clause 10.15, the date of issue of the notice under
         clause 10.16.

(b) A failure of the Principal's Representative to grant a reasonable extension
    of time to any Date for Completion, or to grant an extension of time to any
    Date for Completion within the relevant 28 day period, will not cause an
affected Date for Completion to be set at large, but nothing in this paragraph will prejudice any right of the Contractor to damages.

(c) The Principal’s Representative will reduce any extension of time to the relevant Date for Completion it would otherwise have determined under this clause 10.10 to the extent that the Contractor:

(i) contributed to the delay; or

(ii) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.11 Reduction in Time

If the Principal’s Representative directs a Variation that omits or deletes any part of the Works:

(a) the Contractor:

(i) may (no later than 10 Business Days after the direction) provide whatever information it considers may assist the Principal’s Representative to determine; and

(ii) must provide whatever programming or other information the Principal’s Representative directs (and within the time directed) so that the Principal’s Representative can determine,

what (if any) adjustment should be made to the Date for Completion of the Works or a Portion; and

(b) the relevant Dates for Completion of the Works or a Portion or Portions may be reduced by a reasonable period determined by the Principal’s Representative having regard to the impact of the Variation and notified to the Principal and the Contractor within 20 Business Days of the date of the Variation.

10.12 Unilateral Extensions

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

The Principal’s Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the Contractor.
10.13 Delay Damages

(a) For each day by which the Date for Completion of the Works or a Portion is extended due to:

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

(ii) the cancellation of a Track Possession or power isolation listed in Schedule 14:

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

(B) with more than 12 weeks' notice, but without the provision of an alternative Track Possession or power isolation at a time the Contractor is reasonably able to utilise in substitution;

(iii) a Variation that satisfies the requirements of paragraph (c) of the definition of Act of Prevention; or

(iv) any:

(A) Authority order or direction referred to in clause 2.4(a)(v);

(B) order by a court or tribunal referred to in clause 2.4(a)(vi); or

(C) direction by the Principal or Principal's Representative referred to in clause 2.4(a)(vii),

given to the Contractor to cease performing its obligations under this Deed, except to the extent that such Authority order or direction, court or tribunal order, or direction arises out of the Contractor's non-compliance with its obligations under this Deed,

the Contractor will be entitled to be paid the costs reasonably incurred by the Contractor as a direct result of the delay the subject of the extension of time, as determined by the Principal's Representative who must, where they are applicable, use the rates and prices in Schedule 1.

(b) The amounts payable pursuant to this clause 10.13 will be a limitation upon the Principal's liability to the Contractor for any delay or disruption that:

(i) the Contractor encounters in carrying out the Contractor's Activities;

or

(ii) arises out of, or in any way in connection with, the breach of this Deed by the Principal,

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

(a) The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Contractor's Activities. Nothing in this clause 10.14 limits the Principal’s rights under clause 2.16.

If the suspension under this clause 10.14(a) arises in the circumstances set out in clause 2.16(f), then clauses 2.16(f) and 2.16(g) will apply, otherwise where it arises as a result of:

(i) the Contractor's failure to carry out its obligations in accordance with this Deed (including where any process, procedure, test method, calculation, analysis or report required by this Deed has resulted in or will result in a non-conformance), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or

(ii) a cause other than the Contractor's failure to perform its obligations in accordance with this Deed:

(A) a direction to suspend under this clause 10.14(a) will entitle the Contractor to:
   (1) be paid by the Principal the extra costs reasonably incurred by it as a direct result of the suspension as determined by the Principal's Representative; and
   (2) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.10;

(B) the Contractor must take all reasonably practicable steps possible to mitigate the extra costs incurred by it and any delay in achieving Completion of the Works or any Portion as a result of the suspension; and

(C) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.14(a)(ii).

(b) The Contractor may suspend the carrying out of all or a part of the Contractor’s Activities to avoid an Incident.

(c) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with a suspension by the Contractor under clause 10.14(b).
10.15 Direction to Compress

If the Contractor makes a claim under clause 10.8, the Principal’s Representative may direct the Contractor to compress the Contractor’s Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve Completion of the Works or a Portion by the relevant Date for Completion.

Prior to commencing any such compression the Contractor must give the Principal’s Representative an estimate of the costs of taking all such necessary measures.

The Principal’s Representative may give such a direction whether or not the cause of delay for which the Contractor has made its claim under clause 10.8 entitles the Contractor to an extension of time to any relevant Date for Completion.

10.16 Withdrawal of Compression Direction

The Principal’s Representative may at any time by notice in writing withdraw any direction given by it under clause 10.15, after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the Contractor made a claim under clause 10.8. Any such extension will be determined having regard to the effect which the compression of the Contractor’s Activities taken by the Contractor prior to the withdrawal of the direction has had on mitigating the delay which is the subject of the claim for an extension of time made by the Contractor under clause 10.8.

10.17 Partial Compression

If the Principal’s Representative gives the Contractor a direction to compress under clause 10.15 and it only applies to part of a delay, the Contractor’s entitlement to any extension of time to any relevant Date for Completion, which it otherwise would have had, will only be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome the delay.

10.18 Compression

If the Principal’s Representative gives a direction to the Contractor under clause 10.15:

(a) whether or not the Contractor provides a cost estimate under clause 10.15, the Contractor must comply with the direction;

(b) if the Contractor would, but for the direction, have been entitled to an extension of time to the relevant Date for Completion for the cause of delay in respect of which the Contractor made a claim under clause 10.8, the
Contractor will, to the extent it would have been entitled to an extension of time, be entitled to be paid the lesser of:

(i) the sum of:

(A) the extra costs reasonably incurred by the Contractor (which, if the Principal's Representative gives a notice to withdraw the direction under clause 10.16 will be those extra costs incurred prior to the giving of such notice) and directly attributable to compressing the Contractor's Activities, as determined by the Principal's Representative; and

(B) that percentage of the amount under sub-paragraph (A) stipulated in Schedule 1; and

(ii) the cost estimate (if any) provided by the Contractor pursuant to clause 10.15; and

(c) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the cause of delay and the direction, other than for the amount it is entitled to under this clause 10.18.

10.19 Principal's Right to Liquidated Damages not Affected

The Principal's rights to liquidated damages under clause 12.7 for a failure by the Contractor to achieve Completion of the Works or a Portion by any relevant Date for Completion will not be affected by the Principal's Representative giving the Contractor a direction to compress under clause 10.15.

10.20 Contractor's Entitlements

This clause 10 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any delay, disruption or Act of Prevention and the Contractor waives all rights at Law to claim any relief from its obligations under this Deed otherwise than in accordance with this clause 10.

11. Payment

11.1 Contractor's Payment Entitlements

(a) Subject to clause 16.12 and to any other right to set-off that the Principal may have, the Principal must pay the Contractor the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed, in accordance with the procedure in this clause 11.

(b) The Contract Sum is not subject to rise and fall.
11.2 Payment Claims

Subject to clause 11.7, the Contractor must give the Principal's Representative a claim for payment on account of the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed:

(a) prior to the time for the submission of the Completion Payment Claim, upon the 6th Business Day of each month;

(b) for the Completion Payment Claim, within the time required by clause 11.10; and

(c) for the Final Payment Claim, within the time required by clause 11.12.

Each claim for payment must:

(d) generally follow the form of the Payment Schedule and be as the Principal's Representative reasonably requires;

(e) include all the evidence reasonably required by the Principal's Representative of the amount of work completed in accordance with this Deed and the amount payable;

(f) [not used];

(g) [not used];

(h) for each monthly claim pursuant to clause 11.2(a) (a *Progress Claim*), set out the amount claimed for work completed to the end of the previous month and details of how the amount has been calculated, using the following methodology:

(i) for each part of the Contractor's Activities described in the Payment Schedule which has been completed (subject to any minor Defects) the sum of the amounts in the Payment Schedule (adjusted to allow for any additions and deductions to the Contract Sum) for all such completed parts of the Contractor's Activities;

(ii) to which is added, for each part of the Contractor's Activities described in the Payment Schedule which has not been completed (with the exception of activities associated with items in the Payment Schedule titled "As-built data and asset management documentation" for which payment claims must be made only once complete under clause 11.2(h)(i)) the completed proportion of that part of the Contractor's Activities multiplied by the amount set out for that part in the Payment Schedule;

(iii) to which is added the value of unfixed plant and materials (in accordance with clause 11.8) multiplied by a factor of 85%;
(iv) to which is added any other amounts that may be payable by the Principal to the Contractor pursuant to a provision of this Deed; and
(v) which is reduced, where work is defective or omitted, by the estimated cost of rectifying the Defect or carrying out the omitted work; and

(i) be accompanied by:

(i) a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 20, made out not earlier than the date of the payment claim;

(ii) the Contractor’s Certificate of Design Compliance and the Designers’ Certificates of Design Compliance;

(iii) the Contractor’s Certificate of Construction Compliance and Designers’ Certificates of Construction Compliance;

(iv) certification by the Contractor that all of the Contractor’s Activities and parts of the Works for which payment has been claimed are in accordance with:

(A) the requirements of the Planning Approval; and

(B) all other Authority Approvals;

(v) in relation to the unfixed plant and materials claimed in the Progress Claim:

(A) evidence of:

(1) ownership of the plant or materials;

(2) identification and labelling of the plant and materials as the property of the Principal;

(3) adequate and secure storage and protection; and

(4) insurance for the full replacement value of the plant and materials;

(B) security acceptable to the Principal in the form of the unconditional undertaking in Schedule 16 issued by an Institution approved by the Principal in an amount equal to the payment claimed for the unfixed plant and materials; and

(C) if the PPS Law applies, confirmation that the Principal has registered a Security Interest in the unfixed plant or materials;
the programs and other information required to be prepared and submitted by the Contractor under clause 10.2;

(vii) [not used];

(viii) [not used]; and

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

The Contractor may not include in any payment claim under this clause 11 any amount for a Claim which is barred by clause 17.6 or any other provision of this Deed.

11.3 Payment Statements

(a) The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 11.2, a Completion Payment Claim under clause 11.10 or a Final Payment Claim under clause 11.12, issue to the Contractor and the Principal a payment statement which identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and which sets out:

(i) its determination of the value of the Contractor's Activities carried out in accordance with this Deed, using the methodology in clause 11.2(h) where the payment statement relates to a Progress Claim;

(ii) the amount already paid to the Contractor;

(iii) the amount (if any) the Principal directs the Principal's Representative that the Principal is entitled to retain, deduct, withhold or set-off under this Deed;

(iv) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor or the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal; and

(v) if the amount in clause 11.3(a)(iv) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim:

(A) the reason why the amount in clause 11.3(a)(iv) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim; and
(B) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

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

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

(d) The Contractor agrees that the amount referred to in the payment statement in respect of clause 11.3(a)(iv), for the purposes of sections 9 and 10 of the SOP Act, is the amount of the "progress payment" (as defined in that SOP Act) calculated in accordance with the terms of this Deed to which the Contractor is entitled in respect of this Deed.

(e) The Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative under clause 11.3(a) give the Principal's Representative a tax invoice (which complies with the GST Legislation) for the amount of the payment statement.
11.5 Payment

(a) Where, pursuant to clause 11.3(a)(iv), the Principal's Representative sets out in a payment statement an amount payable by the Principal to the Contractor, subject to clauses 11.1, 11.2, 11.7, 11.10, 11.12, 14.3, 14.7(a)(i) and 16.12, the Principal must, within 15 Business Days of the last to occur of:

(i) the Principal's Representative issuing the payment statement under clause 11.3;

(ii) the Contractor complying with clause 11.7; or

(iii) the Principal's Representative receiving the tax invoice referred to in clause 11.3(e), pay the Contractor the amount set out in the payment statement referred to in clause 11.3(a).

(b) Where, pursuant to clause 11.3(a)(iv), the Principal's Representative sets out in a payment statement an amount payable by the Contractor to the Principal, the Contractor must, within 5 Business Days of the Principal's Representative issuing the payment statement under clause 11.3, pay the
11.6 Payment on Account

A payment of moneys under clause 11.5(a) is not:

(a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Deed;

(b) an admission of liability; or

(c) approval by the Principal or the Principal’s Representative of the Contractor’s performance or compliance with this Deed,

but is only to be taken as payment on account.

11.7 Conditions Precedent

The Contractor is not entitled to make a payment claim under clause 11.2, and the Principal is not obliged to make a payment under clause 11.5(a), unless the Contractor has:

(a) complied with clauses 1.6, 2.2(f)(i), 2.2(f)(ii) and 10.2(e);

(b) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.8;

(c) submitted the initial and updated parts of the Contract Management Plan as required by clauses 4 and 9.14 of this Deed and the TfNSW Standard Requirements;

(d) provided any report and programs required under clause 9.10;

(e) provided the documents required by clause 11.2(i);

(f) effected or procured to be effected the insurances required by clauses 2.2(c) and 13.5 and (if requested) provided evidence of this to the Principal’s Representative;

(g) provided such evidence as the Principal’s Representative may require that this Deed has been properly executed by or on behalf of the Contractor and that the Contractor is bound under this Deed;

(h) [not used]; and

(i) done everything else that it is required to do under this Deed before being entitled to make a payment claim or receive payment.

The Principal is not obliged to make a payment under clause 11.5(a), unless the Contractor has submitted a claim for payment in accordance with clause 11.2 and provided an accompanying document or other information required by that clause.
11.8 Unfixed Plant and Materials

If the Contractor claims payment for plant or materials intended for incorporation in the Works but not yet incorporated, the Principal is not obliged to make payment for such plant or materials in accordance with clause 11.5(a) unless:

(a) the Contractor provides the evidence required in clause 11.2(i)(v);
(b) the plant and materials are on the Site or are available for immediate delivery to the Site;
(c) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative;
(d) the condition of the unfixed plant and materials has (if required by the Principal's Representative) been confirmed in an Inspection by the Principal's Representative; and
(e) if the PPS Law applies, the Principal has registered a Security Interest in the unfixed plant or materials in accordance with clause 16.29.

The only such unfixed plant or materials to be allowed for in a payment statement are those that have become or (on payment) will become the property of the Principal. Upon a payment against a payment statement that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest progressively in the Principal.

The security provided in accordance with clause 11.2(i)(v)(8) will be released once the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose.

11.9 Payment of Employees and Subcontractors

(a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal's Representative a statutory declaration in accordance with clause 11.2(i)(i).

(b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.2(i)(i), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.

(c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the...
employee or Subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.

(d) If the Principal receives notice of any Insolvency Event in relation to the Contractor, the Principal will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.

(e) Nothing in this clause 11.9 limits or otherwise affects the Principal's rights under section 175B(7) of the Workers Compensation Act 1987 (NSW), section 18(6) of schedule 2 of the Payroll Tax Act 2007 (NSW) or section 127(5) of the Industrial Relations Act 1996 (NSW).

11.10 Completion Payment Claim

(a) No later than 28 days after the issue of the Notice of Completion for the last Portion to reach Completion, the Contractor must lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating:

(i) the Contract Sum;
(ii) all payments received on account of the Contract Sum;
(iii) the balance (if any) due to the Contractor, being the Contract Sum less the payments referred to in clause 11.10(a)(ii).

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

(b) With the Completion Payment Claim, the Contractor must lodge with the Principal's Representative a First Statement of Outstanding Claims. The First Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Deed which occurred prior to the date of submission of the Completion Payment Claim.

(c) The Completion Payment Claim and First Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Deed up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and First Statement of Outstanding Claims.

(d) Without limiting clause 11.11, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way
in connection with, the Contractor's Activities, the Works or this Deed which occurred prior to the date of submission of the Completion Payment Claim which:

(i) has been made;
(ii) could have been made; or
(iii) should have been made,

that is not included in the Completion Payment Claim or First Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred.

(e) The First Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the First Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the First Statement of Outstanding Claims or the Completion Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor except as provided in clause 11.12.

(f) Despite clause 11.10(e), if subsequent to the lodgement by the Contractor of the Completion Payment Claim, a final determination is made under clause 15 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Completion Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Principal's Representative within 28 days after the final determination is made. If it is not lodged within that time, it is barred.

(g) The claims and statements required under this clause 11.10 are in addition to the other notices which the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.

(h) Without limiting clause 11.10(g), the Contractor cannot include in any claim or statement under this clause 11.10 any Claims that are barred under this Deed including by clause 17.6.

11.11 Release after Completion Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Deed that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:
has been included in the Completion Payment Claim or First Statement of Outstanding Claims which is given to the Principal’s Representative within the time required by, and in accordance with clause 11.10; and

(b) has not been barred under another provision of this Deed.

11.12 Final Payment Claim

(a) No later than 28 days after the expiration of the last Defects Rectification Period, the Contractor must lodge with the Principal’s Representative a payment claim marked “Final Payment Claim” stating the Contract Sum, all payments received on account of the Contract Sum and the balance, if any, due to the Contractor. The Final Payment Claim must be accompanied by such information as the Principal’s Representative may reasonably require.

(b) With the Final Payment Claim the Contractor must lodge with the Principal’s Representative a Second Statement of Outstanding Claims. The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor’s Activities, the Works or this Deed which occurred prior to the date of submission of the Final Payment Claim.

(c) The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Contractor’s Activities, the Works or this Deed up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.

(d) Without limiting clause 11.13, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor’s Activities, the Works or this Deed which occurred prior to the date of the Final Payment Claim which:

(i) has been made;
(ii) could have been made; or
(iii) should have been made under the paragraph above,

that is not included in the Final Payment Claim or Second Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred.

(e) The Second Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the Second Statement of
Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the Second Statement of Outstanding Claims or the Final Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor.

(f) Despite clause 11.2(e), if subsequent to the lodgement by the Contractor of the Final Payment Claim, a final determination is made under clause 15 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Final Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Principal's Representative within 28 days after the final determination is made. If it is not lodged within that time, it is barred.

(g) The claims and statements required under this clause 11.12 are in addition to the other notices that the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.

(h) Without limiting clause 11.12(g), the Contractor cannot include in any claim or statement under this clause 11.12 any Claims that are barred under this Deed including by clause 17.6.

11.13 Release after Final Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Deed that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:

(a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.12; and

(b) has not been barred under another provision of this Deed.

11.14 Interest

If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable thereon from, but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.

The rate of interest will be the rate from time to time prescribed for judgement debts under the Uniform Civil Procedure Rules 2005 (NSW). Interest will be compounded at six monthly intervals.
This will be the party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

11.15 Correction of Payment Statements
The Principal's Representative may, in any payment statement:
(a) correct any error; and
(b) modify any assumptions or allowances made,
in any previous payment statement issued by the Principal's Representative.

11.16 Costs Allowed by Contractor
Unless otherwise provided in this Deed, it is agreed that the Contractor has, and will be deemed to have, allowed in the Original Contract Price for and will be wholly responsible for the payment of:
(a) without limiting clause 18, all customs duties, tariffs and similar taxes (other than GST) and charges paid or payable on all items that are:
   (i) intended to be used for, or that are to be incorporated into, the Works; or
   (ii) otherwise used for the Contractor's Activities;
(b) any long service leave levy which may be payable in respect of the Contractor's Activities or the Works;
(c) all royalties, licence fees and similar payments for Intellectual Property in respect of:
   (i) the items that are intended to be used for, or that are to be incorporated into, the Works; and
   (ii) all Contract Documentation; and
(d) all fluctuations in the value of the Australian dollar against other currencies.
The Contractor will have no entitlement to any increase in the Contract Sum or otherwise to make any Claim against the Principal in respect of any of those amounts, whatever they may actually be.

11.17 Security of Payment Act
(a) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:
   (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 11.3;
all of the adjudicated amount that was paid by the Principal
(overpayment), the overpayment will be a debt due and payable by
the Contractor to the Principal which the Contractor must pay to the
Principal upon demand and in respect of which the Contractor is not
entitled to claim or exercise any set-off, counterclaim, deduction or
similar right of defence;

(iii) if the adjudicator’s determination is quashed, overturned or declared
to be void, the adjudicated amount then becomes a debt due and
payable by the Contractor to the Principal upon demand and in
respect of which the Contractor is not entitled to claim or exercise
any set-off, counterclaim, deduction or similar right of defence;

(iv) the Principal’s Representative:
    (A) is not bound by the adjudication determination;
    (B) may reassess the value of the work that was valued by the
        adjudicator; and
    (C) may, if it disagrees with the adjudication determination,
        express its own valuation in any payment statement; and

(v) the payment statement referred to in clause 11.17(a)(iv)(C) will be
treated as a final determination of the value of the relevant work,
subject to the provisions of clause 15.

(b) Nothing in this Deed will affect, restrict or limit the Contractor's right to:

(i) refer for adjudication any dispute falling with section 17 of the SOP
    Act; or

(ii) suspend the Contractor's Activities under section 15, 16 or 24 of the
    SOP Act.

(c) For the purposes of section 17(3) of the SOP Act the Contractor irrevocably
    chooses the Institute of Arbitrators & Mediators, Australia, as the
    "authorised nominating authority" (as that term is defined in the SOP Act)
    for any adjudication application it may make under the SOP Act in respect
    of the subject matter of this Deed.

11.18 Payment Withholding Request under Division 2A of Part 3 of the SOP Act

(a) Without limiting clause 11.9 or 16.12, the Principal may withhold any
    amount that is less than or equal to the amount claimed to be owed under a
    payment withholding request served on the Principal pursuant to Division
    2A of Part 3 of the SOP Act.

(b) If the Principal withholds from money otherwise due to the Contractor any
    amount that is less than or equal to the amount claimed to be owed under a
payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act, then:

(i) the Principal may plead and rely upon Division 2A of Part 3 of the SOP Act as a defence to any claim for the money by the Contractor from the Principal; and

(ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of Part 3 of the SOP Act will not be taken into account for the purpose of determining:

(A) any period for which money owed by the Principal to the Contractor has been unpaid; and

(B) the date by which payment of money owed by the Principal to the Contractor must be made.

(c) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of Part 3 of the SOP Act.

(d) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due and payable from the Contractor to the Principal.

(e) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act and the Contractor:

(i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or

(ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal and the Principal's Representative within 5 days after the occurrence of the event in subparagraph (e)(i) or (ii) (as applicable) by providing to the Principal and the Principal's Representative a statement in writing in the form of a statutory declaration together with such other evidence as the Principal or the Principal's Representative may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

11.19 Title

Title in all items forming part of the Works will pass progressively to the Principal (or, in respect of Remote Works constructed on Remote Sites, to the Principal's
nominee being the relevant entity who is to take the benefit of the Remote Works) on the earlier of payment for or delivery of such items to the Site or Remote Site (as applicable). Risk in all such items remains with the Contractor in accordance with clause 13.1.

12. Completion

12.1 Progressive Inspection and Testing

At any time prior to Completion of the Works or any Portion, the Principal's Representative may direct that any materials or work forming part of the Contractor's Activities in respect of the Works or that Portion be tested. The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Contractor's Activities or Works as may be required. On completion of any test the Contractor must make good the Contractor's Activities or Works so that they fully comply with this Deed.

The Principal's Representative may direct that any part of the Contractor's Activities or the Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.

The tests prescribed in this Deed must be conducted by the Contractor as and when provided for in this Deed, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.

Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.

Unless otherwise stated in this Deed, before conducting a test under this Deed the Principal's Representative or the Contractor must give not less than two Business Days notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.

Without prejudice to any other rights or remedies under this Deed, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

Each party must promptly make the results of tests available to the other and to the Principal's Representative.

Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the Contractor unless:
(a) this Deed provides that the Contractor must bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under clause 12.1;

(b) the test shows that the material or work is not in accordance with this Deed;

(c) the test is in respect of a part of the Contractor's Activities or the Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or

(d) the test is consequent upon a failure of the Contractor to comply with a requirement of this Deed.

Where the extra costs are not to be borne by the Principal, they will be borne by the Contractor and will be a debt due from the Contractor to the Principal or paid by the Contractor to the Principal on demand.

12.2 Contractor to Notify

(a) The Contractor must give the Principal's Representative written notice 21 days before it anticipates achieving Completion of the Works or a Portion.

(b) Following the issue by the Contractor of a notice under clause 12.2(a), the Contractor must:

(i) prepare a detailed procedure for the progressive Inspection by the Principal's Representative of the Works or that Portion; and

(ii) provide a draft defects management plan (without identifying any Defects) in respect of the Works or that Portion.

(c) The procedure and draft defects management plan referred to in clause 12.2(b) must be submitted to the Principal's Representative and, prior to the Inspection under clause 12.3(a) must, if required by the Principal's Representative, be amended to ensure that the:

(i) procedure provides the Principal's Representative with sufficient time to properly carry out the progressive Inspection and the final Inspection which the Principal's Representative is required to undertake under clause 12.3 to determine whether Completion of the Works or the Portion (as the case may be) has occurred; and

(ii) draft defects management plan fully addresses the matters the Principal's Representative directs.

12.3 Inspection before Completion of the Works

(a) The Principal's Representative and the Contractor's Representative must, within 7 days of receipt by the Principal's Representative of the notice
referred to in clause 12.2(a), jointly inspect the Works or the Portion at a mutually convenient time.

(b) Following the joint Inspection under clause 12.3(a), the Principal's Representative must issue a notice to the Principal and the Contractor either:

(i) containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or

(ii) stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated in clause 12.3(b)(i).

(c) When the Principal's Representative issues a notice under either clause 12.3(b)(i) or clause 12.3(b)(ii), the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when the Contractor considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative in writing by means of:

(i) in respect of a particular Portion (other than the last Portion to reach Completion), copies of the Contractor's Certificate of Portion Completion in respect of the relevant Portion and the Designers' Certificates of Portion Completion in respect of the relevant Portion; and

(ii) in respect of the last Portion to reach Completion, copies of all Contractor's Certificates of Portion Completion and the Designers' Certificates of Portion Completion for all Portions.

Each Contractor's Certificate of Portion Completion, must attach:

(iii) a register of all records of verification of design, construction, commissioning and handover (including procurement, testing, and Hold Points and Witness Points). All records are to be satisfactorily completed and signed;

(iv) the final form of the defects management plan referred to in clause 12.2, which incorporates a register of any outstanding minor Defects and proposals for their rectification;

(v) a register of Asset Management Information provided in accordance with the TfNSW Standard Requirements;

(vi) a register of deficiency notices issued, all of which are required to have been satisfactorily completed and closed out;
(vii) a register of concessions granted for non-conforming work; and
(viii) all Authority Approvals including any required for the Principal to occupy and use the Works or Portion (as the case may be) for its intended purposes, in accordance with clause 2.3(c)(vii).

Thereafter the Principal's Representative and the Contractor's Representative must jointly inspect the Contractor's Activities at a mutually convenient time.

(d) Following the joint Inspection under clause 12.3(c), the Principal's Representative must within 21 days of receipt of a notice under clause 12.3(c), or of receipt of a notice under clause 12.3(e), issue a notice to the Principal and the Contractor:

(i) if satisfied that Completion of the Works or the Portion has been achieved:
   (A) stating the date on which the Principal's Representative determines Completion of the Works or the Portion was achieved; and
   (B) where relevant to the test for Completion of the Works or that Portion, containing a list of any minor Defects, of the type described in paragraph (a) of the definition of Completion in clause 1.1, that are apparent; or

(ii) if not satisfied that Completion of the Works or the Portion has been achieved:
   (A) containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or
   (B) stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated by clause 12.3(d)(ii)(A).

(e) If the Principal's Representative issues a notice under either clause 12.3(d)(ii)(A) or clause 12.3(d)(ii)(B), the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when it considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative by notice in writing by means of:

(i) in respect of a particular Portion (other than the last Portion to reach Completion), a Contractor's Certificate of Portion Completion in
respect of the relevant Portion and the Designers' Certificate of Portion Completion in respect of the relevant Portion; and

(ii) in respect of the last Portion to reach Completion, copies of all Contractor's Certificates of Portion Completion and the Designers' Certificates of Portion Completion for all Portions,

to which are attached the documents referred to in the second paragraph of clause 12.3(c), and after which the third paragraph of clause 12.3(c), clause 12.3(d) and this clause 12.3(e) will reapply.

(f) For the purposes of this Deed and without affecting the Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion:

(i) no separate Date for Completion of the Works is specified in this Deed;

(ii) Completion of the Works is achieved by achieving Completion of all Portions;

(iii) Completion of the Works will be taken to have occurred once Completion of all Portions has occurred; and

(iv) the Date of Completion of the Works will be taken to be the Date of Completion of the last Portion to reach Completion.

12.4 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Contractor to the Principal's Representative under either of clauses 12.3(c) or 12.3(e) is not given by the Contractor yet the Principal's Representative is of the opinion that Completion of the Works or a Portion has been achieved, the Principal's Representative may at any time and for any reason in its absolute discretion, issue a Notice of Completion under clause 12.3(d)(i) for the Works or the Portion.

12.5 Handover upon Completion

The Contractor acknowledges that the Principal will require (in part) a progressive handover of the Works and that this handover will take place by the Contractor handing over each Portion once that Portion has reached Completion. The Principal's obligations under clause 3.1(b) in respect of the Site will then cease in respect of so much of the Site, access to which was provided for that Portion which is handed over to the Principal.

12.6 Part of the Works or a Portion

If a part of the Works or a Portion has reached a stage equivalent to Completion but another part of the Works or a Portion has not reached Completion and the
parties cannot agree upon the creation of new Portions, the Principal's Representative may determine that the respective parts will be Portions. The Principal may, after the Contractor is given written notice by the Principal's Representative, occupy or use any part of the Works or a Portion although the whole of the Works or the Portion has not reached Completion.

If the Principal's Representative gives any such notice:

(a) the Principal must allow the Contractor reasonable access to the part of the Works or the Portion referred to in the notice and being occupied or used by the Principal, to enable the Contractor to bring the Works or the relevant Portion of which the area being occupied or used forms part to Completion; and

(b) this will not otherwise limit or affect the obligations of the parties under this Deed, including the obligation of the Contractor to achieve Completion of the Works or the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Completion.

12.7 Liquidated Damages for Delay in Reaching Completion

(a) Subject to clause 12.7(f), if Completion of the Works or a Portion has not occurred by the Date for Completion for the Works or the Portion, the Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1 for every day after the Date for Completion of the Works or a Portion up to and including:

(i) the Date of Completion of the Works or the relevant Portion; or

(ii) the date that this Deed is terminated under clause 14, whichever is first.

(b) The Contractor acknowledges and agrees that:

(i) the liquidated damages payable under clause 12.7(a) in respect of any Portion are cumulative and payable regardless of the Date for Completion, and the Date of Completion, of any other Portion; and

(ii) where, on any single day, liquidated damages are payable in respect of the failure to achieve Completion of more than one Portion, then the liquidated damages for each Portion will be aggregated and the total payable for that day.

(c) The parties:

(i) agree that the amount of liquidated damages provided for in Schedule 1 constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Principal as a result of Completion of the Works or a Portion not
occurring on or before the relevant Date for Completion (except for amounts referred to in clause 12.7(d));

(ii) desire to avoid the difficulties of proving damages in connection with such failure and agree that the liquidated damages payable by the Contractor in accordance with clause 12.7(a) are reasonable and do not constitute nor are they intended to be a penalty; and

(iii) agree that the amount of liquidated damages payable by the Contractor under clause 12.7(a) will be recoverable from the Contractor as a debt immediately due and payable to the Principal.

d) The Contractor:

(i) acknowledges that the liquidated damages referred to in clause 12.7(a) do not include any allowances for any liability of the Principal to Other Contractors; and

(ii) must indemnify the Principal against any Claim that the Principal must pay to any Other Contractor as a result of a breach of clause 10.1 by the Contractor.

e) If clause 12.7(a) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages as a result of the Contractor failing to achieve Completion of a Portion by the relevant Date for Completion, but the Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the Contractor would have had if clause 12.7(a) had not been void, invalid or otherwise inoperative.

(f) The Contractor's aggregate liability under clauses 12.7(a), 12.7(d)(ii), 12.7(e) and under clause 3 of Schedule 26 is limited to the amount set out in Schedule 1.

12.8 Final Completion

(a) The Contractor must give the Principal's Representative written notice two months before it anticipates completing all the work to be completed prior to achieving Final Completion.

(b) The Principal's Representative and the Contractor's Representative must, within 28 days before the date the Principal's Representative expects Final Completion to occur, but no earlier than 28 days before the end of the latest Defect Rectification Period, jointly inspect the Works at a mutually convenient time.
(c) Following the joint Inspection under clause 12.8(b), the Principal's Representative must issue a notice to the Principal and the Contractor containing a list of the items that are apparent and it believes must be completed before Final Completion is achieved.

(d) If the Principal's Representative issues a notice under clause 12.8(c), the Contractor must continue to bring the Works to Final Completion and thereafter when the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Final Completion in accordance with Schedule 8. Thereafter, the Principal's Representative and the Contractor's Representative must jointly inspect the Works at a mutually convenient time.

(e) Following the joint Inspection under clause 12.8(d), the Principal's Representative must within 21 days of receipt of a notice under clause 12.8(d), or of receipt of a notice under clause 12.8(f), issue a notice to the Principal and the Contractor:

(i) if satisfied that Final Completion has been achieved, stating the date on which the Principal's Representative determines Final Completion was achieved; or

(ii) if not satisfied that Final Completion has been achieved:

(A) containing a list of the items which it believes must be completed before Final Completion is achieved; or

(B) stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 12.8(e)(ii)(A).

(f) If the Principal's Representative issues a notice under clause 12.8(e)(ii)(A) or clause 12.3(e)(ii)(B), the Contractor must continue to proceed to bring the Works to Final Completion and thereafter when it considers it has achieved Final Completion of the Works the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 12.8(d), clause 12.8(e) and this clause 12.8(f) will reapply.

12.9 Effect of Notice of Completion or Final Completion

A notice issued under clauses 12.3(d)(i) or 12.8(e)(i) will not:

(a) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this Deed;

(b) be taken as an admission or evidence that the Works or the Portion complies with the requirements of this Deed; or
13. Care of the Work, Risks and Insurance

13.1 Care of the Works

Except where it arises from an Exceptioned Risk, and without limiting the generality of the Contractor’s obligations, the Contractor:

(a) from and including the earlier of the date of commencement of work and the date on which the Contractor is given access to the Site, or a part of the Site, until 4:00pm on the Date of Completion of the last Portion to reach Completion will:

(i) be responsible for the care of and will bear the risk of, and indemnify the Principal against any loss of, or damage to:

(A) the Contractor’s Activities;
(B) the Works;
(C) Temporary Works;
(D) Construction Plant;
(E) unfixed plant and materials (whether on or off the Site) the value of which has been included in a payment statement under clause 11.3; and
(F) things entrusted to the Contractor by the Principal or brought onto the Site by a Subcontractor for the purpose of carrying out the Contractor’s Activities; and

(ii) provide the storage and protection necessary to preserve these things;

(b) (after the time after which the Contractor ceases to be responsible under paragraph (a) for the care of a part of the Works or any other thing referred to in sub-paragraph (a)(i)) will bear the risk of, and indemnify the Principal against, any loss of or damage to that part of the Works or other thing, arising from:

(i) any act or omission of the Contractor during the Defects Rectification Period (including any extension under clause 8.6) or any other Contractor’s Activities; or

(ii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Works or other thing under paragraph (a) in connection with the Contractor’s Activities; and

(c) prejudice any rights or powers of the Principal or the Principal’s Representative.
(c) will be responsible for the care of or for loss or damage to any item under this clause 13.1 unaffected by:

(i) the fact that under Schedule 22 the place in which the item is located is subject to the Control of the Contractor or an Other Contractor; or

(ii) any other provision of Schedule 22.

13.2 Other Risks

The Contractor must indemnify the Principal against:

(a) any loss of or damage to property of the Principal caused by, arising out of, or in any way in connection with, the Contractor's Activities;

(b) any liability to or claims by a third party in respect of loss of or damage to property, the loss of use of or access to property, or injury to or death of persons caused by, arising out of, or in any way in connection with, the Contractor's Activities; and

(c) (without limiting or otherwise affecting paragraphs (a) or (b)) any loss or damage to existing property in or upon which the Contractor's Activities are being carried out, caused by, or arising out of, or in any way in connection with, the Contractor's Activities,

but the Contractor's responsibility to indemnify the Principal will be reduced proportionally to the extent that an act or omission by the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor contributed to the loss, damage, injury or death, provided that the Contractor has complied with its obligations under clause 2.13(b)(ii).

The indemnity in this clause 13.2 will not:

(d) exclude any other right of the Principal to be indemnified by the Contractor; or

(e) apply to the extent to which the Contractor must indemnify the Principal under clause 13.1.

13.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage, and while the Contractor is responsible for its care, if loss or damage occurs to anything for which the Contractor is responsible under clause 13.1, the Contractor must:

(a) subject to paragraph (b), promptly replace or otherwise make good the loss or repair the damage; and
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(b) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the Contractor, only comply with paragraph (a) to the extent directed by the Principal's Representative.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk (but subject to paragraph (b)), be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applied.

13.4 Works and Public Liability Insurance

Upon entering into this Deed, the policies of insurance included in Exhibit D will come into effect and will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities. The policies the Principal has put in place are primary to and will not call into contribution any policies of insurance maintained by the Contractor (other than under this Deed) covering similar risks as the policies to be effected and maintained by the Principal under this clause 13.4.

This insurance is subject to the exclusions, conditions and excesses noted on the policies and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that it was provided with a copy of terms of the insurance policies in Exhibit D prior to the date of this Deed and it reviewed and examined the terms of those insurance policies and:

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

(b) acknowledges that the policies of insurance included in Exhibit D do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit D; and

(c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies in Exhibit D or any insurance taken out under clause 13.4.

13.5 Contractor's Insurance Obligations

The effecting of insurance will not limit the liabilities or obligations of a party under any other provision of this Deed.
The Contractor must, or in the case of asbestos liability insurance, either the Contractor or its specialist asbestos removal Subcontractor must, before the Contractor commences the Contractor's Activities or as otherwise required by this Deed:

(a) effect and have in place the following insurance with insurers and on terms satisfactory to the Principal's Representative:

(i) workers compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Contractor's Activities are being performed;

(ii) an insurance policy covering loss or damage to the Construction Plant;

(iii) asbestos liability insurance;

(iv) professional indemnity insurance;

(v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Contractor's Activities, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances, and including:

(A) insurance against personal injury or death, as required under all applicable Laws; and

(B) in addition to the coverage provided under clause 13.4, insurance for third party property damage and personal injury or death;

(vi) if the things the care of which the Contractor is responsible for under clause 13.1 are in transit (including storage and transhipment) from any place outside of Australia, marine transit insurance on an "all risks" basis, including war, riots, strikes and civil commotion coverage, covering those things until they are delivered to the Site, unpacked, inspected and confirmed as in sound condition;

(vii) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law; and

(viii) appropriate insurance (for replacement value) in respect of all materials being or to be fabricated overseas for the Works and any other insurance that the Principal may reasonably require the Contractor to obtain,

for amounts not less than the amounts (if any) referred to in Schedule 1;
(b) ensure the Construction Plant insurance, motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the Law), asbestos liability insurance, marine transit insurance and any insurance required by sub-paragraph (a)(vii):

(i) are policies in the joint names of the Principal and the Contractor, and cover the Principal, the Principal's Representative (including any appointee under clauses 9.2 or 9.3), the Contractor and all its Subcontractors, for their respective rights and interests, and their liabilities to third parties and liability to each other;

(ii) cover loss or damage to property and the death of or injury to any person (other than liability which the Law requires to be covered under a workers compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Contractor's Activities;

(iii) includes a cross-liability clause in accordance with clause 13.9; and

(iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1;

(c) ensure the asbestos liability insurance is in place before any work involving asbestos or asbestos decontamination work commences;

(d) ensure that any insurance policy required by sub-paragraph (a)(vii) is in place before the Contractor's Activities covered by such policies commence;

(e) ensure the professional indemnity insurance:

(i) covers claims for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its Subcontractors in carrying out the Contractor's Activities;

(ii) covers the Contractor for liability to the Principal arising from errors or omissions in:

(A) design or documentation of the Works or the Temporary Works; or

(B) other professional services, carried out by the Contractor or any of its Subcontractors; and

(iii) provide:

(A) cover for any amount in respect of any one claim of not less than;

(B) cover for an amount in the aggregate of not less than; and
(C) for an excess not greater than,
the amount stated in Schedule 1;

(f) in relation to the workers compensation insurance or similar insurance:
(i) where permitted by Law, extend the insurance policy to provide
indemnity to the Principal for its statutory liability to the Contractor's
employees;
(ii) ensure that each of its Subcontractors has such workers
compensation insurance or similar insurance covering the
Subcontractor's employees; and
(iii) ensure it insures against liability for death of or injury to persons
employed by the Contractor or its Subcontractors as required by any
Law for an amount not less than the amount stated in Schedule 1 (if
any) for any one event, subject to the maxima or minima imposed
by relevant Law; and

(g) in relation to marine transit insurance, ensure that the policy:
(i) is in the joint names of the Principal and Contractor, and covers the
Principal, the Principal's Representative, the Contractor and all its
Subcontractors, for their respective rights and interests;
(ii) includes a cross-liability clause in accordance with clause 13.9; and
(iii) includes a delayed unpacking clause and a 50:50 clause.

13.6 General Insurance Policies

The Contractor must:

(a) in respect of any insurance policy (including an insurance policy which
clause 2.2(c) of this Deed requires the Contractor to procure to be effected
by a Subcontractor) which it is required to effect, or procure to be effected,
pursuant to this Deed and where required by the Principal's Representative,
provide the Principal's Representative (or other person nominated for this
purpose by the Principal's Representative) within 5 days of a request with:
(i) a certificate of currency and any other evidence satisfactory to the
Principal's Representative demonstrating that the policy is current
and in compliance with the Contractor's obligation to insure (or
procure insurance), or (where relevant) a licence as a self-insurer or
other proof of being a self-insurer under the Workers Compensation
Act 1987 (Cth); and
(ii) a certified copy of the insurance policy and any other evidence
which may be reasonably necessary to satisfy the Principal's
Representative that the policy is current and complies with the requirements of this Deed;

(b) ensure that except for workers compensation or similar insurance:

(i) the Principal receives at least 30 days notice of any cancellation or material change of any insurance policy effected under clauses 13.4 or 13.5;

(ii) a notice of claim given to the insurer by the Principal, the Contractor or a Subcontractor will be accepted by the insurer as a notice of claim by the Principal, the Contractor and the Subcontractor; and

(iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice in writing to the Principal about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and

(c) ensure that it:

(i) does not do anything which prejudices any insurance;

(ii) where required, rectifies anything which might prejudice any insurance;

(iii) reinstates an insurance policy if it lapses;

(iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;

(v) immediately notifies the Principal's Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and

(vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

If the Contractor fails to:

(d) provide copies of any insurance policy (including an insurance policy which clause 2.2(c) of this Deed requires the Contractor to procure a Subcontractor to effect) which the Contractor is required to effect together with evidence satisfactory to the Principal's Representative that the policy is current; or

(e) effect or procure to be effected insurance which is with insurers and on terms satisfactory to the Principal's Representative,
as required by clauses 2.2(c), 13.5 or 13.6, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Contractor to the Principal.

The Principal may refuse payment until the Contractor produces evidence of compliance with its insurance obligations under clauses 2.2(c) and 13.5 to the satisfaction of the Principal. The rights given by this clause 13.6 are in addition to any other right.

13.7 Period of Insurance

The insurance the parties are required to have in place under this clause 13 must be maintained:

(a) in the case of the works and public liability insurance policy required by clause 13.4, so as to provide cover until the later to occur of:
   (i) the Contractor ceasing to be responsible under clause 13.1 for the care of anything; or
   (ii) 24 months after the Date of Completion of the last Portion to achieve Completion;

(b) in the case of the Construction Plant insurance:
   (i) until the Contractor ceases to bear the risk of loss of or damage to anything under clause 13.1; and
   (ii) at any time it is being used in connection with the Contractor's Activities;

(c) in the case of the workers compensation insurance and motor vehicle insurances, until the latest to occur of:
   (i) the end of the last Defects Rectification Period (including any extension under clause 8.6);
   (ii) the date upon which all Defects have been rectified in accordance with this Deed; and
   (iii) the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;

(d) in the case of professional indemnity insurance, before commencing work covered by the policy referred to in clause 13.5(e) until at least the period specified in Schedule 1 after the Date of Final Completion;

(e) in the case of asbestos liability insurance, marine transit insurance and All Risk insurance required under clause 13.5(a)(viii), for so long as there is a risk
that an event covered by the insurance may occur in relation to the Works or the Contractor's Activities; and

(f) in the case of insurance required under clause 13.5(a)(vii), during the period required by any Law.

13.8 Notice of Potential Claim

The Contractor must:

(a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by this Deed (except for the professional indemnity insurance policy);

(b) keep the Principal informed of subsequent developments concerning the claim; and

(c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences that may give rise to a claim.

13.9 Cross Liability

Where this Deed requires insurance to be effected in joint names the party effecting the insurance must ensure that the insurance policy provides that:

(a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;

(b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;

(c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;

(d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and

(e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

13.10 Loss or Damage to Third Party Property

(a) Without limiting clauses 13.1 and 13.2, where any loss of or damage to real or personal property (other than the Works, Temporary Works or Construction Plant) occurs arising out of, or in any way in connection with, the carrying out by the Contractor of the Contractor's Activities or a failure by the Contractor to comply with its obligations under this Deed, the Contractor must, at its cost, promptly repair any such loss or damage.
(b) Without limiting clause 16.14, if the Contractor fails to carry out any repair work under clause 13.10(a), the Principal may carry out such work and all costs, losses and damages so suffered or incurred by the Principal will be a debt due and payable from the Contractor to the Principal.

(c) The Contractor must immediately notify the Principal's Representative upon receipt of any letter of demand or notice of claim from or on behalf of any third party or any writ, summons, proceedings, impending prosecution or inquest and immediately forward a copy of any such documents to the Principal's Representative.

13.11 Risk of Deductibles

The Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 13.

14. Default or Insolvency

14.1 Default

(a) If the Contractor commits a breach of this Deed referred to below, the Principal may give the Contractor a written notice.

The breaches by the Contractor to which this clause applies are:

(i) not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this Deed, in breach of clause 10.1;

(ii) suspension of work, or failing to proceed with the Contractor's Activities with due expedition and without delay, in breach of clause 10.1;

(iii) failing to provide the security, in breach of clause 2.8;

(iv) failing to ensure that the Principal is promptly notified if the Contractor causes or contributes to the occurrence of an Incident in accordance with clause 2.16(d);

(v) failing to provide evidence of insurance, in breach of clause 13;

(vi) failing to use the materials or standards of workmanship required by this Deed, in breach of clause 4.1;

(vii) not complying with any direction of the Principal's Representative made in accordance with this Deed, in breach of clause 9.1;

(viii) not complying with the requirements of this Deed regarding the Contract Management Plan in a material respect;
(ix) not complying with its obligations under clause A7 of Annexure A to the TfNSW Standard Requirements Prelude or the TfNSW Standard Requirements TSR-S1;

(x) not complying with its environmental obligations under this Deed or the TfNSW Standard Requirements;

(xi) not complying with its obligations under this Deed or the TfNSW Standard Requirements regarding work, health and safety;

(xii) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 2.3; or

(xiii) any other failure to comply with a material obligation under this Deed.

14.2 Contents of Notice

A written notice under clause 14.1(a) must:

(a) state that it is a notice under clause 14.1(a);

(b) specify the alleged breach;

(c) require the Contractor to remedy the breach or, where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and

(d) specify the time and date by which the Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 21 clear days after the notice is given).

14.3 Rights following Notice

(a) Upon giving a notice under clause 14.1(a), the Principal may suspend payments to the Contractor until the date upon which the Contractor remedies the breach or makes arrangements satisfactory to the Principal.

(b) If, by the time specified in a notice under clause 14.1(a), the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor:

(i) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or

(ii) terminate this Deed.
14.4 Immediate Termination or Immediate Take Out

If:

(a) an Insolvency Event occurs:
   (i) to the Contractor;
   (ii) where the Contractor comprises more than one person, any one of
        those persons; or
   (iii) to a person specified in Schedule 1;

(b) the Contractor is in fundamental breach of this Deed as set out in clause 2.9(b)(i);

(c) the Contractor causes or contributes to the occurrence of an Incident and
    fails to ensure that the Principal is promptly notified as set out in
    clause 2.16(d); or

(d) the Contractor’s aggregate liability under clauses 12.7(a), 12.7(d)(ii) and
    12.7(e) reaches or exceeds the amount to which its aggregate liability is
    limited under clause 12.7(f),

then, whether or not the Contractor is then in breach of this Deed, the Principal
may, without giving a notice under clause 14.1(a), exercise the right under clauses
14.3(b)(i) or 14.3(b)(ii).

14.5 Principal’s Common Rights After Take-Out or Termination

If:

(a) the Principal:
   (i) exercises its rights under clause 14.3(b)(i); or
   (ii) terminates this Deed under clauses 14.3(b)(ii), 14.4 or 14.9;

(b) the Contractor repudiates this Deed and the Principal otherwise terminates
    this Deed; or

(c) this Deed is frustrated under the Law,

then:

(d) the Contractor:
   (i) must novate to the Principal or the Principal’s nominee those
       Subcontracts between the Contractor and its Subcontractors that
       the Principal directs;
   (ii) irrevocably appoints (for valuable consideration) the Principal and
        any authorised representative of the Principal to be the Contractor’s
        attorney to:
execute, sign, seal and deliver all notices, deeds and documents; and

undertake actions in the name of the Contractor,

for the purposes referred to in clause 14.5(d)(i); and

must immediately hand over to the Principal’s Representative all copies of:

(A) any documents provided by the Principal to the Contractor;
(B) all Contract Documentation prepared by the Contractor to the date on which the Principal exercises its rights under clauses 14.3(b)(i) or 14.3(b)(ii) (whether complete or not); and
(C) any other documents or information in existence that is to be provided to the Principal under the terms of this Deed; and

the Principal:

(i) will be entitled to require the Contractor to remove from the Site or any area affected by the Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Works;
(ii) may complete that work;
(iii) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site, Remote Sites or Extra Land as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work; and
(iv) must, if it takes possession of the items referred to in clause 14.5(e)(iii):

(A) for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 15; and

(B) maintain the Construction Plant, Temporary Works or other things and, subject to clause 14.6, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 14.5(e)(iii) which are surplus.

This clause 14.5 will survive the termination or frustration of this Deed.
14.6 Principal's Entitlements after Take-Out

(a) If the Principal exercises the right under clause 14.3(b)(i), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under this clause 14.6.

(b) When work taken out of the hands of the Contractor under clause 14.3(b)(i) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate certifying the amount.

(c) If the cost incurred by the Principal is greater than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due to the Contractor from the Principal.

(d) Without limiting clause 14.6(c), if the Principal exercises the right under clause 14.3(b)(i), the Principal will be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.

(e) If the Contractor is indebted to the Principal, the Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 14.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the Contractor.

14.7 Parties' Rights after Termination

Subject to clause 14.11, if the Principal terminates this Deed under clauses 14.3 or 14.4, or if the Contractor repudiates this Deed and the Principal otherwise terminates this Deed:

(a) the Principal will:

(i) subject to clause 14.7(b), not be obliged to make any further payments to the Contractor, including any money that is the subject of a payment claim under clause 11.2 or a payment statement under clause 11.3;

(ii) be absolutely entitled to call, convert and have recourse to any unconditional undertaking held under clause 2.8; and
be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and

(b) the Contractor will:

(i) for work carried out prior to the date of termination, be entitled to an amount (determined by the Principal’s Representative when the Principal has completed the work) that would have been payable if:

(A) this Deed had not been terminated; and

(B) the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination; and

(ii) not be entitled to claim for any further payment of money (including for damages) in respect of the termination or for any other reason.

This clause 14.7 will survive the termination of this Deed.

14.8 Contractor’s Rights after Repudiation or Wrongful Termination

(a) If the Principal:

(i) repudiates this Deed and the Contractor terminates this Deed; or

(ii) wrongfully:

(A) exercises or attempts to exercise any right or power conferred on it by clauses 14.3, 14.4 or 14.9; or

(B) determines or purports to determine this Deed at common law,

then the:

(iii) Principal’s actions will be deemed to have been a lawful termination in accordance with clause 14.9 and the Contractor’s sole rights in such circumstances will be those set out in clause 14.10; and

(iv) Contractor:

(A) will not be entitled to the payment of damages;

(B) will not be entitled to any payment on a quantum meruit basis; and

(C) waives all other rights it has to make a Claim in such circumstances.

(b) This clause 14.8 will survive the termination of this Deed.
14.9 **Termination for Convenience**

Without prejudice to any of the Principal's other rights or entitlements or powers under this Deed, the Principal may:

(a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and

(b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the Contractor's Activities or the Works either itself or by engaging Other Contractors.

14.10 **Payment with Termination under Clause 14.9**

If the Principal terminates this Deed under clause 14.9, the Contractor:

(a) will be entitled to payment of the following amounts as determined by the Principal's Representative:

(i) for work carried out prior to the date of termination, the amount which would have been payable if this Deed had not been terminated and the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination;

(ii) the cost of plant and materials reasonably ordered by the Contractor for the Works and for which it is legally bound to pay provided that:

(A) the value of the plant or materials have not been previously paid or included in the amount payable under sub-paragraph (a)(i); and

(B) title in the plant and materials vests in the Principal upon payment;

(iii) the reasonable cost of removing from the Site all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the Contractor's Activities that are not part of, or to be part of, the Works;

(iv) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the Contractor's Activities and not included in any other payment by the Principal; and

(v) the amount specified in Schedule 1, for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs (a)(ii), (a)(iii) and (a)(iv);
(b) must take all steps possible to mitigate the costs referred to in sub-
paragraphs (a)(ii) and (a)(iii).

To the extent it has not had recourse to them, the Principal will return all
unconditional undertakings then held by it under clause 2.8 when the Contractor
has complied with all its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.10 will be a
limitation upon the Principal's liability to the Contractor arising out of, or in any way
in connection with, the termination of this Deed and the Principal will not be liable
to the Contractor upon any Claim arising out of, or in any way in connection with,
the termination of this Deed other than for the amount payable under this clause 14.10.

This clause 14.10 will survive the termination of this Deed by the Principal under
clause 14.9.

14.11 Preservation of Rights
Subject to clause 14.8, nothing in this clause 14 or that the Principal does or fails
to do pursuant to this clause 14 will prejudice the right of the Principal to exercise
any right or remedy (including recovering damages or exercising a right of set-off
under clause 16.12) which it may have where the Contractor breaches (including
repudiates) this Deed.

14.12 Termination by Frustration
If under the Law this Deed is frustrated the Principal will:
(a) pay the Contractor the following amounts as determined by the Principal's
Representative:
(i) an amount calculated in accordance with clause 14.10(a)(i) for work
carried out prior to the date of frustration;
(ii) the costs calculated in accordance with the terms of, and subject to
the conditions in, clauses 14.10(a)(ii); and
(iii) the costs calculated in accordance with the terms of clauses
14.10(a)(iii) and 14.10(a)(iv); and
(b) to the extent it has not had recourse to them, return all unconditional
undertakings then held by it under clause 2.8 when the Contractor has
complied with its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.12 will be a
limitation upon the Principal's liability to the Contractor arising out of, or in any way
in connection with, the frustration of this Deed and the Principal will not be liable to
the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Deed other than for the amount payable under this clause 14.12. Without limiting any other provision of this Deed, this clause 14.12 will survive the frustration of this Deed.

14.13 Codification of Contractor’s Entitlements

This clause 14 is an exhaustive code of the Contractor’s rights arising out of or in any way in connection with any termination and the Contractor:

(a) cannot otherwise terminate, rescind or treat this Deed as repudiated; and
(b) waives all rights at Law to terminate, rescind or treat this Deed as repudiated,

otherwise than in accordance with this clause 14.

15. Disputes

15.1 Dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor’s Activities, the Works or this Deed, or either party’s conduct before the date of this Deed (Dispute) the Dispute must be determined in accordance with the procedure in this clause 15.

15.2 Notice of Dispute

Where such a Dispute arises, either party may give a notice in writing to the Principal’s Representative and the other party (Notice of Dispute). The Notice of Dispute must:

(a) specify the Dispute;
(b) provide particulars of the party’s reasons for being dissatisfied;
(c) set out the position which the party believes is correct; and
(d) in the case of a Dispute in respect of a direction of the Principal’s Representative under one of the clauses referred to in Schedule 1 (a Schedule 1 Dispute), be given in accordance with clause 15.4.

15.3 Request for further particulars

Where a Notice of Dispute is given by the Contractor, if the Contractor fails to provide sufficient particulars of the Dispute to enable the Principal’s Representative to properly consider the matter, then within 21 days after receipt of the Notice of
Dispute the Principal's Representative may request the Contractor to provide further particulars of the Dispute.

If within 14 days after the request the Contractor has not furnished the particulars sought, and where the Dispute relates to a Schedule 1 Dispute, then, whether the direction is by the Principal's Representative or by a person appointed pursuant to clause 9.3(a)(i):

(a) the Contractor will be deemed to have accepted the Principal's Representative's direction as final and binding and the direction will not be capable of being challenged, opened up or reviewed in any forum; and

(b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.

15.4 Time for Submitting Notice of Dispute Concerning Principal's Representative's Direction

The parties acknowledge that any direction by the Principal's Representative under one of the clauses referred to in Schedule 1 is an interim position only and that, without limiting the rights of the Principal's Representative under clauses 11.3 or 11.15, either party may seek to have any such direction opened up, reviewed, decided and substituted pursuant to this clause 15 by giving a Notice of Dispute to the other party and the Principal's Representative.

The Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any such direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to clause 15 or is unreasonable (other than in accordance with the corrected determination).

The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a Notice of Dispute.

If the Contractor wishes to have a direction by the Principal's Representative under one of the clauses referred to in Schedule 1 opened up, reviewed, decided and substituted, then, whether the direction is by the Principal's Representative or by a person appointed pursuant to clause 9.3(a)(i), the Contractor must give a Notice of Dispute in respect of the Dispute to the Principal and the Principal's Representative within 14 days of the date of the direction after which the Principal's Representative may review the Dispute and make a determination in accordance with clause 15.5.

If the Contractor fails to give such a notice to the Principal and the Principal's Representative within the time period required:
(a) the direction will be final and binding and will not be capable of being challenged, opened up or reviewed in any forum; and

(b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.

15.5 Determination of Schedule 1 Disputes by the Principal's Representative

Upon receipt of a Notice of Dispute in respect of a Schedule 1 Dispute which is given in accordance with clause 15.4, the Principal's Representative may review and make a determination in respect of the Dispute. The determination of the Principal's Representative in respect of any such Notice of Dispute:

(a) must be in writing;

(b) must be given within 21 days after the Notice of Dispute is given or where further particulars have been requested under clause 15.3, within 21 days after the further particulars have been provided to the Principal's Representative;

(c) will be substituted for the relevant direction the subject of the Notice of Dispute; and

(d) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

If the Principal's Representative fails to make a determination as required by this clause 15.5 the direction the subject of the Notice of Dispute will be deemed to be confirmed by the Principal's Representative.

15.6 Referral to Dispute Resolution Board

(a) If a party wishes to refer a Dispute to the Dispute Resolution Board it must give notice in writing to the Principal's Representative and the other party (Notice of Intention to Refer Dispute):

(i) where the Dispute relates to a Schedule 1 Dispute:

(A) within 14 days of the date of receipt of the Principal's Representative's determination under clause 15.5; or

(B) where the Principal's Representative does not make a determination under clause 15.5, within 35 days after the Notice of Dispute is given, or where further particulars have been requested under clause 15.3, within 35 days after the further particulars have been provided to the Principal's Representative; or
(ii) where the Dispute for which a Notice of Dispute has been given does not relate to a Schedule 1 Dispute, within 14 days after the Notice of Dispute is given (for the avoidance of doubt, the making of a request for further particulars by the Principal's Representative pursuant to clause 15.3 will not extend this 14 day period where the Dispute for which a Notice of Dispute has been given does not relate to a Schedule 1 Dispute).

If a party gives a Notice of Intention to Refer Dispute as required by this clause 15.6(a), then unless the Dispute the subject of the Notice of Intention to Refer Dispute is resolved within 14 days after the Notice of Intention to Refer Dispute is given, either party may, by giving notice in writing to the other party and the Dispute Resolution Board in accordance with clause 15.6(b), require that those parts of the Dispute which remain unresolved be referred to the Dispute Resolution Board (Notice of Referral to DRB).

(b) A Notice of Referral to DRB must:
(i) be given within 21 days after the expiry of the:
   (A) 14 day period referred to in clause 15.6(a)(i)(A);
   (B) 35 day period referred to in clause 15.6(a)(i)(B); or
   (C) 14 day period referred to in clause 15.6(a)(ii), as the case may be;
(ii) state that it is a Notice of Referral to DRB under this clause 15.6; and
(iii) include or be accompanied by reasonable particulars of those parts of the Dispute which remain unresolved.

15.7 Obtaining Dispute Resolution Board's Decision
(a) The parties acknowledge and agree that:
(i) the person nominated in Schedule 1 is the Contractor's nominated member of the Dispute Resolution Board;
(ii) the Principal will, after the date of this Deed, nominate a person as its nominated member of the Dispute Resolution Board and will notify the Contractor of that nomination;
(iii) following the nomination referred to in clause 15.7(a)(ii), the Principal and the Contractor authorise their nominated members to select the 3rd member of the Dispute Resolution Board (subject to the approval of the Principal and the Contractor (acting reasonably)).
and insert all information into the DRB Agreement to make it ready for signing;

(iv) as soon as practicable following the approval by the Principal and the Contractor of the 3rd member of the Dispute Resolution Board under clause 15.7(a)(iii), the Dispute Resolution Board must be constituted and each member of the Dispute Resolution Board, the Principal and the Contractor must sign the DRB Agreement;

(v) the Principal and the Contractor must do anything necessary or desirable to ready the DRB Agreement for signing and have it signed by them and each member of the Dispute Resolution Board; and

(vi) if the Contractor fails to take a step contemplated by clauses 15.7(a)(iii) to 15.7(a)(v), the Contractor irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to:

(A) execute, sign, seal and deliver all notices, deeds and documents; and

(B) undertake actions in the name of the Contractor, for the purposes referred to in this clause 15.7.

(b) In performing its functions the Dispute Resolution Board must comply with this Deed and the DRB Agreement. If a Dispute is referred to the Dispute Resolution Board under clause 15.6, the Dispute Resolution Board will be deemed to have received such reference on the date when the Notice of Referral to DRB is received by the chairperson of the Dispute Resolution Board. The decision of a Dispute by the Dispute Resolution Board under clause 15.7 must be made in accordance with the rules in Appendix 2 of Schedule 28 or such other rules that may otherwise be agreed between the parties.

(c) Both parties must promptly make available to the Dispute Resolution Board all such additional information, access to the Site, and appropriate facilities, as the Dispute Resolution Board may require for the purposes of making a decision on the Dispute.

(d) The Dispute Resolution Board will be deemed to be not acting as arbitrators.

(e) Notwithstanding anything else, to the extent permitted by Law, the Dispute Resolution Board will have no power to apply or have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).
(f) Within 35 days after receiving a Notice of Referral to DRB under clause 15.6, or within such other period as may be proposed by the Dispute Resolution Board and approved by both parties, the Dispute Resolution Board must give its decision in writing, which will be reasoned and must state that it is given under this clause 15.7(f). The decision will be binding on both parties, who must give effect to it unless and until it is revised in an amicable settlement or an arbitral award made in an arbitration following a referral to arbitration pursuant to clause 15.8 which arises as a result of the issue of a notice of dissatisfaction in accordance with clause 15.7(g).

(g) If either party is dissatisfied with the Dispute Resolution Board’s decision then either party may, within 14 days after receiving the decision, give notice to the other party of its dissatisfaction.

If the Dispute Resolution Board fails to give its decision within the period of 35 days (or as otherwise approved) after receiving a Notice of Referral to DRB under clause 15.6, then either party may, within 14 days after this period has expired, give notice to the other party of its dissatisfaction.

In either event, this notice of dissatisfaction must state that it is given under this clause 15.7(g), and must set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in clause 15.9 and clause 15.10, neither party will be entitled to commence arbitration of a Dispute unless a notice of dissatisfaction has been given in accordance with this clause 15.7(g).

(h) If the Dispute Resolution Board has given its decision as to a Dispute, and no notice of dissatisfaction has been given by either party under clause 15.7(g) within 14 days after it received the Dispute Resolution Board’s decision, then the decision will become final and binding upon both parties.

(i) Once a decision of the Dispute Resolution Board has become final and binding under clause 15.7(h), neither party will be entitled to challenge the decision on the basis that a member of the Dispute Resolution Board did not, at the time of making the decision, meet the criteria referred to in clause 15.11(c).

15.8 Amicable Settlement

Where a notice of dissatisfaction has been given under clause 15.7(g), the parties may attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise, if no amicable settlement has been reached by the 14th day after the day on which notice of dissatisfaction was given, the Dispute will be taken to have been referred to arbitration under clause 15.13.
15.9 Failure to Comply with Dispute Resolution Board's Decision

If in respect of any binding or final and binding decision of the Dispute Resolution Board a party fails to comply with the decision, then the other party may, without prejudice to any other rights it may have, refer the failure itself as a Dispute to arbitration under clause 15.13. In these circumstances clauses 15.1-15.7 will not apply to this reference and in making an award the arbitrator will not be entitled to open up and review the decision of the Dispute Resolution Board, including any decision in respect of which a notice of dissatisfaction was given in accordance with clause 15.7(g).

15.10 Expiry of Dispute Resolution Board's Appointment

If a Dispute arises and there is no Dispute Resolution Board in place, whether by reason of the expiry of the Dispute Resolution Board's appointment or otherwise:

(a) clause 15.6 will still apply, but if the Dispute is not resolved within the relevant period referred to in clause 15.6(a), the Dispute will not be referred to the Dispute Resolution Board;

(b) clauses 15.7, 15.8 and 15.9 will not apply; and

(c) the Dispute may be referred directly to arbitration under clause 15.13.

15.11 Replacement of Dispute Resolution Board Member

(a) If a member of the Dispute Resolution Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:

(i) if that member is the chairperson, the remaining two members will appoint a replacement member; and

(ii) if that member is not the chairperson:

(A) if the parties have previously agreed upon one or more reserve members for the Dispute Resolution Board, and one or more such members are willing and able to act on the Dispute Resolution Board, the party that nominated the member to be replaced will appoint one of the reserve members to the Dispute Resolution Board; or

(B) if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Resolution Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.
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(b) If, within 42 days of a member declining to act or being unable to act on the Dispute Resolution Board, the member has not been replaced by a person appointed in accordance with clause 15.11(a), either party may request the President of The Institute of Arbitrators and Mediators Australia to appoint a replacement member. This appointment will be final and conclusive.

(c) Any appointment or nomination made under clause 15.11(a) or 15.11(b) must be made in accordance with the criteria set out in Schedule 29.

15.12 Termination of Dispute Resolution Board

The appointment of any member of the Dispute Resolution Board may be terminated by mutual agreement of both parties, but not by the Principal or the Contractor acting alone. Unless otherwise agreed by both parties, the Dispute Resolution Board will terminate upon the later of:

(a) the Dispute Resolution Board having made a decision in accordance with clause 15.7 in respect of all Disputes that were referred to it; or

(b) the expiration of the last Defects Rectification Period.

15.13 Arbitration

Any Dispute which is referred to arbitration will be conducted before a person to be:

(a) agreed between the parties; or

(b) failing agreement within 21 days after the Dispute has been referred to arbitration, appointed by the President for the time being of The Institute of Arbitrators and Mediators Australia.

To the extent that they are not inconsistent with this Deed, the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators and Mediators Australia will apply to the arbitration.

The seat of the arbitration will be Sydney, Australia.

The arbitrator will have power to grant all legal, equitable and statutory remedies and, subject to clause 15.9, to open up, review and substitute any decision of the Dispute Resolution Board under clause 15.7 that is not final and binding on the parties pursuant to clause 15.7(h).

Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

15.14 Survive Termination

This clause 15 will survive the termination of this Deed.
15.15 Continuation of Work

Despite the existence of a Dispute between the parties, the Contractor must:

(a) continue to carry out the Contractor's Activities; and
(b) otherwise comply with its obligations under this Deed.

15.16 Urgent Relief

Nothing in this clause 15 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

15.17 Disputes under Third Party Agreements

(a) A Dispute under this Deed may be concerned with matters that also arise in respect of the respective rights and obligations of the Principal and a Third Party (a Common Dispute) including where the:

(i) Principal is in breach of a provision of this Deed to the extent such a breach is caused by a Third Party under its respective Third Party Agreement;

(ii) Principal is entitled to obtain remedies or benefits under a Third Party Agreement referenced to a Claim by the Contractor under this Deed;

(iii) Contractor has rights against the Principal under a warranty or indemnity or specific right of reimbursement or recovery in this Deed, and there is a corresponding warranty or indemnity or specific right of reimbursement or recovery in a Third Party Agreement; or

(iv) Contractor has a Claim against the Principal and the Principal has a Claim against a Third Party based on the same or similar events or circumstances.

(b) In the event that there is a Common Dispute then the Principal's Representative may, in its absolute discretion, within 28 days of a Notice of Dispute, issue a direction to the Contractor stating that this clause 15.17 applies.

(c) Clauses 15.17(d) to 15.17(k) apply only in relation to Common Disputes for which the Principal's Representative has issued a direction pursuant to clause 15.17(b).

(d) In relation to the relevant Common Dispute:

(i) clauses 15.1 to 15.13 will not apply to the resolution of that Common Dispute; and
(ii) the Contractor acknowledges and agrees that the purpose of this clause 15.17 is:

(A) to provide the Contractor with comparable remedies and entitlements in respect of Common Disputes, and to limit the Contractor's rights against the Principal in respect of Common Disputes by reference to the Principal's rights and entitlements under or in connection with Third Party Agreements; and

(B) not to reduce or disentitle or otherwise affect the validity of any Claim by the Principal against a Third Party under, arising out of, or in any way in connection with the respective Third Party Agreement.

(e) In respect of the relevant Common Dispute:

(i) the Contractor's entitlement to receive compensation from the Principal, and the Principal's liability to pay compensation to the Contractor, will only arise at the time the relevant Common Dispute is resolved or determined;

(ii) if any compensation is payable by the Principal to the Contractor under this Deed in respect of the Common Dispute, the Contractor will have the same entitlement to recover compensation under this Deed as the Principal has to recover that compensation from a Third Party under the respective Third Party Agreement;

(iii) any rights the Contractor has against the Principal will not exceed the equivalent relief, benefit or payment to which the Principal is entitled under the relevant Third Party Agreement; and

(iv) the Principal will pass through to the Contractor the proportion of the damages or other form of relief to which the Principal is entitled:

(A) to the extent referable to the Contractor, including any liability, Claim or loss of the Contractor; and

(B) determined by reference to what is actually compensated or allowed by a Third Party under the respective Third Party Agreement.

(f) The Principal agrees to:

(i) request of the relevant Third Party that the Contractor be permitted to directly make representations in respect of the Common Dispute;

(ii) if it is unable to obtain the Third Party's consent as contemplated under clause 15.17(f)(i), make on behalf of the Contractor whatever
representations in respect of the Common Dispute that the Contractor reasonably requests; and

(iii) provide:
   (A) regular updates to the Contractor; and
   (B) whatever information and documents the Contractor reasonably requests,

as to the progress of the Common Dispute.

(g) The Principal's liability to pay the Contractor:

(i) is satisfied by payment to the Contractor in accordance with this clause 15.17; or

(ii) if the Third Party is not liable to the Principal, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the respective Third Party Agreement or otherwise), provided that:

   (A) the Principal has complied with its obligations under this clause 15.17 with respect to recovery of the Principal's and the Contractor's entitlements from the Third Party; and
   (B) all appeals from such determination have been exhausted.

(h) The Contractor agrees:

(i) to provide all documents, assistance, and cooperation reasonably requested by the Principal (and in the time requested by the Principal) in connection with the Common Dispute;

(ii) that where a Third Party Agreement contemplates:

   (A) a dispute resolution process other than litigation (including arbitration, expert determination, mediation or any other dispute resolution process):

      (1) that dispute resolution process will apply as between the Principal and the Contractor (including any rules or other terms relating to procedure); and
      (2) the Contractor consents to the Common Dispute being heard together with (or consolidated with) that dispute resolution process; and

   (B) litigation, the Contractor consents to the Common Dispute being consolidated with (or heard together with) that litigation; and
(iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects the Contractor's rights and obligations under this Deed.

(i) The Contractor's entitlement to a remedy will not be reduced to the extent to which the Principal's entitlements under a Third Party Agreement are reduced or extinguished due to the Principal's breach or failure to comply with the Third Party Agreement or other act or omission (to the extent not caused by the Contractor).

(j) To the extent the Contractor has recovered compensation in respect of a Common Dispute under another provision of this Deed, then the Contractor is not entitled to the same compensation under this clause 15.17.

(k) Any payment to which the Contractor is entitled under this clause 15.17 shall be paid by the Principal to the Contractor within 20 Business Days from the date of the settlement or determination of such entitlement under or in connection with the Third Party Agreement.

16. General

16.1 Notices

(a) At any time and from time to time the Principal's Representative may notify the Contractor of an electronic portal or document management system to be used for the purposes of the Contract. The Principal's Representative's notice will set out:

(i) the relevant electronic portal or document management system;

(ii) the commencement date for the use of the electronic portal or document management system;

(iii) any password, login details or similar information required for the Contractor to use the electronic portal or document management system;

(iv) address details for the Principal, the Principal's Representative and the Contractor; and

(v) any other information reasonably necessary for the use and service of notices via the electronic portal or document management system.

(b) Any notices contemplated by this Deed must be in writing and must:

(i) before the date referred to in clause 16.1(a)(ii), be delivered or posted to the relevant address or sent to the facsimile number,
shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); and

(ii) on and from the date referred to in clause 16.1(a)(ii):

(A) in the case of notices by the Contractor:

(1) without limiting clause 16.1(b)(ii)(A)(2), be sent to the Electronic Portal address of the Principal or the Principal's Representative (as applicable); and

(2) under clauses 10, 11, 12, 14, 15 or 17 or concerning a claim for payment (including any communication in respect of the SOP Act), in addition to the copy of the notice sent pursuant to clause 16.1(b)(ii)(A)(1), also be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); and

(B) in the case of notices by the Principal or the Principal's Representative:

(1) be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); or

(2) except in relation to notices by the Principal under clauses 14.3, 14.4, 14.9 or 15.2, be sent to the Electronic Portal address of the intended recipient.

(c) For the avoidance of doubt, no notice referred to in clause 16.1(b)(ii)(A)(2) shall be effective unless delivered in accordance with both clauses 16.1(b)(ii)(A)(1) and 16.1(b)(ii)(A)(2).

(d) Subject to clause 16.1(g), 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.

(e) Subject to clause 16.1(g), 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.
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(f) Subject to clause 16.1(g), a notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with clause 16.1(b)(i), 16.1(b)(ii)(A)(2) or 16.1(b)(ii)(B)(1) (as applicable), which is a Business Day.

(g) Where clause 16.1(b)(ii)(A)(2) applies, the relevant notice will be taken to have been received on the later of:

(i) the date determined in accordance with clause 16.1(d); and

(ii) the date determined in accordance with clause 16.1(e) or 16.1(f) (as the case may be).

16.2 Law and Jurisdiction

(a) This Deed is governed by and will be construed according to the Laws of New South Wales.

(b) Where clause 15.16 applies:

(i) the parties irrevocably submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State of New South Wales with respect to any proceedings that are permitted to be brought at any time under clause 15.16; and

(ii) in respect of the jurisdiction referred to in clause 16.2(b)(i), the parties irrevocably waive any objection they may now or in the future have to the venue of any action or proceeding, and any claim they may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

16.3 No Waiver

(a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Deed.

(b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.

(c) No waiver by the Principal of:

(i) a breach of any term of this Deed; or
(ii) any other failure by the Contractor to comply with a requirement of this Deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

16.4 Assignment

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

16.5 Entire Agreement

This Deed and the Deed of Disclaimer constitute the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

(a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed and the Deed of Disclaimer; and

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

16.6 Joint and Several Liability

The obligations of the Contractor, if more than one person, under this Deed, are joint and several. Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

16.7 Severability

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or

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

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

Nothing in this clause 16.8 prevents any other provision of this Deed, as a matter of interpretation also surviving the termination of this Deed.

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

16.9 Stamp Duty and Other Fees

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Deed and the performance of its obligations in respect of this Deed.

16.10 Taxes

Without limiting clause 2.3 but subject to clause 18, the Contractor must pay all Taxes that may be payable in respect of the Contractor’s Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the Contractor’s Activities.

16.11 Confidentiality

(a) Subject to clause 16.11(b), the Contractor must:

   (i) keep confidential this Deed and any information relating to the Contractor’s Activities and any discussions concerning this Deed;
   (ii) not use the information referred to in sub-paragraph (a)(i) except as necessary for the performance of the Contractor’s Activities; and
   (iii) ensure that each of its officers, employees and Subcontractors complies with the terms of sub-paragraphs (a)(i) and (a)(ii).

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

   (i) which is in the public domain through no default of the Contractor; or
   (ii) the disclosure of which is:

      (A) required by Law;
      (B) consented to in writing by the Principal; or
      (C) given to a court in the course of proceedings to which the Contractor is a party or to an expert or other person appointed under this Deed or an agreed arbitrator.
(c) The Contractor must:

(i) execute and submit to the Principal within 14 days of this Deed a Confidentiality Undertaking;

(ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and

(iii) ensure that each Subcontractor, including suppliers and consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.

(d) The Contractor acknowledges that the Principal may disclose this Deed (and information concerning the terms of this Deed) under or in accordance with any one or more of the following:

(i) the Government Information (Public Access) Act 2009 (NSW); and

(ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability.

(e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under clause 16.11(d).

16.12 Right of Set-Off

The Principal may deduct from moneys otherwise due to the Contractor:

(a) any debt or other moneys due from the Contractor to the Principal (including any debt due from the Contractor to the Principal pursuant to section 26C of the SOP Act);

(b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act; or

(c) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise, whether under this Deed or otherwise at Law.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 2.8.
16.13 Entire Contract

Despite any progress payments that may be made to the Contractor under clause 11.5(a), this Deed is an entire contract.

16.14 Principal May Act

(a) The Principal may, either itself or by a third party, perform an obligation under this Deed that the Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.

(b) Where the Principal or the Principal's Representative is entitled under this Deed to exercise any right or power to:

(i) direct or instruct the Contractor to, or

(ii) itself step in to,
take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.

Where the Principal or the Principal's Representative does exercise any such right or power, the Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Works.

16.15 Unlimited Discretion

(a) Except as expressly provided in this Deed (including in clause 16.15(c)) no procedural or substantive limitation (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this Deed.

(b) Without limiting clause 16.15(a):

(i) except as expressly provided in this Deed (including in clause 16.15(c)) neither the Principal nor the Principal's Representative will be:

(A) constrained in the manner in which it exercises; or

(B) under any obligation to exercise,

any discretion, power or entitlement conferred by this Deed because of the operation of any legal doctrine which in any way limits or otherwise affects the express words used in the provision of this Deed conferring the discretion, power or entitlement; and
(ii) any approval or consent referred to in, or required under, this Deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) think fit; unless this Deed expressly provides otherwise.

(c) Nothing in this clause 16.15 will prevent the implication of a term into this Deed where the implication of the term is required to ensure that this Deed (or a part of this Deed) is not void or voidable due to uncertainty or any other legal principle.

16.16 No Partnership, Joint Venture or Other Fiduciary Relationship

Nothing in this Deed will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

16.17 Process Agent

If the Contractor is a foreign company (as defined in the Corporations Act 2001 (Cth)), the Contractor must:

(a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this Deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and

(b) obtain the process agent's consent to the appointment.

16.18 Indemnity

The Contractor must indemnify the Principal against:

(a) any liability to or claim by any other person (including any Third Party); and

(b) all costs, expenses, losses, damages, fines and penalties suffered or incurred by the Principal,

arising out of, or in any way connected with:

(c) the Contractor's breach of a term of this Deed;

(d) any obligation under any Third Party Agreement (including Draft Third Party Agreements and executed Third Party Agreements) which the Contractor is obliged to perform under clause 2.12(a)(ii);

(e) the Contractor's Activities during a Track Possession or power isolation; or

(f) any Defect or the consequences of a Defect,

provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other
Contractor or an agent of the Principal contributed to the liability claim, costs losses or damages.

16.19 Variations

Subject to clauses 2.12(b) and 6.3, this Deed may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

16.20 Provisions Limiting or Excluding Liability

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

16.21 Limit of Contractor's Liability

Subject to clause 16.23, the liability of the Contractor to the Principal, whether arising under or in connection with this Deed 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 Contract Sum.

16.22 No Liability for Certain Matters

Subject to clause 16.23A, the Contractor will have no liability whatsoever to the Principal for loss of use, production, profit, revenue, business, data, contract or anticipated saving or for any financing costs or increase in operating costs.

16.23 Qualification on Limitation of Liability

Clause 16.21 does not apply to limit or restrict in any way:

(a) any liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy effected in accordance with this Deed;

(b) any liability for which, but for a failure by the Contractor to comply with its obligations under this Deed or under an insurance policy, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with this Deed;

(c) the Contractor's liability to pay liquidated damages under clause 12.7(a) or general damages under clause 12.7(e);

(d) the Contractor's liability to indemnify the Principal under clauses 2.5(a)(vi), 2.7(c), 2.12(c), 3.4(b)(iv), 3.7(d), 3.9(f), 3.14(d), 5.8(c)(ii), 5.11(a)(ii), 12.7(d)(ii) or 13.2 or for breach of clause 2.9.
(e) the Contractor's liability for costs, losses and damage caused by the malicious or fraudulent acts of employees of the Contractor or its Subcontractors or its agents;

(f) liability which is otherwise limited by another provision of this Deed;

(g) the Contractor's liability for Abandonment;

(h) the Contractor's liability to indemnify RailCorp under the deed poll executed in the form of Schedule 26; or

(i) liability out of which by Law the Contractor cannot contract.

16.23A Qualification on Exclusion of Liability

Clause 16.22 does not apply to limit or restrict in any way:

(a) any liability referred to in clause 16.23(a), (b), (c), (e), (f), (g), (h) or (i);

(b) the Contractor's liability to indemnify the Principal under clauses 2.7(c), 2.12(c), 3.4(b)(iv), 3.7(d), 3.9(f), 3.14(d), 5.8(c)(ii), 5.11(a)(ii), 12.7(d)(ii) or 13.2 or for breach of clause 2.9; or

(c) the Contractor's liability to indemnify the Principal under clauses 2.5(a)(vi), except to the extent that the relevant Service that was disconnected, interfered with, interrupted or disrupted was a Service referred to in paragraph (b) or (c) of the definition of "Latent Condition" in clause 1.1.

16.24 No Circularity

(a) In determining:

(i) whether an insurance policy extends to cover this Deed in respect of any matters referred to in clauses 16.21 or 16.22 and the liability (if any) of the Contractor arising out of or in connection with the matter; or

(ii) the amount recovered or recoverable by the Contractor under an insurance policy in connection with a matter referred to in clauses 15.21 or 16.22,

(together the Determinable Matters), the limitation on the Contractor's liability pursuant to clauses 16.21 or 16.22 will be disregarded and it must be assumed that the Contractor has paid in full the amount of its liability to the Principal (unlimited by clauses 16.21 or 16.22) in a manner which entitles the Contractor to claim under the relevant insurance policy.

(b) The Contractor waives and disclaims any right or entitlement it may now or in the future have, but for this clause 16.24(b), to:
(i) not disregard clauses 16.21 or 16.22, in connection with any determination of the Determinable Matters; or

(ii) do any of the following:

(A) claim or assert (including by way of defence, counter-claim or third party proceeding); or

(B) instigate, participate in, consent to, or lend its name to, any action or proceedings of any kind under which it is claimed or asserted (including by way of defence, counter-claim or third party proceeding),

that clauses 16.21 or 16.22 are not to be disregarded in connection with the determination of the Determinable Matters.

(c) The parties agree that clauses 16.24(a) and 16.24(b) may be pleaded in bar to any claim or assertion by:

(i) the Contractor; or

(ii) any insurer;

in any Claim to the effect that clauses 16.21 or 16.22 are not to be disregarded as provided in clause 16.24(a).

(d) If for any reason in relation to a matter referred to in clauses 16.21 or 16.22:

(i) clauses 16.24(a) to 16.24(c) (or any of them) are unenforceable, void, voidable or illegal, clauses 16.21 and 16.22 will be of no force or effect and will be treated as if they were severed from, and had never been terms of, this Deed; and

(ii) the Contractor, or an insurer is for any reason not obliged to disregard, or is for any reason entitled to have regard to, clauses 16.21 and 16.22 in determining the Determinable Matters, then clauses 16.21 and 16.22 will treated as if they were severed from and had never been terms of, this Deed and as of no force or effect whatsoever as against the person(s) who is so not obliged, or who is so entitled.

16.25 Proportionate Liability

(a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
Without limiting the above, the rights, obligations and liabilities of the Principal and the Contractor under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

(b) To the extent permitted by Law:

(i) the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and

(ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

(c) The Contractor must:

(i) in each Subcontract into which it enters for the carrying out of the work under this Deed or for the supply of materials or services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and

(ii) require each Subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the carrying out of the work under this Deed, a term that (to the extent permitted by Law) excludes the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

(d) The Contractor must ensure that all policies of insurance covering third party liability it is required by this Deed to effect or maintain (including the professional indemnity policy referred to in clause 13.5(a)(iv)):
(i) cover the Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the Civil Liability Act 2002 (NSW); and

(ii) do not exclude any potential liability the Contractor may have to the Principal under or by reason of this Deed.

(e) The powers conferred and restrictions imposed on a court by Part 4 of the Civil Liability Act 2002 (NSW) are not conferred on the Dispute Resolution Board or any arbitrator appointed in accordance with the provisions of this Deed.

The Dispute Resolution Board or arbitrator (as the case may be) has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the Dispute Resolution Board or arbitration.

16.26 Prior Work

The Contractor agrees that the work in connection with the Contractor's Activities carried out by the Contractor prior to the date of this Deed will be deemed to be governed by the provisions of this Deed and will be deemed to be part of the Contractor's Activities and any payments made to the Contractor by the Principal prior to the date of this Deed in respect of the Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this Deed.

16.27 Design Life

(a) The Contractor waives any and all rights it may have under section 14 of the Limitation Act 1969 (NSW) and section 109ZK of the Environmental Planning and Assessment Act 1979 (NSW) in respect of the design lives of the asset elements referred to in clause 2.8 of the Works Brief where those design lives are for periods longer than those provided for in those Acts.

(b) If the waiver referred to in clause 16.27(a) is held to be without effect or otherwise unenforceable, or if it is severed from this Deed, the Contractor shall indemnify and keep the Principal indemnified at all times from and against all costs that the Principal may suffer or incur out of the Principal's loss of the benefit of the waiver.

(c) The indemnity in clause 16.27(b) is to continue and remain in full force and effect until the expiration of the last of the design lives referred to in clause 2.8 of the Works Brief.
(d) The parties agree that any action by the Principal on the indemnity in clause 16.27(b) is not a "building action" for the purposes of section 109ZI of the Environmental Planning and Assessment Act 1979 (NSW).

16.28 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

16.29 Personal Property Securities Act

(a) By signing this Deed, the Contractor acknowledges and agrees that if this Deed and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (Security Interest), the Contractor shall do anything (including amending this Deed or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:

(i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;

(ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or

(iii) enabling the Principal to exercise rights in connection with the Security Interest and this Deed.

(b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.

(c) The Contractor:

(i) acknowledges that the Security Interests created under or pursuant to this Deed relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);

(ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and

(iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
(d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.

(e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

16.30 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

17. Notification of Claims

17.1 Notice of Variation

If a direction by the Principal's Representative, other than a Variation Order under clause 6.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

(a) within the time specified in Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Variation;

(b) within the time specified in Schedule 1 of giving the notice under paragraph (a), submit a written Claim to the Principal's Representative, which includes the details required by clause 17.3(b); and

(c) continue to carry out the Contractor's Activities in accordance with this Deed and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 17.1.

17.2 Notice of Other Claims

If the Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this Deed by the Principal) under, arising out of, or in any way in connection with, this Deed, the Contractor's Activities or the Works, including anything in respect of which:

(a) it is otherwise given an express entitlement under this Deed; or

(b) this Deed expressly provides that:

(i) specified costs are to be added to the Contract Sum; or
(ii) the Contract Sum will be otherwise increased or adjusted, as determined by the Principal's Representative, the Contractor must give the Principal's Representative the notice required by clause 17.3(a) and a Claim in accordance with clause 17.3(c).

17.3 Prescribed Notices

(a) Any written notice referred to in clauses 17.1 and 17.2 must:

(i) be provided not later than the time specified in Schedule 1 after the first occurrence of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and

(ii) expressly specify:

(A) that the Contractor proposes to make a Claim; and

(B) the direction, event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.

(b) Any written Claim referred to in clause 17.1(b) must include:

(i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;

(ii) the provisions of this Deed or other legal basis upon which the Claim is based; and

(iii) details of the amount claimed and how it has been calculated.

(c) Any written Claim referred to in clause 17.2 must:

(i) be provided not later than the time specified in Schedule 1 of giving the written notice under clause 17.3(a); and

(ii) include:

(A) detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;

(B) the legal basis for the Claim, whether based on a term of this Deed or otherwise, and if based on a term of this Deed, clearly identifying the specific term;

(C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and

(D) details of the amount claimed and how it has been calculated.
17.4 Submission of Claims

Claims submitted by the Contractor under clauses 17.1(b) and 17.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.

If within 28 days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 28th day.

17.5 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 17.3(b) or 17.3(c) every 28 days after the written Claim under clause 17.1(b) or 17.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

17.6 Bar

If the Contractor fails to comply with clauses 2.3(g), 15.1, 15.2, 15.3, 15.4, 17.1, 17.2, 17.3 or 17.5:

(a) the Principal will not be liable upon any Claim by the Contractor; and

(b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

17.7 Other Provisions Unaffected

Nothing in clauses 17.1 to 17.6 will limit the operation or effect of any other provision of this Deed that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

18. General Provisions Relating to GST

(a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Deed are exclusive of GST.

(b) If GST is or becomes payable on a supply made by a party (Supplier) under or in connection with this Deed, including the Contractor's Activities or the Works, the party providing consideration for the supply must pay an
additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.

(c) Subject to clause 18(e), any amount payable under clause 18(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.

(d) If any party is required under this Deed to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.

(e) Notwithstanding any other provision of this Deed, a party will not be obliged to pay any amount in respect of GST to the other party (whether under this clause 18 or otherwise) unless and until a tax invoice that complies with the GST Legislation has been issued by the Supplier in respect of that taxable supply.

(f) Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to:

(i) enable or assist the other party to claim input tax credits to the maximum extent possible; or

(ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Deed.

(g) If the GST payable in relation to a supply made by the Supplier under this Deed varies from the additional amount paid by the other party under this clause 18 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

(h) In this clause 18:

(i) terms defined in GST Legislation have the meaning given to them in GST Legislation; and

(ii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.