



**Transport
for NSW**

Transport for NSW

SITE INVESTIGATIONS CONTRACT (Schedule of Rates)

Contract No. IPD-22-12012

CIRCULAR QUAY RENEWAL

Between

Transport for NSW

[PRINCIPAL]

ABN 18 804 239 602

and

Lendlease Construction Pty Limited

[SITE INVESTIGATIONS CONTRACTOR]

ABN 97 000 098 162

Level 44, 680 George Street
Sydney NSW 2000

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**SITE INVESTIGATIONS CONTRACT
(SCHEDULE OF RATES)**

DEED FORM

DATED 16 day of NOVEMBER 2022

Parties: Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) of Level 44, 680 George Street, Sydney NSW 2000. (TfNSW) (Principal)

Lendlease Construction Pty Limited (ABN 97 000 098 162) of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000 (Site Investigations Contractor)

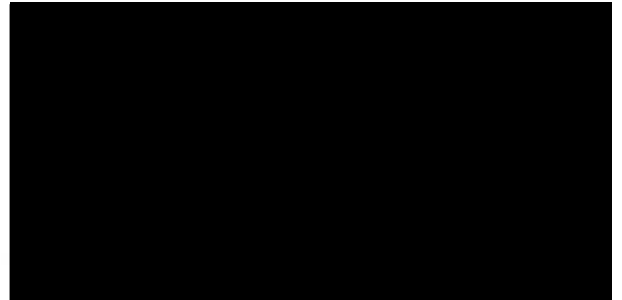
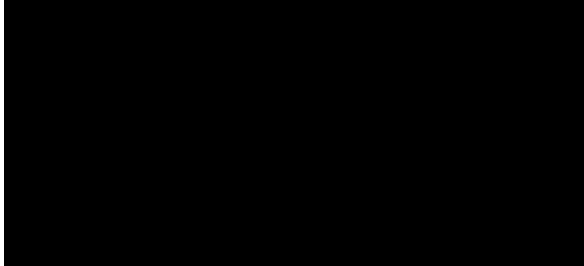
Deed: The parties agree to enter into and comply with the terms of this Deed.

This Deed comprises the following documents:

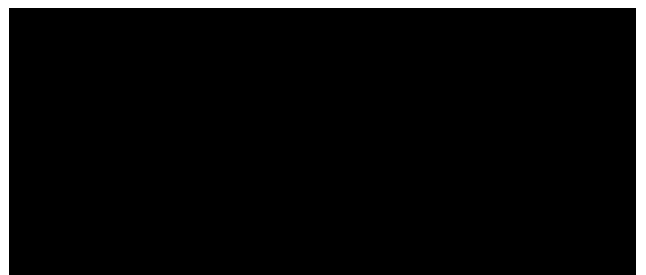
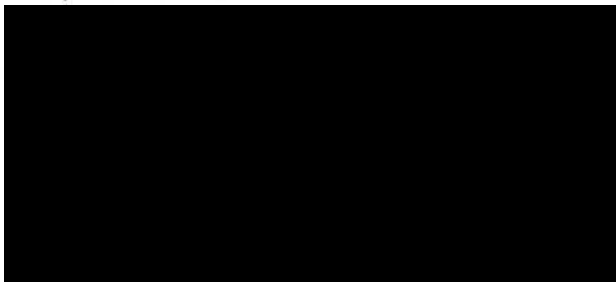
Document description	Where found
This Deed Form	This document
General Conditions Schedule 1 – Contract Particulars Schedule 2 – Not used Schedule 3 – Form of Statutory Declaration and Subcontractor's Statement Schedule 4 – Form of Statement of Interests and Associations Schedule 5 – Schedule of Rates Schedule 6 – Works Element Development Schedule 7 – [REDACTED] Schedule 8A – Site Investigations Contractor's Certificate of Completion Schedule 8B – Site Investigations Contractor's Certificate of Final Completion Schedule 9 – Deed of Novation Schedule 10 – Expert Determination Agreement Schedule 11 – Services Brief Schedule 12 – Action in complying with Planning Approval Schedule 13 – Not used Schedule 14 – Planning Approval Schedule 15 – Form of Third Party Deed	Attached to this document

EXECUTED by the parties as a deed.

Signed sealed and delivered for and on behalf
of Transport for NSW (ABN 18 804 239 602) by
its authorised delegate in the presence of:



Signed sealed and delivered by Lendlease
Construction Pty Limited (ABN 97 000 098 162)
by its Attorney under Power of Attorney dated 1
September 2022:



SITE INVESTIGATIONS CONTRACT – GENERAL CONDITIONS

This Deed is between the Principal and the Site Investigations Contractor set out in the Contract Particulars.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"Asset Management Branch or AMB (formerly Asset Standards Authority or ASA)" means the independent unit of that name established within TfNSW, the functions of which include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets for the Asset Lifecycle (both as defined in the AMB Charter).

"AMB Authorisation" means an authorisation issued by the AMB to a legal entity which verifies that it has the relevant systems in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any conditions of the authorisation.

"AMB Charter" means the document which identifies the AMB's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the AMB (as amended from time to time), a copy of which can be found on <https://www.transport.nsw.gov.au/industry/asset-management-branch#About>

"AMB Requirements" has the meaning assigned to it in the AMB Charter.

"Asset Lifecycle" has the meaning assigned to it in the AMB Charter.

"Asset Lifecycle Services" means the aspects of the Services which relate to the Asset Lifecycle of Transport Assets.

"Authorised Engineering Organisation" or "AEO" means a legal entity to whom the AMB has issued an AMB Authorisation.

"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 AMB) and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to CQR, the Services or the performance by the Site Investigations Contractor of its obligations under this Deed and includes any Government Agency (as defined in the Commitment Deed).

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

- (a) carry out the Services including for the avoidance of doubt all things required for dealing with, transporting and disposing of Contamination or waste; or
- (b) occupy and use for its intended purpose the completed Separable Portion,

and for the avoidance of doubt includes the Planning Approval.

"Business Day" means any day other than:

- (a) a Saturday, Sunday or public holiday in New South Wales, or
- (b) 27, 28, 29, 30 or 31 December.

"CCU" means Construction Compliance Unit, the unit established within NSW Industrial Relations to monitor compliance with and receive reports of alleged breaches of the NSW Guidelines.

"Codes of Conduct" means the following documents:

- (a) the 'Transport for NSW Statement of Business Ethics', a copy of which is available on the TfNSW website;
- (b) TfNSW's 'Our Code of Conduct', a copy of which is available on the TfNSW website; and
- (c) the New South Wales Government 'Supplier Code of Conduct', November 2019, a copy of which is available at www.procurepoint.nsw.gov.au,

as updated from time to time.

"Commencement Date" means:

- (a) in relation to the Planning Services, the date stated in the Contract Particulars; and
- (b) in relation to the Investigations, the date of the Works Element Direction for that Works Element.

"Commitment Deed" means the document entitled "CQR Commitment Deed" between the Principal and the P&D Partner dated on or around the date of this Deed.

"Competence Records" means, with respect to any Rail Safety Worker engaged in connection with the Services (including those engaged by subcontractors), the following information:

- (a) the rail safety training undertaken by the Rail Safety Worker, including when, and for how long, the training was undertaken;
- (b) the qualifications of the Rail Safety Worker, including (if applicable):
 - (i) the units of competence undertaken to achieve the qualification;
 - (ii) the level of qualification attained;
 - (iii) if, and when, a re-assessment of competence is to be conducted;
 - (iv) if, and when, any re-training is due and was undertaken; and
 - (v) the name of any organisation conducting training or re-training;
- (c) the name and qualifications of any person who assessed the competence of the worker; and
- (d) any further information requested by the Principal with respect to the competence of the Rail Safety Worker.

"Completion" means:

- (a) the stage when the Separable Portion is complete in accordance with this Deed except for minor Defects:
 - (i) that in the Principal's Representative's opinion do not prevent the Separable Portion from being reasonably capable of being used for the intended purpose of the Separable Portion;
 - (ii) that in the Principal's Representative's opinion can be rectified without prejudicing the convenient intended use of the Separable Portion; and
 - (iii) in respect of which the Site Investigations Contractor has reasonable grounds for not promptly rectifying; and
- (b) the Site Investigations Contractor has:
 - (i) in the opinion of the Principal's Representative, satisfactorily completed the Site investigations, sampling, testing and ancillary services and produced and delivered to the Principal the Contract Material;

- (ii) obtained all Authority Approvals that it is required under this Deed to obtain and provided such Authority Approvals to the Principal's Representative;
- (iii) given to the Principal's Representative all other documents and information that are to be handed over to the Principal's Representative as contemplated in the Services Brief;
- (iv) cleaned and reinstated the Site in accordance with this Deed; and
- (v) provided the Principal's Representative with the Site Investigations Contractor's Certificate of Completion in the form of Schedule 8A for each Separable Portion.

"Confidential Information" has the meaning given in the Confidentiality Deed Poll.

"Confidentiality Deed Poll" means the confidentiality deed poll signed by the Site Investigations Contractor dated 3 June 2020.

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

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals.

"Contract Management Plan" means the documents required to be provided and implemented by the Site Investigations Contractor pursuant to the Services Brief as developed, amended or updated from time to time in accordance with this Deed.

"Contract Material" means those documents (including information stored by electronic and other means) and materials created or required to be created under this Deed by the Site Investigations Contractor.

"Contract Particulars" means the particulars in Schedule 1.

"Contractor's Program" means the Site Investigations Contractor's program to be developed and updated in accordance with clause 18.1 from time to time.

"COVID-19" means the disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020, or any future forms or strains of the disease known as Coronavirus (COVID-19).

"COVID-19 Directive" means any Statutory Requirement or direction by an Authority in Australia under a Statutory Requirement arising out of or directly related to COVID-19.

"COVID-19 Management Plan" means the plan referred to as the COVID-19 Management Plan to be prepared as part of the Planning Services.

"CQR" has the meaning given in the Commitment Deed.

"CQR Information" has the meaning given in clause 22.5.

"CQR Team" has the meaning given in the Commitment Deed.

"Date for Completion" means:

- (a) in relation to the Planning Services, the date shown in the Contract Particulars; and
- (b) in relation to the Investigations, the date calculated in accordance with the Works Element Direction in respect of that Works Element,

each as adjusted in accordance with this Deed.

"Date of Completion" means:

- (a) the date of Completion of a Separable Portion, set out in a Notice of Completion; or
- (b) where another date is determined in any determination by an expert or any court pursuant to clause 19 as the date upon which Completion was achieved, that date.

"Deed" means this deed between the Principal and the Site Investigations Contractor comprising the documents specified in the Deed Form.

"Deed Form" means the document of that name to which these General Conditions are attached.

"Deed of Disclaimer" means the disclaimer deed poll executed by the Site Investigations Contractor on or around the date of this Deed.

"Defect" means any:

- (a) defect, deficiency, fault, error or omission in the Services; or
- (b) other aspect of the Services that is not in accordance with the requirements of this Deed, including non-compliances, non-conformances and non-conformities.

"Defects Liability Period" means the period stated in the Contract Particulars, as may be extended under clause 40.5.

"Delivery Phase Activities" has the meaning given in the Commitment Deed.

"Developed Binding Offer" has the meaning given in the Commitment Deed.

"Draft Services Brief" means the draft services brief set out in Schedule 11.

"Fee" means the sum of the Planning Services Fee and the Investigations Amounts.

"Final Binding Offer" has the meaning given in the Commitment Deed.

"Final Completion" means the stage in the execution of the Services when all Defects Liability Periods (including any extension under clause 40.5) have expired and the Site Investigations Contractor has rectified all Defects in accordance with this Deed.

"Financial Close" has the meaning given in the Commitment Deed.

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

"General Conditions" means these General Conditions and all Schedules including the Contract Particulars attached to these General Conditions and any Exhibits which are attached to the Deed Form.

"GIPA Act" means the *Government Information (Public Access) Act 2009* (NSW).

"Government Agency" has the meaning given in the Commitment Deed.

"ICIP Rights" means indigenous cultural and intellectual property rights.

"Incident" means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Services including:
 - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW;
 - (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;

- (iv) a security breach;
- (v) any unauthorised removal of trees;
- (vi) a non-compliance with an Authority Approval; 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) "notifiable incidents" under the WHS Legislation and a "notifiable occurrence" under the Rail Safety National Law.

"Information Documents and Materials" means all documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Site Investigations 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) a party informs the other party in writing or creditors generally that the party is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;
- (b) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge;
- (c) in relation to an individual person or a partnership including an individual person, and if that person (being a party):
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the party enters a deed of company 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 party;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the party;

- (v) an application is made to a court for the winding-up of the party and not stayed, dismissed or discontinued within 21 days;
- (vi) a sequestration order or winding-up order is made in respect of the party;
- (vii) that party resolves by special resolution that the party 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 party be wound up;
- (viii) the party enters into any other form of insolvency administration;
- (ix) a mortgagee of any property of the party takes possession of that property; or
- (x) the party 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.

"Intellectual Property Rights" means all rights in copyright, inventions (including patent and innovation patents), registered and unregistered trademarks or name, registered and registrable designs, 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.

"Investigations" means the site investigations to be performed by the Site Investigations Contractor subject to a Works Element Direction in respect of that Works Element.

"Investigations Amounts" means, in respect of each Works Element the subject of a Works Element Direction, the sum of the:

- (a) Investigations Costs; and
- (b) Investigations Margin,

as adjusted in accordance with this Deed but subject to the Upper Limit applicable to that Works Element.

"Investigations Costs" means, in respect of each Works Element the subject of a Works Element Direction, all amounts properly due and payable, including the amounts for the items in clause 3(b)(iii) of Schedule 6, for the performance of the Investigations of that Works Element based on rates and prices set out in the Works Element Proposal in accordance with Schedule 6.

"Investigations Margin" means, in respect of each Works Element, the amount calculated in accordance with Schedule 6.

"Key People" means the person(s) nominated in the Contract Particulars who are engaged by the Site Investigations Contractor under clause 11.2.

"Latent Condition" has the meaning given in clause 39.5(a).

"Long Service Levy" has the meaning in section 3 of the *Building and Construction Industry Long Service Payments Act 1986* (NSW).

"Loss" means any loss, cost, expense, damage or liability (including any fine or penalty) whether direct, indirect or consequential (including revenue loss and pure economic loss), present or future, fixed or unascertained, actual or contingent and whether arising under contract (including any breach of this Deed), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty (to the maximum extent possible)), in tort (including for negligence) or otherwise (including negligent misrepresentation or in restitution).

"Management Plans" means all of the plans required to be submitted by the Site Investigations Contractor, and which are not rejected by the Principal, in accordance with this Deed.

"Maritime AMB Authorisation" means the AMB Authorisations relevant to maritime Asset Lifecycle work required in respect of the Services.

"NCS Value" has the meaning given in clause 3.3(c)(i).

"New COVID-19 Directive" means a new COVID-19 Directive, or a change in an existing COVID-19 Directive, coming into effect after the date which is 10 Business Days prior to the date of this Deed which:

- (a) has a direct effect on the Site Investigations Contractor carrying out the Services; and
- (b) directly results in an increase in the Site Investigations Contractor's costs of carrying out the Services or a delay to the Site Investigations Contractor achieving Completion,

but excludes a change in an existing COVID-19 Directive or a new COVID-19 Directive that is introduced as the result of a perceived lower risk (rather than a greater risk) to public health as a result of COVID-19, including any easing of restrictions.

"Non-complying Services" has the meaning given in clause 3.3.

"Notice of Completion" means a notice issued under clause 18.6(d)(i) by the Principal's Representative.

"Notice of Final Completion" means a notice issued under clause 18.8(b)(i) by the Principal's Representative.

"NSW Code" means the NSW Government's Supplier Code of Conduct (November 2019), or any substitute for, or update to, such code.

"NSW Government" has the meaning given in the Commitment Deed.

"NSW Government Adviser" has the meaning given in the Commitment Deed.

"NSW Guidelines" means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (as published by the NSW Treasury July 2013, updated in September 2017) or any substitute for, or update to, such guidelines.

"NSW Trains" means the corporation by that name constituted by section 37(1) of the *Transport Administration Act 1988* (NSW).

"Other Contractor" means any consultant, contractor, supplier or other person engaged by the Principal, Property NSW or any person with a legal interest in the Site, in relation to CQR or the Site other than the Site Investigations Contractor and its subcontractors, the Key People and the Site Investigations Contractor's Representative.

"P&D Partner" means:

- (a) Capella Capital Pty Limited (ACN 127 727 771) as agent for the Capella Capital Partnership (ABN 68 720 326 224);
- (b) Lendlease Construction Pty Limited (ABN 97 000 098 162); and
- (c) BESIX Watpac (NSW) Pty Ltd (ABN 46 651 621 493).

"Payment Claim Date" means the last Business Day of each month.

"PDSA Services Brief" means Attachment A of the Planning and Design Services Agreement between the Principal, Capella Capital Pty Ltd and Lendlease Construction Pty Ltd, dated on or around the date of this Deed.

"Personal Information" has its meaning in the *Privacy and Personal Information Protection Act 1998* (NSW).

"Phase 3 Activities" has the meaning given in the Commitment Deed.

"Phase 3 Agreement" has the meaning given in the Commitment Deed.

"Planning Approval" means:

- (a) approval of the Services in accordance with the *Environmental Planning and Assessment Act 1979* (NSW) and any other applicable legislation;
- (b) all associated mitigation measures and conditions of approval as set out in the planning approval referred to in paragraph (a) above;
- (c) any modification to the planning approval referred to in paragraph (a) above where agreed by the Principal and assessed and approved under the *Environmental Planning and Assessment Act 1979* (NSW) and any other relevant legislation; and
- (d) any other Authority Approval required to undertake the Services.

"Planning Services" means the:

- (a) development of the Draft Services Brief into a Services Brief in respect of each Works Element; and
- (b) pricing of each Works Element of each Services Brief for the purpose of providing a Works Element Proposal,

each as further described in Schedule 6 and including the activities of the Site investigations Contractor under Schedule 6.

"Planning Services Fee" means the lump sum amount for the performance of the Planning Services as set out in the Contract Particulars and adjusted in accordance with this Deed.

"Potential Probity Issue" means any fact, matter, circumstance or thing concerning, arising out of or in any way in connection with the Site Investigations Contractor, its Providers, its Team Members or the Services which might adversely affect, or create the perception of adversely affecting, the probity or competitiveness of the SME. It includes actual, potential or perceived conflicts of interest.

"Principal's Representative" means the person nominated in the Contract Particulars or any other person appointed from time to time by the Principal under clause 11.3.

"Probity Adviser" has the meaning given in the Commitment Deed.

"Process Document" means each of the Confidentiality Deed Poll and Deed of Disclaimer.

"Project Document" has the meaning given in the Commitment Deed.

"Project Partner" has the meaning given in the Commitment Deed.

"Project Phase" has the meaning given in the Commitment Deed.

"Project Work Health and Safety Management Plan" means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Site Investigations Contractor pursuant to the Services Brief and which must:

- (a) set out in adequate detail the procedures the Site Investigations Contractor will implement to manage the Investigations and the performance of the Investigations from a work health and safety perspective; and
- (b) describe how the Site Investigations Contractor proposes to ensure the Investigations are performed consistently with Statutory Requirements in relation to work health and safety.

"Provider" means an entity who is involved with the performance of the Services. It includes proposed advisers, consultants, subcontractors and suppliers to the Site Investigations Contractor, and proposed subcontractors and suppliers further down the contracting chain.

"Public Transport Agency" means Transport for NSW (and each of its divisions), Rail Corporation NSW, Sydney Trains, NSW Trains and Sydney Metro.

"**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).

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

"**Rail Safety National Law**" means the Rail Safety National Law (NSW), as defined in the *Rail Safety (Adoption of National Law) Act 2012*, and any associated regulations.

"**Rail Safety Work**" has the meaning given in section 8 of the Rail Safety National Law.

"**Rail Safety Worker**" has the meaning given in section 4 of the Rail Safety National Law.

"**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).

"**Rail Transport Agency**" means Transport for NSW (and each of its divisions), RailCorp, Sydney Trains and NSW Trains.

"**Related Entity**" means, in respect of an entity, another entity which is a related body corporate (as defined by sections 9 and 50 of the *Corporations Act 2001* (Cth)) or an associate (as defined by sections 10 to 17 of the *Corporations Act 2001* (Cth)) of that first mentioned entity.

"**Safety Report**" means the report required to be prepared by a designer of a structure by clause 295 of the *Work Health and Safety Regulation 2017* (NSW).

"**Separable Portion**" means the:

- (a) Planning Services; and
- (b) in relation to the Investigations, each Works Element the subject of a Works Element Direction,

or as directed under clause 18.11.

"**Services**" means the whole of the services to be carried out and completed in accordance with this Deed, including the:

- (a) Planning Services; and
- (b) Investigations,

and any changes required due to Variations provided for by this Deed.

"**Services Brief**" has the meaning given to it in Schedule 6.

"**Site**" means the areas on which the Investigations are to be carried out as described in the Works Element Proposal including:

- (a) any areas made available to the Site Investigations Contractor by the Principal in accordance with the Works Element Direction; and
- (b) any additional areas the Site Investigations requires in order to undertake the Services in accordance with the Services Brief.

"**Site Investigations Contractor**" has the meaning given in the Commitment Deed.

"**Site Investigations Contractor's Certificate of Completion**" means the certificate in the form set out in Schedule 8A.

"Site Investigations Contractor's Certificate of Final Completion" means the certificate in the form set out in Schedule 8B.

"Site Investigations Contractor's Representative" means the person nominated in the Contract Particulars under clause 11.1.

"SME" has the meaning given in the Commitment Deed.

"SOP Act" means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

"Statutory Requirements" include:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of New South Wales;
- (b) certificates, licences, consent, permits, approvals (including Authority Approvals) and requirements of organisations having jurisdiction applicable to the Services;
- (c) relevant Australian Standards applicable to the Services; and
- (d) for the purpose of the definition of "COVID-19 Directive", any other government legislation including regulations, by-laws and other subordinate legislation (including ordinances, instruments, codes of practice, policy and statutory guidance) of a State or Territory of Australia.

"Sydney Metro" means the corporation by that name constituted by section 38(1) of the *Transport Administration Act 1988* (NSW).

"Sydney Trains" means the corporation by that name constituted by section 36(1) of the *Transport Administration Act 1988* (NSW).

"Team Member" means an individual who is an employee, officer, agent or adviser of the Site Investigations Contractor or Provider who is involved in the performance of the Services or the SME on behalf of the Site Investigations Contractor or Provider (as applicable).

"Temporary Works" means any temporary works required to be carried out or provided by the Site Investigations Contractor for the purpose of performing of the Investigations but not forming part of the Investigations.

"TfNSW" means Transport for NSW (ABN 18 804 239 602), a NSW Government agency and a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW).

"Third Party Services" includes any service facility or item of public or private infrastructure, including railway systems, pedestrian and vehicular corridors, rail corridor, water, electricity, gas, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service.

"Transaction Phase" has the meaning given in the Commitment Deed.

"Transport Assets" has the meaning assigned to it in the AMB Charter.

"Upper Limit" means, subject to Variations and other adjustments provided for by this Deed, the capped amount in respect of the relevant Investigations as set out in a Works Element Proposal developed in accordance with Schedule 6 and the subject of a Works Element Direction.

"Variation" has the meaning given in clause 16.1(a).

"WHS Legislation" means the following as it may apply from time to time:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) all other acts, regulations and codes of practice relating to work health and safety which apply in the State in which the Services are being executed.

“Works Element” means those parts of the Investigations set out in the Works Element Proposal and approved in a Works Element Direction subject to Variations provided for by this Deed.

“Works Element Direction” has the meaning given to it in Schedule 6.

“Works Element Proposal” has the meaning given to it in Schedule 6.

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) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where otherwise designated as a Business Day), “day” means calendar day and “week” means a period of 7 calendar days;
- (l) a reference to \$ is to Australian currency;

- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part;
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (o) the obligations of the Principal are limited to those expressly stipulated in this Deed and without limitation, there are no implied terms of good faith;
- (p) the Principal has no responsibility or duty of care to do, or refrain from doing, anything other than fulfil its express obligations under this Deed;
- (q) not used;
- (r) all indemnities provided for by this Deed are continuing in nature and survive the termination of this Deed;
- (s) the Principal's Representative has no responsibility or duty of care to do, or refrain from doing, anything other than fulfil its express obligations under this Deed; and
- (t) any reference in this Deed to:
 - (i) "the Contract" or "this Contract" will be taken to be a reference to this Deed;
 - (ii) "the Works" or "the works" will be taken to be a reference to the Services; and
 - (iii) "the Contractor" will be taken to be a reference to the Site Investigations Contractor.

1.3 Authorities

- (a) This Deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Principal or any other Public Transport Agency to exercise any of their respective functions and powers pursuant to any law (including any Statutory Requirements); or
 - (ii) the AMB to exercise any of its functions and powers pursuant to the AMB Charter.
- (b) Without limiting clause 1.3(a), anything the Principal or any other Public Transport Agency or the AMB does, or fails to do or purports to do, pursuant to their respective functions and powers either as an AEO or an Authority or under any law or pursuant to the AMB Charter, will be deemed not to be an act or omission by the Principal, the Public Transport Agency or the AMB for the purposes of this Deed (including a breach of contract) and will not entitle the Site Investigations Contractor to make any Claim against the Principal.
- (c) Clauses 1.3(a) and 1.3(b) do not limit any liability which the Principal would have had to the Site Investigations Contractor under this Deed as a result of a breach by the Principal of a term of this Deed but for clauses 1.3(a) and 1.3(b).
- (d) Except to the extent expressly stated otherwise in this Deed, the Site Investigations Contractor:
 - (i) waives any claims that it may have against the Principal as a result of the exercise by the Principal or any other Public Transport Agency or the AMB of their respective functions and powers under any Statutory Requirements; and
 - (ii) acknowledges and agrees that:
 - A. there are many Authorities with jurisdiction over aspects of the Services;

- 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 Services (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 1.3(d)(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.

1.4 Ambiguous Terms

- (a) If the Principal's Representative considers, or if the Site Investigations Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in this Deed, the Principal's Representative must, subject to clause 1.5, direct the interpretation of this Deed which the Site Investigations Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.4(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Deed.

1.5 Order of Precedence in this Deed

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

- (a) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the Services Brief, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and
- (b) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in this Deed is:
 - (i) the Deed Form;
 - (ii) the General Conditions;
 - (iii) the Schedules; then
 - (iv) the Services Brief.

1.6 Inconsistency

To the extent that there are any inconsistencies, ambiguities or discrepancies between:

- (a) this Deed;
- (b) the Process Documents;
- (c) the Phase 3 Agreements; and
- (d) not used,

the higher standard (being the standard that delivers greater benefit to the Principal) shall prevail (unless the Principal's Representative directs otherwise).

2 TERMS OF ENGAGEMENT

- (a) The Principal engages the Site Investigations Contractor to perform the Services in accordance with this Deed.
- (b) Where the P&D Partner or the Site Investigations Contractor is engaged to proceed to the Project Phase as Project Partner:

- (i) the Services performed under this Deed will be treated as Delivery Phase Activities under the Project Documents; and
- (ii) the terms and conditions of the Project Documents will apply to any Services performed (and any Contract Materials produced) under this Deed.

3 SITE INVESTIGATIONS CONTRACTOR'S OBLIGATIONS

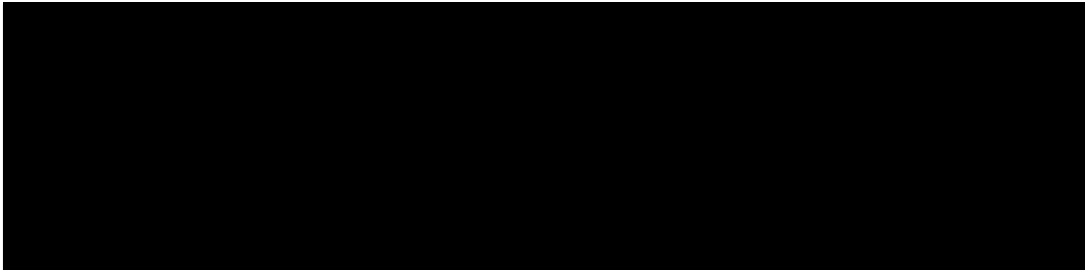
3.1 General

Subject to clause 3.1A, the Site Investigations Contractor must:

- (a) perform the Services in accordance with this Deed in consideration of the payments to be made by the Principal under clause 17;
- (b) perform the Services in compliance with the Codes of Conduct and in accordance with the Management Plans;
- (c) perform the Services to that standard of skill, care and diligence to be expected of a site investigations contractor who regularly acts in the capacity in which the Site Investigations Contractor is engaged and who possesses the knowledge, skill and experience of a site investigations contractor qualified to act in that capacity. The Site Investigations Contractor acknowledges that the Principal is relying on the Site Investigations Contractor's expertise, skill and judgement in the Site Investigations Contractor's performance of the Services;
- (d) ensure that the Contract Material:
 - (i) is suitable for the intended purposes stated in, or reasonably inferred from, the Services Brief;
 - (ii) complies with all relevant Statutory Requirements, unless otherwise expressly instructed by the Principal in writing;
 - (iii) is correct and complete for use by the Principal, the Other Contractors and any other person nominated by the Principal; and
 - (iv) otherwise complies with all requirements of this Deed;
- (e) use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Services;
- (f) liaise, co-operate and confer with others as directed by the Principal;
- (g) promptly give written notice to the Principal if and to the extent the Site Investigations Contractor becomes aware that any document or other information provided by the Principal is ambiguous or inaccurate or is otherwise insufficient to enable the Site Investigations Contractor to carry out the Services;
- (h) make reasonable enquiries to ascertain the requirements of the Principal regarding the Services, including in respect of any hazards and risks at the Site;
- (i) regularly consult the Principal regarding the carrying out of the Services;
- (j) as soon as practicable after becoming aware of any matter or circumstances which may adversely affect or has adversely affected the scope, timing or carrying out of the Services, give written notice to the Principal detailing the matter or circumstances and its anticipated effect on the Services;
- (k) ensure that any person employed or engaged by the Site Investigations Contractor and its subcontractors who undertakes any work in connection with the Services complies with all Statutory Requirements, including the WHS Legislation; and
- (l) without limiting any other provision of this Deed, consult with the Principal as required to enable the Principal to discharge its obligations under clause 294 of the *Work Health and Safety Regulation 2017* (NSW).

Except as expressly provided for otherwise in this Deed or the Works Element Proposal, the Site Investigations Contractor warrants that it has done everything that would be expected of a skilled, prudent, experienced and professional consultant in assessing the risks which it is assuming under this Deed and ensuring that the Fee contains allowances to protect it against any of these risks eventuating.

3.1A



3.2 Complying with Statutory Requirements

- (a) The Site Investigations Contractor must comply with:
 - (i) all Statutory Requirements including the WHS Legislation and any New COVID-19 Directive;
 - (ii) the requirements of the National Construction Code; and
 - (iii) the requirements of any other standards or codes, which apply to the Services.
- (b) Without limiting the above, the Site Investigations Contractor must prepare the Safety Report in accordance with the requirements of, and otherwise discharge its obligations under, the provisions of the WHS Legislation. The Site Investigations Contractor must give a copy of the Safety Report to the Principal within the time specified in the Contract Particulars.

3.3 Non-Complying Services

Without limiting clause 40, if the Principal discovers or believes that the Services, or any part thereof, have not been performed in accordance with this Deed (including any Contract Material not complying with the requirements of this Deed) ("**Non-complying Services**") the Principal may give the Site Investigations Contractor a direction specifying the non-complying Services and do one of the following:

- (a) require the Site Investigations Contractor to:
 - (i) re-perform the Non-complying Services (including by amending the Contract Material) within a specified time period; and
 - (ii) take all such steps as are reasonably necessary to:
 - A. mitigate the effect on the Principal of the failure to perform the Services in accordance with this Deed; and
 - B. put the Principal (as closely as possible) in the position in which it would have been if the Site Investigations Contractor had performed the Services in accordance with this Deed; or
- (b) advise the Site Investigations Contractor that the Principal will accept the Non-complying Services despite the non-compliance, in which event the Principal will be entitled to recover from the Site Investigations Contractor any additional costs which will be incurred by the Principal as a result of the non-compliance, including any costs incurred by the Principal in having the Non-complying Services re-performed by an Other Contractor; or

- (c) advise the Site Investigations Contractor that the Principal will accept the Non-complying Services despite the non-compliance, in which event for any portion of Non-complying Services:
 - (i) the Principal's Representative will determine the value of the Non-complying Services or in accordance with clauses 16.3(b) or 16.3(c) (each an "**NCS Value**");
 - (ii) the Site Investigations Contractor will have no entitlement to make any payment claim against the Principal arising out of or in connection with the Non-complying Services; and
 - (iii) if the Principal has already paid the Site Investigations Contractor some or all of the NCS Value for those Services, such amount will be a debt due and payable by the Site Investigations Contractor to the Principal.

3.4 Re-performance of the Non-complying Services

If a direction is given under clause 3.3(a), the Site Investigations Contractor must, at its own cost, re-perform the Non-complying Services:

- (a) within the time specified in the Principal's instruction; and
- (b) so as to minimise the delay and disruption to the performance of the Services.

If the Site Investigations Contractor fails to comply with a direction under clause 3.4, the Principal may give the Site Investigations Contractor a direction under clauses 3.3(b) or 3.3(c).

3.5 Safety and Environment

- (a) The Site Investigations Contractor must:
 - (i) prior to appointing any subcontractor, assess the work health and safety management capability of such subcontractor and 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;
 - (ii) prior to commencing to perform the Services on the Site ensure that all Key People have undertaken any induction required by the Principal;
 - (iii) in the provision of the Services comply with and procure that any subcontractor and its employees comply with all the requirements of the WHS Legislation and any other requirements of this Deed for work health, safety and rehabilitation management;
 - (iv) comply with, and procure that any subcontractor complies with, any reasonable directions issued by the Principal's Representative in relation to work, health, safety or the environment including where the direction is given because Key People are not complying with their obligations under this clause 3.5;
 - (v) immediately inform the Principal's Representative verbally of all work health, safety and environment matters arising out of, or in any way connected with the Services or CQR;
 - (vi) provide written assurances obtained pursuant to clause 3.5(a)(i), together with written assurances from each subcontractor and its employees about the subcontractor's and its employees' ongoing compliance with the WHS Legislation, to the Principal;
 - (vii) comply with its obligation 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 including co-operate with the Principal's Representative and any contractor engaged by the Principal with respect to CQR and co-ordinate the Services with the work of the Principal's Representative and any contractor engaged by the Principal with respect to CQR;

- (viii) exercise a duty of utmost good faith to the Principal in carrying out the Services to enable the Principal to discharge the Principal's duties under the WHS Legislation; and
- (ix) ensure its subcontracts include provisions equivalent to the obligations of the Site Investigations Contractor in this clause 3.5 and any other provisions of this Deed concerning work health and safety matters.
- (b) The Site Investigations Contractor's design (if any) must:
 - (i) take into account best work health and safety practice applicable to the construction, utilisation, operation, safety and/or maintenance of CQR; and
 - (ii) be subject to a health, safety and environment review by a suitably qualified person at appropriate stages of the design development process (if any) to verify the design's compliance with the WHS Legislation.

3.6 Licensing and Authorisation

The Site Investigations Contractor must:

- (a) ensure that if any Statutory Requirement (including the WHS Legislation) requires that:
 - (i) a person:
 - A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any part of the Services at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - B. has prescribed qualifications or experience to carry out any part of the Services 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
 - (ii) 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;
- (b) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements under clause 3.6(a) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (c) if requested by the Principal, the Principal's Representative or required by the WHS Legislation, 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 before the Site Investigations Contractor commences such work.

3.7 Duties under WHS Legislation

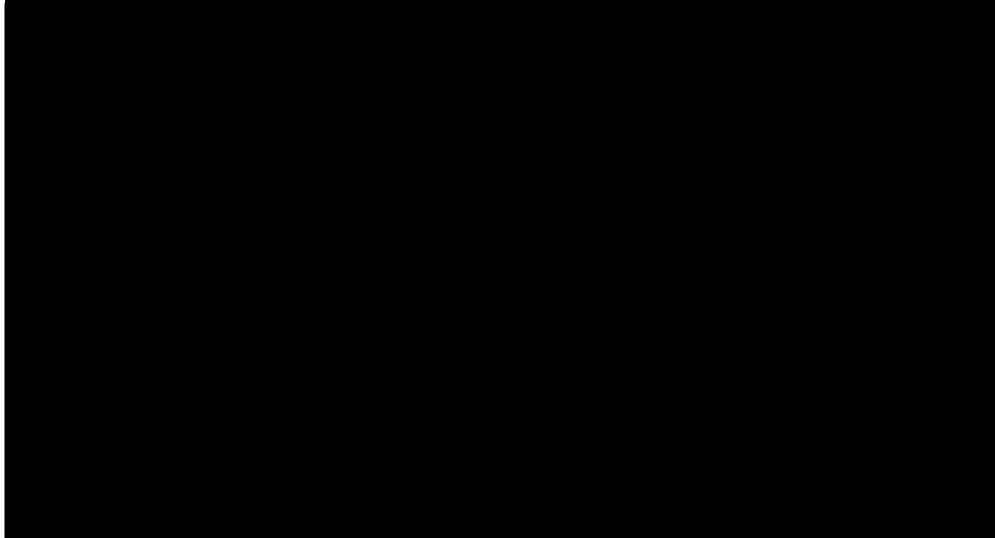
Without limiting the Site Investigations Contractor's obligations under any other clause of this Deed, insofar as the Site Investigations Contractor, in carrying out the Services, is a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011* (NSW) applies, then to the extent that the obligations under that section apply to the Services the Site Investigations Contractor must comply with the applicable obligations under the WHS Legislation.

3.8 Incident Management Reporting

- (a) The Site Investigations Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Services and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident.

- (b) Should an Incident occur which is reportable under any relevant Statutory Requirements, the Site Investigations Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative.

(c)



(d)

- (e) If the Site Investigations 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 Site Investigations Contractor.

3.9 Principal Contractor

- (a) In this clause 3.9 the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.
- (b) The Principal engages the Site Investigations Contractor as the principal contractor in respect of the Services carried out on the Site.
- (c) The Principal authorises the Site Investigations Contractor to have management and control over the Site and of each workplace at which the Services are to be carried out and to discharge the duties of a principal contractor under the WHS Legislation.
- (d) The Site Investigations Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (e) To the extent not prohibited by any Statutory Requirement, the Site Investigations Contractor must indemnify the Principal against any damage, expense, loss (including reasonable legal fees) or liability suffered or incurred by the Principal arising out of or in connection with the Site Investigations Contractor's failure to discharge the duties imposed on a principal contractor by the WHS Legislation that the Site Investigations Contractor is required to discharge in accordance with this clause 3.9.

(f)



3.10 Long Service Leave Levy

Before commencing any construction work under this Deed (including any construction of Temporary Works), the Site Investigations Contractor must, to the extent it is required to do so in accordance with the *Building and Construction Industry Long Service Payments Act 1986* (NSW):

- (a) pay to the Long Service Corporation or that body's agent, all amounts payable for the Long Service Levy in respect of the Services 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 3.10(a).

3.11 Cooperation with Other Contractors

The Site Investigations Contractor:

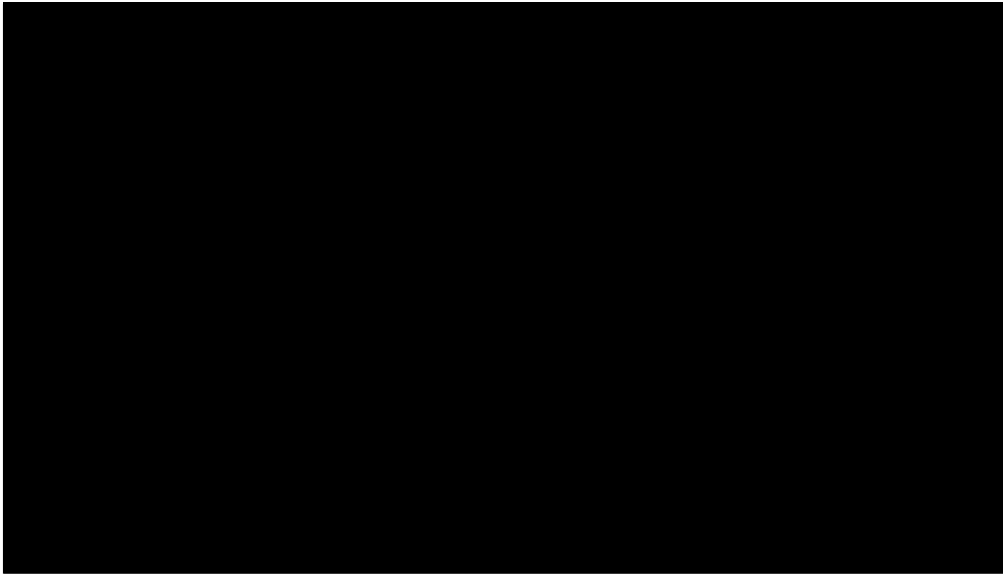
- (a) acknowledges that Other Contractors may be executing works or services on parts of the Site, or adjacent to the Site, at the same time as the Site Investigations Contractor is performing the Investigations;
- (b) must, [REDACTED], at all times:
 - (i) permit Other Contractors to execute works or services on the applicable parts of the Site or on any adjacent property to the Site:
 - A. at the same time as the Site Investigations Contractor is performing the Investigations; and
 - B. at the times agreed with the Other Contractor, or failing agreement at the times determined by the Principal's Representative,
 - and for this purpose ensure they have safe, clean and clear access to those parts of the Site, or property adjacent to the Site, required by them for the purpose of carrying out their work;
 - (ii) protect the Investigations, Temporary Works and other improvements on the Site from accidental damage by Other Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Other Contractors;
 - (iii) co-operate with Other Contractors and do everything reasonably necessary to facilitate the execution of work by Other Contractors, including providing Other Contractors with such assistance as may be directed by the Principal's Representative;
 - (iv) perform the Investigations so as to minimise any interference with or disruption or delay to the works or services carried out by any Other Contractor; and
 - (v) be responsible for coordinating the Services, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, Other Contractors' personnel and work; and
- (c) subject to clause 18, warrants that, except to the extent expressly provided for otherwise in a Works Element Direction, the Fee and the Contractor's Program contain sufficient allowances for the assumption by the Site Investigations Contractor of the obligations and risks under clauses 3.11(a), 3.11(b) and this clause 3.11(c).

3.12 Engineering Authorisation

The Site Investigations Contractor represents and warrants that if it or any of its subcontractors will carry out Asset Lifecycle Services that the Site Investigations Contractor will be an AEO and will have the necessary AMB Authorisation to carry out the Asset Lifecycle Services.

3.13 AMB Compliance

- (a) [REDACTED] the Site Investigations Contractor (or a relevant Provider) must:
 - (i) hold and maintain AMB Authorisation in respect of the Asset Lifecycle Services for so long as the Services are carried out; and
 - (ii) must carry out the Asset Lifecycle Services in accordance with that AMB Authorisation.

- (b) The Site Investigations Contractor must (and must ensure that all personnel for which it is responsible including any Provider):
- (i) comply with the conditions of the applicable AMB Authorisation;
 - (ii) implement and comply with the requirements of any AMB Requirements applicable to the Asset Lifecycle Services;
 - (iii) cooperate fully with the AMB in the performance of the AMB's functions;
 - (iv) provide access to premises and resources as reasonably required by the AMB, including so that it can effectively carry out its review, surveillance and audit functions;
 - (v) comply with the directions, instructions and requirements issued by the AMB;
 - (vi) notify the AMB of any matter that could reasonably be expected to affect the exercise of the AMB's functions;
 - (vii) provide the AMB with any information relating to its activities or any documents or other things reasonably required by the AMB in the exercise of its functions; and
 - (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the AMB and to implement and comply with AMB Requirements.
- (c) The Site Investigations Contractor releases and discharges TfNSW from all claims, costs, expenses and losses which it may have against TfNSW or otherwise suffers or incurs arising out of, or in any way in connection with, the requirement to obtain AMB Authorisation or the obligation to comply with the requirements of the AMB and the AMB Authorisation, except to the extent expressly provided for otherwise in this Deed.
- (d) 

3.14 Rail Safety Work

Subject to clause 10.2 and without limiting or otherwise restricting clause 3.1, this clause 3.14 only applies to the extent the Site Investigations Contractor is carrying out Rail Safety Work in performing the Services.

The Site Investigations Contractor must:

- (a) whilst performing the Services, require all persons to:
- (i) report for work and whilst working be free from the influence of alcohol and otherwise comply with section 128 of the Rail Safety National Law and be free

- from the influence of any other drugs (below the cut off level stipulated by the Australian Standard AS/NZS 4308:2008); and
- (ii) undergo random and targeted alcohol and drug testing in accordance with the Rail Safety National Law, the TfNSW 60-ST-010 - Alcohol and Other Drugs and TfNSW 60-PR-085 Testing for Alcohol and Other Drugs; and
- (b) ensure that any person employed or engaged by the Site Investigations Contractor and its subcontractors who undertakes any Rail Safety Work in connection with the Services complies with any Statutory Requirements, including:
 - (i) the provisions of the Rail Safety National Law;
 - (ii) holding and maintaining Rail Safety Worker certification; and
 - (iii) the WHS Legislation;
- (c) prior to any Rail Safety Worker carrying out any Rail Safety Work in connection with the Services, provide the Principal with the Competence Records in the form directed by the Principal (which may be electronic);
- (d) ensure that any Rail Safety Worker who carries out Rail Safety Work in connection with the Principal's railway operations has the competence to carry out that work; and
- (e) ensure that each Rail Safety Worker used in connection with the Services has a form of identification that is sufficient to enable the type of competence and training undertaken by that Rail Safety Worker to be checked by a rail safety officer.

3.15 Access to the Rail Corridor

- (a) The Site Investigations Contractor acknowledges and agrees that if clause 3.14 does not apply to this Deed:
 - (i) the Site Investigations Contractor:
 - A. is not permitted to access; and
 - B. must not access,

the Rail Corridor to perform any of the Services under this Deed, without the prior express written approval of the Principal;
 - (ii) as a condition of giving approval to access the Rail Corridor, the Principal and other Public Transport Agencies may impose on the Site Investigations Contractor, additional terms and conditions for accessing the Rail Corridor; and
 - (iii) the Principal or other rail agencies such as Sydney Trains may require the Site Investigations Contractor to enter into a separate agreement to facilitate access to the Rail Corridor.

3.16 Planning approval

Unless otherwise expressly specified in Schedule 12:

- (a) the Site Investigations Contractor must obtain the Planning Approvals identified as being the Site Investigations Contractor responsibility, and
- (b) the Principal must obtain the Planning Approvals identified as being the Principal's responsibility,

in a Works Element Proposal, the subject of a Works Element Direction.

The Site Investigations Contractor must fulfil all conditions and requirements of the Planning Approvals (unless expressly provided for otherwise in a Works Element Direction).

4 JOINT AND SEVERAL LIABILITY

If the Site Investigations Contractor comprises more than one person, those persons are jointly and severally liable for the performance and obligations of the Site Investigations Contractor.

5 SUBCONTRACTING

- (a) The Site Investigations Contractor must not subcontract any part of the Services, other than to a P&D Partner, without the prior written approval of the Principal.
- (b) An approval given by the Principal permitting the Site Investigations Contractor to subcontract any portion of the Services does not relieve the Site Investigations Contractor from its obligations and liabilities pursuant to this Deed and the Site Investigations Contractor will be vicariously liable for the acts and omissions of its subcontractors and consultants.

6 CONTRACTOR PERFORMANCE REPORTING

The Site Investigations Contractor acknowledges that the Principal has in place processes for assessing the performance of its contractors and that these processes will apply to this Deed. The Site Investigations Contractor agrees to participate in the Principal's contractor performance reporting process.

6.1 Exchange of Information between Government Departments and Agencies

The Site Investigations Contractor authorises the Principal, its employees and agents to make information concerning the Site Investigations Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Site Investigations Contractor to the Principal and any information relating to the Site Investigations Contractor's performance under this Deed.

The Site Investigations Contractor acknowledges that:

- (a) any information about the Site Investigations Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Site Investigations Contractor future opportunities for NSW government work; and
- (b) the Principal may be required to publish information concerning this Deed in accordance with sections 27 to 35 of the *Government Information (Public Access) Act 2009* (NSW). If the Site Investigations Contractor reasonably believes that any part of this Deed contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, the Site Investigations Contractor must immediately advise the Principal in writing, identifying the provisions and providing reasons so that the Principal may consider exempting those provisions from publication.

7 INTELLECTUAL PROPERTY

7.1 Ownership

The Intellectual Property Rights in or relating to the Contract Material will vest in the Principal (other than ICIP Rights).

The Principal grants to the Site Investigations Contractor an irrevocable licence to use those Intellectual Property Rights for the purpose of carrying out the Services. The Site Investigations Contractor will retain the Intellectual Property Rights in any original ideas, equipment processes or systems created outside the terms of this Deed and used in carrying out the Services (other than ICIP Rights).

The Site Investigations Contractor must grant or cause to be granted to the Principal an irrevocable royalty-free licence (which includes the right to sublicense to third parties) to use such Intellectual Property Rights for any purpose the Services are provided for including any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts) or additions or alterations to, CQR and the copying of any document for such purposes.

7.2 Warranty and Indemnity

The Site Investigations Contractor warrants that in providing the Services the Site Investigations Contractor owns or is licensed to use the Intellectual Property Rights in the Contract Material and the Site Investigations Contractor must indemnify the Principal against any action, claim, demand, liability, loss or damage suffered or incurred by the Principal arising out of or in connection with any alleged or actual infringement of the Intellectual Property Rights of a third party in the performance of the Services or the use by the Principal of the Contract Material.

The Principal warrants that documents and materials provided by the Principal to the Site Investigations Contractor for the Services will not infringe the Intellectual Property Rights of a third party.

7.3 Moral Rights

If the Site Investigations Contractor in performing the Services includes or makes use of any work or other subject matter in which copyright subsists, the Site Investigations Contractor must procure from every person (whether a subcontractor or an officer, employee or consultant of the Site Investigations Contractor or of a subcontractor, and including the Site Investigations Contractor's Representative and the Key People) who is an author of that work or subject matter a written consent signed by that person for the benefit of the Principal and the Site Investigations Contractor, under which (to the maximum extent permitted by law) that person irrevocably and unconditionally:

- (a) consents to the Principal and the Site Investigations Contractor:
 - (i) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter anywhere in the world in whatever form the Principal and the Site Investigations Contractor thinks fit (including the making of any distortions, additions, or alterations to that work or subject matter or any adaptation thereof, or to any part of that work or subject matter or of any such adaptation in a manner which but for the consent, infringes or may infringe that person's moral rights in the work or other subject matter) as so used, disclosed, reproduced, transmitted, exhibited, communicated, adapted or published; and
 - (ii) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter or any adaptation thereof (or any part of that work or subject matter or of any such adaptation) anywhere in the world including pursuant to the *Copyright Act 1968* (Cth) without making any identification of that person in relation thereto; and
- (b) waives, to the extent permitted by law, all and any moral rights to which that person may be entitled anywhere in the world in relation to any Contract Material.

7.4 Indigenous Cultural and Intellectual Property

- (a) The parties acknowledge that the Contract Materials, may include ICIP, and that ICIP rights remain with the relevant traditional owners or custodians of such ICIP.
- (b) Despite any other provision of this Deed, each party agrees to deal with any ICIP identified in relation to the Contract Materials or Services in accordance with this clause 7.4.
- (c) The Site Investigations Contractor will consult with persons and communities with relevant ICIP rights in relation to the production of Contract Materials to ensure that relevant ICIP is identified and treated respectfully in the Contract Materials, including identifying to the Principal relevant traditional indigenous owners or custodians of relevant ICIP rights, obtaining consents from relevant traditional indigenous owners or custodians to including ICIP materials in the Contract Materials and providing information about any relevant cultural restrictions in relation to ICIP rights that should be communicated to the Principal, including how to appropriately acknowledge

indigenous individuals, communities or families who have ICIP rights relevant to the Services and the Contract Materials.

- (d) The Site Investigations Contractor warrants that to the extent ICIP materials are included in the Contract Materials, use of the ICIP materials in those Contract Materials, and use of those Contract Materials will not be culturally inappropriate when used in accordance with any requirements identified under clause 7.4(c) and if any consents are required under clause 7.4(c), the Site Investigations Contractor has obtained or will obtain such consents.
- (e) The Site Investigations Contractor will assist the Principal to develop and maintain relationships with any relevant indigenous contributors or communities for potential ongoing consultation or collaboration in relation to ICIP identified in carrying out the Services and the Contract Materials.
- (f) The Site Investigations Contractor agrees that if any third party claims that the Principal does not have rights to use the ICIP in the Contract Materials, that it will assist the Principal to address that claim.
- (g) Each party:
 - (i) will respectfully use any Contract Materials in a way that respects the cultural significance of the ICIP contained in such Contract Materials;
 - (ii) will ensure that the relevant traditional indigenous knowledge holders, owners or custodians are attributed as the cultural source of the ICIP, including individual, community and/or family acknowledgements as required and as notified under clause 7.4(c);
 - (iii) will not make material alterations or modifications of ICIP without re-consulting traditional indigenous owners or custodians identified under clause 7.4(c); and
 - (iv) will not use the ICIP contained in the Contract Materials for any purpose other than undertaking CQR without first consulting with the relevant traditional indigenous owners or custodians.
- (h) The Principal will engage with the Site Investigations Contractor and traditional indigenous owners or custodians to allow for ongoing feedback about the authenticity and cultural integrity of ICIP. Each party will respond to feedback or complaints in a timely, transparent and respectful manner.

7.5 Survival

This clause 7 will survive the termination of this Deed.

8 CONFLICT OF INTEREST

- (a) The Site Investigations Contractor warrants that no conflict of interest exists in relation to the Services at the date of this Deed.
- (b) The Site Investigations Contractor must immediately provide the Principal written notice upon becoming aware of the existence, or possibility, of an actual or perceived conflict of interest in the performance of the Services.
- (c) On receipt of a notice under clause 8(b), the Principal may:
 - (i) approve the Site Investigations Contractor continuing to perform the Services, which approval may be subject to conditions specified by the Principal (including requirements relating to separation arrangements) to ensure appropriate management of the conflict; or
 - (ii) where in the Principal's view the conflict of interest cannot be appropriately managed, and without limiting clause 21, terminate this Deed by notice in writing to the Site Investigations Contractor effective from the date specified in the notice.

- (d) The Principal may, at its sole discretion and at any time, require the Site Investigations Contractor to sign and procure that each of its officers, employees, subcontractors or agents involved in the performance of the Services signs and delivers to the Principal a Statement of Interests and Associations in the form attached in Schedule 4.

9 INDEMNITY BY SITE INVESTIGATIONS CONTRACTOR

The Site Investigations Contractor must indemnify the Principal against:

- (a) loss of or damage to property of the Principal including the Contract Material; and
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any other property,

arising out of or in consequence of carrying out the Services but the Site Investigations Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that the act or omission of the Principal or the employees, agents or other contractors of the Principal contributed to the loss, damage, injury or death.

10 INSURANCE

10.1 Professional Indemnity Insurance

- (a) Before the Site Investigations Contractor commences carrying out the Services, the Site Investigations Contractor must effect a professional indemnity insurance policy for the Services with a total aggregate cover of not less than the sum stated in the Contract Particulars.
- (b) The policy must include provisions for one automatic reinstatement of the sum insured and for loss of documents. The policy and such level of cover must be maintained until the Site Investigations Contractor completes carrying out the Services and thereafter for a period as stated in the Contract Particulars.
- (c) The Site Investigations Contractor must ensure that its subcontractors and consultants have professional indemnity insurance with an annual total aggregate cover of not less than the sum stated in the Contract Particulars (or such level as agreed by the parties from time to time).

10.2 Public Liability Insurance

- (a) The Site Investigations Contractor must maintain a public liability policy for an amount in respect of any one claim or series of claims arising from one original cause of not less than the sum stated in the Contract Particulars. The policy must be maintained until the Site Investigations Contractor completes carrying out the Services.
- (b) The policy must cover the Site Investigations Contractor in respect of liability to the Principal and third parties in respect of any claim arising from the acts or omissions of the Site Investigations Contractor, its employees, subcontractors and consultants in the course of carrying out the Services and must extend to indemnify the Principal and/or any Government Agency as one of the class of persons constituting the insured.
- (c) The Site Investigations Contractor must ensure that if the Services are to be carried out on or near rail, the public liability insurance does not contain any exclusions or limitations in cover in respect of works conducted on or near rail.
- (d) Notwithstanding any other provision in this Deed, if the Services include Rail Safety Work, the public liability insurance must be structured such that:
 - (i) the Site Investigations Contractor provides the primary layer of public liability insurance, which must be for an amount not less than as specified in the Contract Particulars; and

- (ii) the Principal provides the secondary layer of public liability insurance, comprising a further amount topping up the aggregate public liability insurance to an amount not less than \$ [REDACTED] for any one occurrence.

10.3 Insurance of Employees

- (a) Before the Site Investigations Contractor commences carrying out the Services, the Site Investigations Contractor must insure against liability for death or injury to persons employed by the Site Investigations Contractor including liabilities, under statute including relevant workers compensation legislation and at common law. The insurance cover must be maintained until the Site Investigations Contractor completes carrying out the Services.
- (b) Where permitted by law, the insurance cover must be extended to indemnify the Principal for the Principal's statutory liability for persons employed by the Site Investigations Contractor. The Site Investigations Contractor must ensure that employees of the Site Investigations Contractor's subcontractors and consultants are similarly insured.

10.4 Asbestos Liability Insurance

- (a) The Site Investigations Contractor must maintain (or must require its specialist subcontractor to maintain) an asbestos liability policy for an amount in respect of any one claim or series of claims arising from one original cause of not less than the sum stated in the Contract Particulars. The policy must be maintained until the Site Investigations Contractor completes carrying out the Services.
- (b) The policy must cover the Site Investigations Contractor in respect of liability to the Principal and third parties in respect of any claim arising from any liability work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, in the course of carrying out the Services and must extend to indemnify the Principal as one of the class of persons constituting the insured but not in respect of liability to the extent that the liability is due to or results from the negligence of the Principal.

10.5 Environmental and Pollutant Liability Insurance

- (a) The Site Investigations Contractor must maintain (or must require its specialist subcontractor to maintain) an environmental and pollutant liability insurance for an amount in respect of any one claim or series of claims arising from one original cause of not less than the amount stated in the Contract Particulars.
- (b) The policy must be maintained until the Site Investigations Contractor completes carrying out the Services and must extend to indemnify the Principal, any Government Agency and third party as one of the classes of persons constituting the insured.
- (c) The policy must cover the Site Investigations Contractor in respect of liability to the Principal and any third parties in respect of any claim arising from the Services resulting in, and involving, Contamination, an Incident, discharge, dispersal, seepage, release or escape of Pollutants into or upon any property owned, leased or occupied by the Principal and any third parties in or where the Principal and third parties did not know or could reasonably not have known that Pollutants existed before the Principal and third parties became the owner, lessee, or occupier of the property.
- (d) For the purpose of this clause 10.5, "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, acids, chemicals or waste.

10.6 Site Investigations Contractor's Insurance Obligations

The Site Investigations Contractor must:

- (a) provide the Principal's Representative with a copy of, or certificate of currency for, any insurance policies required by this clause 10 prior to commencement of the Services as evidence for the Principal's Representative that the policy is current as required by the Principal's Representative from time to time; and

- (b) ensure that it:
 - (i) does not do anything which prejudices the insurance;
 - (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) reinstates any insurance policy if it lapses;
 - (iv) does not cancel, vary [REDACTED] or allow an insurance policy to lapse without providing prior written notification to the Principal's Representative. Such notification, or any cancellation, variation or lapse that has not been notified to the Principal's Representative, will not constitute a waiver of the Principal's rights under this Deed;
 - (v) immediately notifies the Principal's Representative of any event which may result in an insurance policy 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.

11 REPRESENTATIVES

11.1 Site Investigations Contractor's Representative

The person nominated in the Contract Particulars is the Site Investigations Contractor's Representative for this Deed, and:

- (a) has the legal power to bind the Site Investigations Contractor in respect of any matter arising in connection with the Services;
- (b) has the authority to receive directions on behalf of the Site Investigations Contractor from the Principal and the Principal's Representative;
- (c) is competent to be the Site Investigations Contractor's Representative; and
- (d) is not discharged or replaced as the Site Investigations Contractor's Representative without the written consent of the Principal, which cannot be unreasonably withheld. Any substitute representative must be notified promptly in writing to the Principal.

11.2 Key People

The Site Investigations Contractor must:

- (a) engage the Key People specified in the Contract Particulars in the performance of the Services and in the positions (if any) specified in the Contract Particulars;
- (b) ensure the Key People (including any replacement) will devote sufficient time to the services they are retained to do such that the Services are performed promptly, efficiently, skilfully, in a timely fashion and in accordance with this Deed;
- (c) subject to clause 11.2(d), not replace the Key People without the Principal's Representative's prior written approval which will not be unreasonably withheld;
- (d) if any of the Key People:
 - (i) dies;
 - (ii) becomes unable to continue in their positions due to illness; or
 - (iii) resigns from the employment of the Site Investigations Contractor (other than to accept other employment with the Site Investigations Contractor or any "related body corporate" of the Site Investigations Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)));

promptly notify the Principal's Representative and replace those Key People with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative; and

- (e) immediately take steps to replace any Key People specified in the Contract Particulars who are requested by the Principal, acting reasonably, to be removed from the Services with a replacement of equivalent expertise and experience, and obtain the written approval of the Principal, which will not be unreasonably withheld, to the replacement prior to engaging the replacement.

11.3 Principal's Representative

The person nominated in the Contract Particulars is the Principal's Representative for this Deed and has the legal power to bind the Principal in respect of any matter arising in connection with the Services. Any substitute representative must be notified promptly in writing to the Site Investigations Contractor.

The Principal's Representative may by notice in writing to the Site Investigations Contractor delegate any or all of its functions to another person.

12 DIRECTIONS

12.1 Directions

The Site Investigations Contractor must comply with the directions of the Principal or the Principal's Representative. Except where this Deed otherwise provides, a direction may be given orally.

If the Site Investigations Contractor in writing requests the Principal to confirm an oral direction in writing, the Principal must do so as soon as practicable.

12.2 Programming

The Site Investigations Contractor must give the Principal reasonable advance notice of when the Site Investigations Contractor needs information, materials, documents or instructions from the Principal.

The Principal shall not be obliged to give any information, materials, documents or instructions earlier than the Principal should reasonably have anticipated at the date of this Deed and in any event no earlier than 10 Business Days after the request for the information, materials, document or instruction was made by the Site Investigations Contractor.

The Principal may direct in what order and at what time the various stages or Separable Portions of the Services must be carried out and the Site Investigations Contractor must comply with any such direction.

13 RECORD KEEPING AND PROGRAM REPORTING

The Site Investigations Contractor must:

- (a) keep, and ensure its subcontractors keep, accurate records of the performance of the Services;
- (b) ensure that all persons engaged in the performance of the Investigations produce and maintain:
 - (i) a daily diary record of tasks performed; and
 - (ii) where the Fee is time based, a daily timesheet accurately recording the time spent in the performance of the Services;
- (c) at the Principal's request, provide, and ensure that its subcontractors provide, the records referred to in this clause 13 for their inspection and copying by the Principal;
- (d) if required, provide the Principal's Representative with periodic program reports on the engagement as required by this Deed;
- (e) ensure that all records required to be kept by this Deed, including the Competence Records, are current and accurate; and

- (f) whenever requested by the Principal's Representative provide the Principal's Representative with a written report containing details on all work health and safety matters arising out of the Services, including in respect of any matters concerning or arising out of clause 3.2 and clauses 3.5 to 3.8.

The records referred to in this clause 13 must be retained for seven (7) years after completion of the Services.

14 COLLABORATIVE AUDITING PROCESS

The Site Investigations Contractor and the Principal will, on a collaborative basis, develop, agree and implement, a scope and program for the Principal's Representative to undertake audits of the Site Investigations Contractor's compliance with the requirements of the Site Investigations Contractor's quality management system (if applicable) as these may apply to the Services and obligations under this Deed and:

- (a) the Site Investigations Contractor agrees to participate and assist in the development and completion of these audits; and
- (b) the Site Investigations Contractor and the Principal's Representative shall when requested share the results of any self verification by the Site Investigations Contractor and/or the outcome of any audits completed.

15 ACCESS TO SITE INVESTIGATIONS CONTRACTOR'S PREMISES

The Site Investigations Contractor must, at all reasonable times and upon reasonable notice, permit the Principal access to the Site Investigations Contractor's premises in order for the Principal to inspect, discuss and assess the Contract Material and any other material obtained by the Site Investigations Contractor from any person in connection with this Deed.

16 VARIATIONS

16.1 Proposal

- (a) The Principal may direct in writing that the Site Investigations Contractor vary the Services, including an addition to, omission from or deletion of any part of the Services, or the timing, including the Date for Completion, of the Services (or part of the Services) or both ("**Variation**").
- (b) If a Variation the subject of a direction by the Principal omits or deletes any part of the Services, the Principal may thereafter carry out the omitted or deleted Services either itself or engage an Other Contractor to carry out the omitted or deleted Services or part of the Services and the Site Investigations Contractor will have no entitlement to make any payment claim against the Principal arising out of or in connection with the omitted or deleted Services or any part thereof.
- (c) If the Principal gives such a direction where the need for the Variation is in order to overcome any Defect in or from the Services, any costs or losses suffered or incurred by the Principal in having the Services which have been deleted or omitted carried out by an Other Contractor will be a debt due and payable by the Site Investigations Contractor to the Principal which may be deducted from the Fee.
- (d) Nothing in clause 16.1(c) limits the Principal's rights under clauses 3.3(b) and 3.3(c).
- (e) If the Principal proposes a Variation, the Principal will specify in the direction a reasonable time by which the Site Investigations Contractor must provide a written estimate of the time, cost and programming effects of the proposed Variation. If no time is specified, the Site Investigations Contractor must provide the estimate within 14 days.

16.2 Variation Direction

Whether or not the Site Investigations Contractor provides a written estimate under clause 16.1(e), the Principal may direct in writing the Site Investigations Contractor to carry out a Variation, and the Site Investigations Contractor must comply with such direction.

16.3 Valuation

The value of a Variation directed under clause 16.1 or 16.2 will be determined by the Principal's Representative as follows:

- (a) by agreement between the Principal's Representative and the Site Investigations Contractor including where the Site Investigations Contractor has provided a written estimate pursuant to clause 16.1(e), which the Principal has accepted, the amount in that written estimate;
- (b) by using the hourly rates and other prices set out in Schedule 5 or as previously agreed in a prior Works Element Direction, where these are reasonable to use; or
- (c) on the basis of reasonable prices and rates determined by the Principal's Representative.

The relevant Upper Limit and Fee will be adjusted by the value of the applicable Variation as determined in accordance with this clause 16.3.

16.4 Variation due to a Change in a Statutory Requirement

If a new Statutory Requirement or a change in a Statutory Requirement after the Commencement Date:

- (a) necessitates a change to the Services;
- (b) has effect after the Commencement Date; and
- (c) could not reasonably have been anticipated at that date,

then the extent to which the Services are changed by the Statutory Requirement shall be deemed to be a Variation and will be valued pursuant to clause 16.3.

16.5 Investigations Margin adjustment

The Investigations Margin shall be adjusted in accordance with Schedule 6 (and not this clause 16).

16.6 COVID-19

- (a) The parties acknowledge that, as at the date of this Deed:
 - (i) COVID-19 exists; and
 - (ii) the precise nature, extent, impact and duration of COVID-19 is unknown.
- (b) The Site Investigations Contractor acknowledges and warrants that it has made adequate allowance in its Site Investigations Proposal for the impact of all COVID-19 Directives in effect on the date that is 10 Business Days prior to the date of this Deed.
- (c) Except as stated in clauses 16.7, 18.3 and [REDACTED] the Site Investigations Contractor will have no entitlement to and the Principal will not be liable for any Claim arising out of or in connection with the impact of COVID-19 or any COVID-19 Directives.
- (d) The Site Investigations Contractor must:
 - (i) ensure the Management Plans take COVID-19 and all COVID-19 Directives into account for the period during which the COVID-19 Directives remain in force and relevant to the Services;
 - (ii) proactively monitor the potential impacts of COVID-19 and all relevant COVID-19 Directives on the Services; and
 - (iii) implement mitigation measures to minimise any potential impact of COVID-19 and any relevant COVID-19 Directives on the Services, including:
 - A. as set out in the updated Management Plans and otherwise consistent with good industry practice; and

- B. sequencing the Services and employing methodologies and practices that minimise the impacts of COVID-19 and any relevant COVID-19 Directives on the Services.

16.7 New COVID-19 Directives

- (a) Where there is a New COVID-19 Directive and the Site Investigations Contractor wishes to claim any increase to the Fee on account of the New COVID-19 Directive:
 - (i) the Site Investigations Contractor must, within 10 Business Days after the commencement of the New COVID-19 Directive, give a written notice to the Principal stating that this clause 16.7(a) applies and containing:
 - A. details of the New COVID-19 Directive;
 - B. the Site Investigations Contractor's estimate of the reasonable net extra direct cost to be incurred by the Site Investigations Contractor in carrying out the Services in compliance with the New COVID-19 Directive including sufficient information to support the estimate; and
 - C. the Site Investigations Contractor's plan to deal with the consequences of the New COVID-19 Directive, including:
 - 1) details of the steps the Site Investigations Contractor will take to avoid, mitigate, resolve or otherwise manage the effects of the New COVID-19 Directive and mitigate any extra direct costs incurred by the Site Investigations Contractor in carrying out the Services in compliance with the New COVID-19 Directive; and
 - 2) an updated COVID-19 Management Plan addressing the impacts of the New COVID-19 Directive;
 - (ii) the Principal and the Site Investigations Contractor must meet within 20 Business Days of a notice being given under clause 16.7(a)(i) to negotiate and endeavour to agree the net extra direct costs to be incurred by the Site Investigations Contractor in carrying out the Services in compliance with the New COVID-19 Directive and where agreement is reached as to the amount of the extra direct costs will be payable by the Principal to the Site Investigations Contractor.
 - (iii) if no agreement is reached within 20 Business Days (or such other period that the Principal and the Site Investigations Contractor agree on) of a notice being given under clause 16.7(a)(i) the reasonable net extra direct costs actually incurred will, subject to the Site Investigations Contractor having taken all reasonable steps to mitigate those increased direct costs, be payable by the Principal to the Site Investigations Contractor, such amount to be as stated by the Principal's Representative.
- (b) The Site Investigations Contractor's entitlement to any direct costs under clause 16.7(a) or an extension to the Date for Completion under clause 18.3 will be reduced to the extent that:
 - (i) the Site Investigations Contractor could have avoided or lessened the direct costs or the delay by implementing the measures set out in the initial COVID-19 Management Plan; or
 - (ii) the Site Investigations Contractor has saved any direct costs or achieved any productivity gains in respect of the Services as a result of the New COVID-19 Directive.
- (c) Without limiting any other provision of this Deed, the Site Investigations Contractor must, every 3 months or otherwise promptly upon request, provide to the Principal's Representative a detailed breakdown, on a transparent and open book basis, of:

- (i) any direct costs claimed under this clause 16.7;
- (ii) [REDACTED] and
- (iii) any program impacts of any New COVID-19 Directive.
- (d) Upon request by the Principal's Representative from time to time, the Site Investigations Contractor must submit to a cost assessment by an assessor nominated by the Principal's Representative of:
 - (i) any direct costs claimed under this clause 16.7; or
 - (ii) [REDACTED]

and must provide any information or records requested by the independent costs assessor in relation to such costs.
- (e) The:
 - (i) direct costs claimed under this clause 16.7; and
 - (ii) [REDACTED]

will be added to the relevant Fee and the Upper Limits.

17 PAYMENT OF FEE

17.1 Payment Claim issued by Site Investigations Contractor

- (a) Subject to the Site Investigations Contractor performing the Services in accordance with this Deed, the Principal must pay the Site Investigations Contractor the Fee in accordance with this clause 17.
- (b) The Site Investigations Contractor acknowledges and agrees that it will not be entitled to claim any amount (whether per claim or in the aggregate) in respect of a Works Element which exceeds the applicable Upper Limit (whether amounts have been claimed or are claimable).
- (c) The Site Investigations Contractor will provide monthly updates to the Principal (which may be included in a payment claim under clause 17.2):
 - (i) of the Investigations Amounts claimed up to and including that month for each Works Element against the Upper Limit applicable to that Works Element; and
 - (ii) an estimate of the Investigations Amounts it anticipates claiming for that part of the Works Element in the subsequent month.

17.2 Payment Claims

The Site Investigations Contractor may prepare and submit to the Principal's Representative a payment claim for the amount representing the value of the Services completed referable to the applicable part of the Services in accordance with this Deed upon the latter of:

- (a) satisfaction of each of the following which is a condition precedent to the Site Investigations Contractor's right to submit a payment claim under this clause 17.1:
 - (i) providing the Principal with a duly completed and signed statutory declaration and subcontractor's statement in the form contained in Schedule 3 (or in any other form requested and/or approved by the Principal's Representative);
 - (ii) where clause 17.8(l) applies, providing the Principal with the statement and the evidence (if any) required to be provided by the Site Investigations Contractor pursuant to that clause; and

- (iii) providing the Principal with certificates of currency in respect of its workers compensation, public liability, professional indemnity and any other insurances, which must be effected by the Site Investigations Contractor under this Deed; and
- (b) the times set out in the Contract Particulars.

17.3 Details in Payment Claims

Each payment claim must:

- (a) be addressed to the Principal's Representative and must refer to the Site Investigations Contract No. on the cover page of this Deed;
- (b) include all the evidence reasonably required by the Principal's Representative of the amount of Services performed as a percentage referable to the applicable part of the Services in accordance with this Deed and the amount payable;
- (c) where any part of the Fee is time based, be accompanied by timesheets accurately recording the time spent in the performance of the Services claimed;
- (d) where any part of the Fee payable is subject to any conditions set out in a Works Element Direction, details of whether such conditions have been satisfied;
- (e) set out the amount claimed for services performed as a percentage referable to the applicable part of the Services in accordance with this Deed and incorporated in the Services during the period up to the last calendar day of the month of issue of the payment claim;
- (f) set out a summary of the Services performed as a percentage referable to the applicable part of the Services in the time period of the claim; and
- (g) include such further information and evidence in respect of the payment claim as is reasonably required by the Principal's Representative.

17.4 Payment Schedule of Fee issued by Principal

If the Principal intends making a payment that is less than the amount claimed by the Site Investigations Contractor, the Principal must, within 10 Business Days following receipt of a payment claim give the Site Investigations Contractor a payment schedule which sets out:

- (a) the value of the Services completed in accordance with this Deed;
- (b) the amount already paid to the Site Investigations Contractor;
- (c) the amount that the Principal is entitled to retain, deduct, withhold or set-off under this Deed;
- (d) the amount (if any) which the Principal proposes to pay to the Site Investigations Contractor;
- (e) the amount (if any) which the Principal proposes to withhold due to the Principal considering that any applicable conditions relating to payment of that part of the Fee have not been satisfied;
- (f) the reason why the amount under clause 17.4(d) is less than the amount claimed in the payment claim; and
- (g) if the reason for the difference is that the Principal is retaining, deducting, withholding or setting-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The failure of the Principal to set out in a payment schedule an amount which it is entitled to retain, deduct, withhold or set off under this Deed will not prejudice its right to subsequently exercise such right.

17.5 Payments

The Principal must within 15 Business Days following receipt of a payment claim, pay the amount stated in the payment schedule or the amount claimed by the Site Investigations Contractor in its payment claim (as the case may be) provided always that the amount claimed in respect of a Works Element does not exceed the Upper Limit applicable to that Work Element.

Where the Principal has notified the Site Investigations Contractor in accordance with clause 26(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Site Investigations Contractor for the Principal, the Site Investigations Contractor must, within two Business Days after receipt of the payment schedule issued by the Principal's Representative under clause 17.4 give the Principal's Representative a tax invoice (which complies with the GST Law) for the amount of the payment schedule.

The making of a payment by the Principal under this clause 17.5 is not evidence of the value of the Services performed, does not constitute an admission by the Principal that any Services provided by the Site Investigations Contractor conform with the requirements of this Deed and is a payment on account only.

17.6 Not Used**17.7 Set Off**

The Principal may, at any time withhold, set-off or deduct from amounts otherwise payable to the Site Investigations Contractor:

- (a) any debt or other moneys due from the Site Investigations Contractor to the Principal including any due debt from the Site Investigations Contractor to the Principal pursuant to section 26C of the SOP Act; or
- (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,

under this Deed or in respect of the Services.

17.8 SOP Act

- (a) This clause applies if the SOP Act applies to the Services.
- (b) The Site Investigations Contractor agrees that each Payment Claim Date is the date on which the Site Investigations Contractor is entitled to make a payment claim for the purposes of section 13(1B) of the SOP Act.
- (c) The Site Investigations Contractor must ensure that a copy of any written communication it delivers to the Principal of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (d) In responding to the Site Investigations Contractor under the SOP Act, the Principal's Representative acts as the agent of the Principal and the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (e) If, within the time allowed by the SOP Act for the service of a payment schedule by the Principal, the Principal does not:
 - (i) serve the payment schedule itself; or
 - (ii) notify the Site Investigations Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,

then a payment schedule issued by the Principal's Representative under this Deed which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).

- (f) For the purposes of section 17(3)(b) of the SOP Act the Site Investigations Contractor irrevocably chooses the Resolution Institute 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.
- (g) If an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Site Investigations Contractor:
 - (i) the amount will be taken into account by the Principal in issuing a payment schedule under clause 17.4;
 - (ii) if it is subsequently determined pursuant to this Deed that the Site Investigations Contractor was not entitled under this Deed to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Site Investigations Contractor to the Principal which the Site Investigations Contractor must pay to the Principal upon demand and in respect of which the Site Investigations Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
 - (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 Site Investigations Contractor to the Principal upon demand and in respect of which the Site Investigations Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (h) Without limiting clause 17.7, 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.
- (i) If the Principal withholds from money otherwise due to the Site Investigations 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 Site Investigations Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Site Investigations 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 Site Investigations Contractor has been unpaid; and
 - B. the date by which payment of money owed by the Principal to the Site Investigations Contractor must be made.
- (j) The Site Investigations 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.
- (k) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Site Investigations Contractor to the Principal.
- (l) 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 Site Investigations 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 Site Investigations Contractor must so notify the Principal within 5 days of the occurrence of the event under clauses 17.8(l)(i) and 17.8(l)(ii) (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

18 TIME

18.1 Time for Commencement and programming

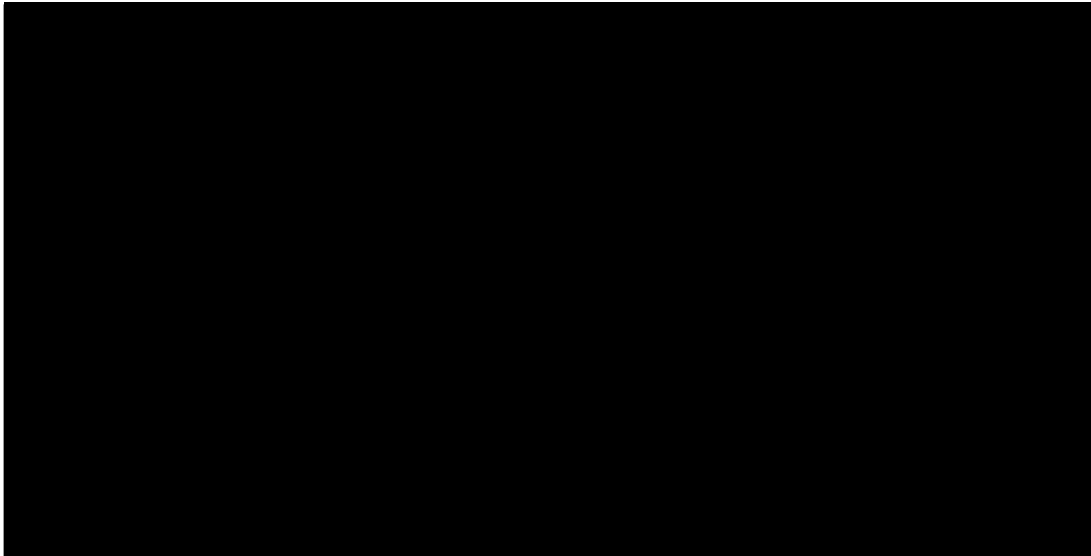
- (a) The Site Investigations Contractor must:
 - (i) immediately commence the performance of the Services;
 - (ii) within 10 Business Days of the Commencement Date, provide to the Principal's Representative, a detailed Contractor's Program setting out the Planning Services and when the Investigations in respect of each Work Element will be carried out; and
 - (iii) provide the Services expeditiously and, in any event, in accordance with the Contractor's Program.
- (b) The Site Investigations Contractor must regularly revise the Contractor's Program as acceptable to, or as required by, the Principal's Representative, including to take account:
 - (i) the durations of Investigations in respect of each Works Element (as set out in a Works Element Direction); and
 - (ii) extensions of time granted under this clause 18,and provide a copy to the Principal's Representative.

18.2 Date for Completion

The Site Investigations Contractor must use its best endeavours to achieve Completion of the Services by the relevant Date for Completion of each Separable Portion.

18.3 Extension of Time for Completion

If the Site Investigations Contractor is or will be delayed in reaching Completion of a Separable Portion by:





the Site Investigations Contractor may claim an extension of time to the relevant Date for Completion.

18.4 Claim for Extension of Time

To claim an extension of time, the Site Investigations Contractor must submit a written claim to the Principal's Representative within 10 Business Days of the first occurrence of the event or circumstance causing the delay. This claim should include:

- (a) details of the delay and the event or circumstance causing the delay;
- (b) details of the activities that are critical to the maintenance of progress in the execution of the Services;
- (c) a statement of the number of days extension of time claimed together with the basis of calculating that period; and
- (d) any other information reasonably requested by the Principal's Representative.

If the effects of the delay continue beyond the period of 10 Business Days after the first occurrence of the event or circumstance causing the delay and the Site Investigations Contractor wishes to claim extensions of time in respect of the further delays, the Site Investigations Contractor must submit further written claims to the Principal's Representative at intervals not greater than 10 Business Days.

The Principal's Representative may, within 10 Business Days of receiving the Site Investigations Contractor's claim or further claim for an extension of time to the relevant Date for Completion, by written notice to the Site Investigations Contractor, request additional information in relation to the claim or further claim. The Site Investigations Contractor must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.

Notwithstanding that the Site Investigations Contractor is not entitled to an extension of time or has not made a claim for an extension of time, the Principal's Representative may at any time by notice in writing to the Site Investigations Contractor extend the time for Completion for any reason.

The Principal's Representative is not required to exercise its discretion under the previous paragraph for the benefit of the Site Investigations Contractor.

18.5 Conditions precedent to Extension of Time

It is a condition precedent to the Site Investigations Contractor's entitlement to an extension of time to any relevant Date for Completion that:

- (a) the Site Investigations Contractor gives the claim required by clause 18.4,
- (b) the Site Investigations Contractor complies with any request for additional information under clause 18.4 within the time required;
- (c) the cause of the delay is beyond the reasonable control of the Site Investigations Contractor; and
- (d) the Site Investigations Contractor is actually, or will be, delayed in achieving Completion of the Services or the Separable Portion, by reason of one or more of the causes set out in clause 18.3.

If the Site Investigations Contractor fails to comply with the conditions precedent in this clause 18.5:

- (e) the Principal will not be liable upon any claim by the Site Investigations Contractor; and
- (f) the Site Investigations 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.

18.6 Completion

- (a) The Site Investigations Contractor must notify the Principal's Representative in writing 5 Business Days prior to the date upon which the Site Investigations Contractor anticipates that Completion of a Separable Portion will be reached.
- (b) The Principal's Representative will, within 5 Business Days after receipt of the notice referred to in clause 18.6(a), review the relevant Services the subject of that notice and thereafter issue a notice to the Principal and the Site Investigations Contractor either:
 - (i) containing a list of the items that are apparent and it believes must be completed (including the correction of any Defects) before Completion of the Separable Portion is achieved; or
 - (ii) stating that it believes the Site Investigations Contractor is so far from achieving Completion of the Separable Portion that it is not practicable to issue a list as contemplated in clause 18.6(b)(i).
- (c) When the Principal's Representative issues a notice under either clause 18.6(b)(i) or clause 18.6(b)(ii), the Site Investigations Contractor must continue to proceed to bring the Separable Portion to Completion and thereafter when the Site Investigations Contractor considers it has achieved Completion of the Separable Portion, the Site Investigations Contractor must notify the Principal's Representative. This notice must contain a Site Investigations Contractor's Certificate of Completion.
- (d) The Principal's Representative will, within 15 Business Days of receipt of a notice in writing under clause 18.6(c) or of receipt of a notice under clause 18.6(e), issue a notice to the Principal and the Site Investigations Contractor:
 - (i) if satisfied that Completion of the Separable Portion has been achieved, stating the date on which the Principal's Representative determines Completion of the Separable Portion was achieved; or
 - (ii) if not satisfied that Completion of the Separable Portion has been achieved:
 - A. containing a list of the items that are apparent and it believes must be completed (including the correction of any Defects) before Completion of the Separable Portion is achieved; or
 - B. stating that it believes the Site Investigations Contractor is so far from achieving Completion of the Separable Portion that it is not practicable to issue a list as contemplated by clause 18.6(d)(ii)(A).
- (e) If the Principal's Representative issues a notice under either clause 18.6(d)(ii)(A) or clause 18.6(d)(ii)(B), the Site Investigations Contractor must continue to proceed to bring the Separable Portion to Completion and thereafter when it considers it has achieved Completion of the Separable Portion, the Site Investigations Contractor must notify the Principal's Representative by notice in writing (by means of a Site Investigations Contractor's Certificate of Completion), after which clause 18.6(d) and this clause 18.6(e) will reapply.
- (f) For the purposes of this Deed and without affecting the Site Investigations Contractor's obligation to achieve Completion of each Separable Portion by the relevant Date for Completion of each Separable Portion:
 - (i) no separate Date for Completion of the Services is specified in this Deed;
 - (ii) Completion of the Services is achieved by achieving Completion of all Separable Portions;
 - (iii) Completion of the Services will be taken to have occurred once Completion of all Separable Portions has occurred; and

- (iv) the Date of Completion of the Services will be taken to be the Date of Completion of the last Separable Portion to reach Completion.

18.7 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Site Investigations Contractor to the Principal's Representative under either of clause 18.6(c) or 18.6(e) is not given by the Site Investigations Contractor yet the Principal's Representative is of the opinion that Completion of a Separable 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 18.6(d)(i) for the Separable Portion.

18.8 Final Completion

- (a) When the Site Investigations Contractor considers it has achieved Final Completion, the Site Investigations Contractor must notify the Principal's Representative in writing by means of a Site Investigations Contractor's Certificate of Final Completion. Thereafter, the Principal's Representative and the Site Investigations Contractor's Representative must jointly inspect the Services at a mutually convenient time.
- (b) Following the joint inspection under clause 18.8(a), the Principal's Representative must within 15 Business Days of receipt of a notice under clause 18.8(a), or of receipt of a notice under clause 18.8(c), issue a notice to the Principal and the Site Investigations 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 Site Investigations Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 18.8(b)(ii)(A).
- (c) If the Principal's Representative issues a notice under clause 18.8(b)(ii)(A) or clause 18.8(b)(ii)(B), the Site Investigations Contractor must continue to proceed to bring the Services to Final Completion and thereafter when it considers it has achieved Final Completion of the Services the Site Investigations Contractor must notify the Principal's Representative in writing after which the second sentence of clause 18.8(a), clause 18.8(b) and this clause 18.8(c) will reapply.

18.9 Effect of Notice of Completion or Notice of Final Completion

The issue of a Notice of Completion or a Notice of Final Completion by the Principal will not:

- (a) constitute approval of the Separable Portion or any other matter nor will it prejudice any claim by the Principal;
- (b) constitute approval by the Principal or the Principal's Representative of the Site Investigations Contractor's performance of its obligations under this Deed;
- (c) be taken as an admission or evidence that the Separable Portion complies with the requirements of this Deed; or
- (d) prejudice any rights or powers of the Principal or the Principal's Representative.

18.10 Suspension

- (a) The Principal may, at any time by prior written notice to the Site Investigations Contractor, suspend the carrying out of the Services or any part thereof. Subject to clause 18.10(b), the Principal must, unless the suspension arose due to an act or omission of the Site Investigations Contractor (or its employees, agents or

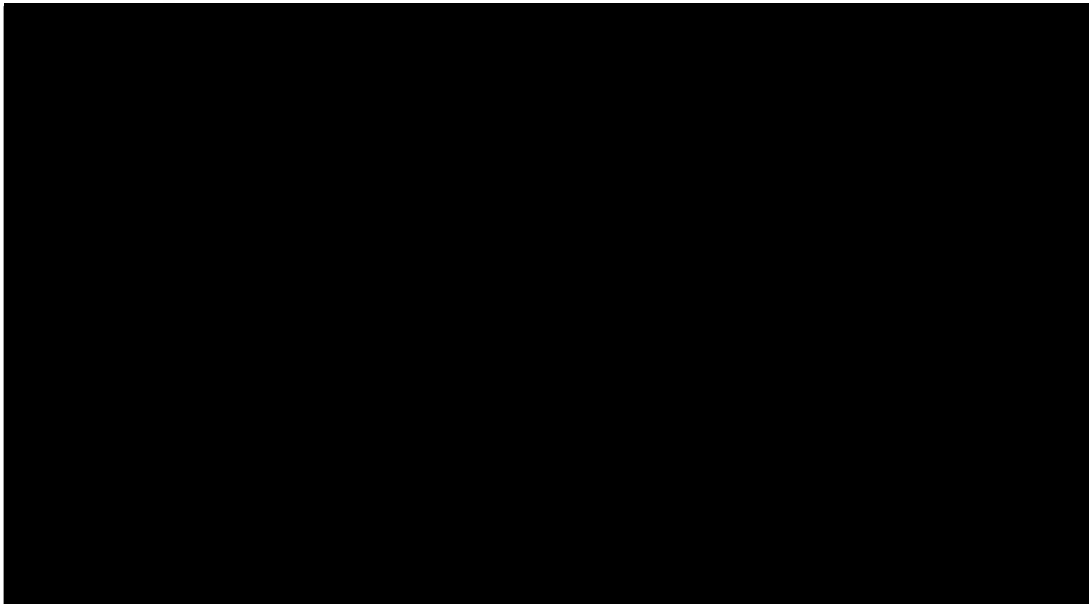
subcontractors), pay the Site Investigations Contractor any costs and expenses reasonably incurred by the Site Investigations Contractor by reason of the suspension.

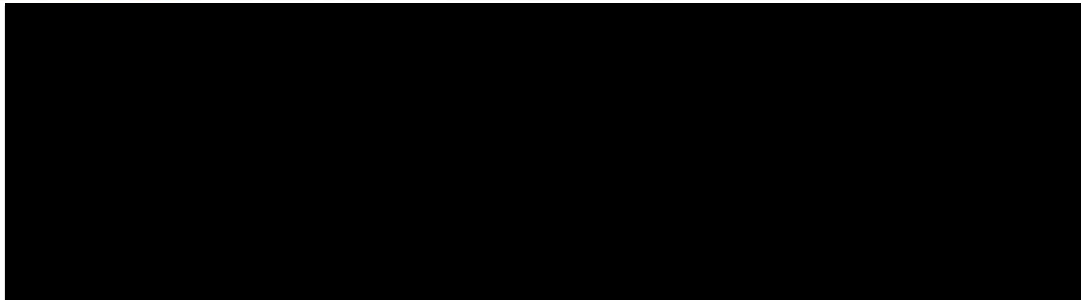
- (b) The Principal may, at any time after giving a notice in accordance with clause 18.10(a), give the Site Investigations Contractor reasonable notice to recommence carrying out those Services so suspended.
- (c) Without limiting or otherwise restricting clause 18.10(a), if the suspension under clause 18.10(a) arises as a result of the Site Investigations Contractor's failure to carry out its obligations under clauses 3.13 and 3.14 or to otherwise fail to comply with its obligations in relation to engineering authorisation or AMB compliance in accordance with this Deed, the Site Investigations 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.

18.11 Separable Portions

- (a) Separable Portions may be directed by the Principal's Representative, who shall clearly identify for each, the:
 - (i) portion of the Services;
 - (ii) Date for Completion; and
 - (iii) respective maximum daily amounts for delay costs (calculated pro-rata according to the ratio of the Principal's Representative's valuation of the Separable Portion to the Fee).
- (b) The interpretation and application of:
 - (i) Commencement Date;
 - (ii) Date for Completion;
 - (iii) Date of Completion; and
 - (iv) Completion,
 apply separately to each Separable Portion and references in the relevant definitions and clauses to the Services mean those parts of the Services comprised in the relevant Separable Portion.
- (c) The Principal may waive any of the requirements for Completion in respect of a Separable Portion by notice in writing to the Site Investigations Contractor.

18.12





19 DISPUTE RESOLUTION

19.1 Dispute Notice

If a difference or dispute (together called a **"dispute"**) between the parties arises in connection with the subject matter of this Deed then either party will give the other party written notice of a dispute by hand or by registered post which adequately identifies the details of the dispute (**"Dispute Notice"**).

19.2 Negotiation

The Site Investigations Contractor and the Principal must endeavour to resolve any dispute expeditiously by negotiation within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of the Dispute Notice. At such negotiations each party must be represented by a person who has the authority to agree to such resolution. All aspects of the negotiation (except the fact that the negotiations took place) will be privileged.

19.3 Expert Determination

- (a) If a dispute between the Site Investigations Contractor and the Principal is not resolved by negotiation within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of the Dispute Notice (**"Negotiation Period"**) then, subject to the parties' right to seek injunctive or urgent declaratory relief, and before either party has recourse to any litigation, the parties must submit the dispute to expert determination by an independent expert.
- (b) If the Site Investigations Contractor and the Principal do not agree upon an independent expert within 10 Business Days of the end of the Negotiation Period then either party may request the President of the Resolution Institute to nominate an expert.
- (c) The parties must enter into an agreement with the agreed or nominated expert on the terms of the agreement in Schedule 10 or such other terms as the parties and the expert may agree.
- (d) Except where the parties otherwise agree in writing:
 - (i) each party must bear its own costs and pay one half of the expert's fees and expenses;
 - (ii) the expert must not act as an arbitrator;
 - (iii) the determination of the expert will be final and binding on the parties except where:
 - A. the expert's determination relating to a dispute is that one party shall pay to the other an amount, or carry out works to an amount, greater than the amount stated in the Contract Particulars; and
 - B. a party gives notice of appeal to the other party within 15 Business Days of the determination being given;
 - (iv) the determination is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 19.4 below.

19.4 Litigation

If the determination of the expert is not final and binding on the parties, but without limiting clause 19.3(d)(iv), either party may commence litigation in relation to the dispute.

19.5 Continuation

Each party must continue to perform its obligations under this Deed notwithstanding the existence of a dispute.

19.6 Survival

This clause 19 will survive the termination of this Deed.

20 NOTICE OF BREACH**20.1 Principal notice**

If the Site Investigations Contractor is in breach of this Deed, then the Principal may give a written notice to the Site Investigations Contractor stating:

- (a) that it is a notice under this clause 20;
- (b) the breach relied upon; and
- (c) that this Deed will be terminated unless the breach is remedied within the period set out in the notice, to be determined by the Principal being the period as is reasonably required to remedy the breach (which in all cases must be no less than 10 Business Days).

21 TERMINATION**21.1 Principal termination for Breach or Financial Difficulty**

The Principal may, without prejudice to any other right, terminate this Deed by notice in writing to the Site Investigations Contractor from the date stated in the notice if:

- (a) the Site Investigations Contractor fails to remedy a breach of this Deed within the time stated in a notice under clause 20;
- (b) an Insolvency Event occurs to the Site Investigations Contractor whether or not there has been a breach of contract by the Site Investigations Contractor; or
- (c) the liability of the Site Investigations Contractor reaches the cap specified in the Contract Particulars.

21.2 Rights on termination

If this Deed is terminated pursuant to clause 21.1 the parties' remedies, rights and liabilities will be the same as they would have been under the law governing this Deed had the Site Investigations Contractor repudiated this Deed and the Principal elected to treat this Deed as at an end and recover damages.

21.3 Termination for Any Reason

- (a) The Principal may terminate this Deed at any time for any reason, by written notice to the Site Investigations Contractor.
- (b) If the Principal terminates this Deed pursuant to this clause 21.3, the Principal:
 - (i) may, in its absolute discretion, complete the uncompleted part of the Services itself or by engaging any third party; and
 - (ii) must reimburse the Site Investigations Contractor for the cost of Services performed to the date of termination plus the direct costs reasonably incurred by the Site Investigations Contractor as a result of the termination. Such payment will be a limitation upon the Principal's liability to the Site Investigations Contractor in connection with the termination of this Deed.

- (c) If the Principal terminates this Deed pursuant to this clause 21.3, the Site Investigations Contractor must immediately hand over to the Principal all copies of any documents provided by the Principal to the Site Investigations Contractor and all Contract Material (whether complete or not).
- (d) This clause 21.3 survives the termination of this Deed by the Principal under this clause 21.3.

21.4 Expiry

Unless terminated in accordance with clause 21.1 or 21.3 this Deed will terminate on Financial Close.

22 COMMUNICATIONS AND INFORMATION

22.1 Confidentiality

- (a) The Site Investigations Contractor acknowledges and agrees that:
 - (i) prior to the date of this Deed, the NSW Government provided a range of information to the Site Investigations Contractor in connection with CQR; and
 - (ii) the Principal may from time to time during the Transaction Phase or during the performance of the Services provide further information to the Site Investigations Contractor in connection with CQR or this Deed, that is Confidential Information.
- (b) The parties acknowledge and agree that, subject to clause 39.6(d):
 - (i) the provision of Confidential Information to the Site Investigations Contractor (whether prior to, or after, the date of this Deed) is subject to the terms of the Confidentiality Deed Poll;
 - (ii) use of the Confidential Information by the Site Investigations Contractor to participate in the Transaction Phase (including carrying out the Services) is a Permitted Purpose as defined in and under the terms of the Confidentiality Deed Poll; and
 - (iii) without limiting the above or the Confidentiality Deed Poll, the terms, schedules and attachments of this Deed and the Contract Materials are all Confidential Information to which the terms of the Confidentiality Deed Poll apply.

22.2 Contact with NSW Government

- (a) Except where required under any of the other Phase 3 Agreements:
 - (i) the Site Investigations Contractor must not contact, canvass, solicit or approach:
 - A. any Authorities, agencies, agents, members, employees, officers or representatives of Authorities (including the State of New South Wales and local councils);
 - B. the NSW Government's advisers, including the NSW Government Advisers, or their subsidiaries or related companies; or
 - C. elected representatives of Commonwealth, NSW Government or local governments, and their offices,

in each case excluding the Principal, to discuss the Services, CQR or any other element of its participation in the SME in any way;
 - (ii) if the Site Investigations Contractor wants to meet with an officer or representative of the NSW Government, it must submit a written request to the CQR Team, following which:

- A. the Principal (at its absolute discretion) may organise a meeting following a request; and
 - B. a member of the CQR Team will be present at any meeting held pursuant to clause 22.2(a)(ii).
- (b) The Site Investigations Contractor acknowledges that an unauthorised communication in breach of this clause may, at the Principal's absolute discretion, lead to termination of this Deed pursuant to clause 21.1.

22.3 Contact with infrastructure owners, third parties and other stakeholders

Subject to clause 22.3A:

- (a) the Site Investigations Contractor acknowledges and agrees that during the Transaction Phase the Principal will have primary responsibility for engagement, communication or interface with infrastructure owners, other third parties (including landowners, peak bodies, private operators and utility service providers) and other stakeholders.
- (b) If the Site Investigations Contractor requires communication or interface with any infrastructure owner, other third party (including landowners, peak bodies, private operators and utility service providers) or other stakeholder that is not a Government Agency, on the basis that it considers it is necessary for the performance of the Services, it must obtain the written approval of the Principal prior to the commencement of any communication, interaction or interface. The approval of the Principal is at its absolute discretion, and may be conditional.
- (c) The Site Investigations Contractor acknowledges that any approved communication, interaction or interface with any infrastructure owner, third party or stakeholder will be facilitated by the Principal unless otherwise specified.
- (d) The Site Investigations Contractor acknowledges and agrees that it will be the responsibility of the Site Investigations Contractor to satisfy itself that all relevant information required to perform the Services is obtained from each infrastructure owner or third party.
- (e) The Site Investigations Contractor must not contact, canvass, solicit or approach any infrastructure owner, third party or stakeholder (that is not a Government Agency) to discuss the Services, CQR or any other element of its participation in the SME in any way, other than as expressly permitted by clause 22.3(b).
- (f) The Site Investigations Contractor acknowledges that any breach of this clause 22.3 may, at the Principal's absolute discretion, lead to termination of this Deed pursuant to clause 21.1.

22.3A Utility Service Providers

- (a) The Site Investigations Contractor acknowledges and agrees that during the Transaction Phase the Site Investigations Contractor will have primary responsibility for:
 - (i) engagement, communication or interface with utility service providers;
 - (ii) ongoing monitoring of utility service providers within the site boundaries through the 'Dial Before You Dig' Service.

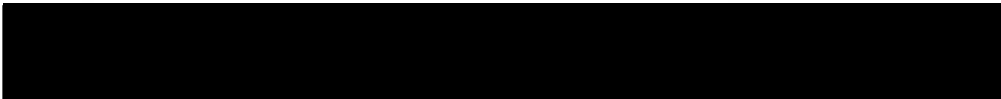
(b)

22.4 Media and other communications

- (a) The Site Investigations Contractor must not use any media or other public communication channels to comment about:
 - (i) CQR or the NSW Government in relation to CQR; or

- (ii) matters associated with the SME or the Transaction Phase; or
- (iii) matters concerning its performance of the Services.
- (b) If the Site Investigations Contractor considers that it should make a market, public or media statement in relation to or in connection with CQR or the Services, the Site Investigations Contractor must, to the extent reasonably possible, discuss the content of such statement with the Principal before making the statement and comply with any requirements which the Principal may express in relation to the statement.
- (c) The Site Investigations Contractor acknowledges that any breach of this clause 0 may, at the Principal's absolute discretion, lead to termination of this Deed pursuant to clause 21.1.

22.5 CQR Information

- (a) The Site Investigations Contractor acknowledges and agrees that:
 - (i) prior to the date of this Deed, the NSW Government made available a range of background, technical and commercial information to the Site Investigations Contractor in connection with CQR or the Approved Purpose (as defined in the Deed of Disclaimer); and
 - (ii) the Principal may from time to time during the Transaction Phase or in relation to this Deed or the Services provide further background, technical and commercial information (including in the CQR Data Room) to assist the Site Investigations Contractor in its participation in the Transaction Phase and performance of the Services,
 (together, **CQR Information**).
- (b) The parties acknowledge and agree that the provision of CQR Information to the Site Investigations Contractor is subject to the terms of the Deed of Disclaimer.
- (c) Without limiting the Deed of Disclaimer, and subject to clause 22.5(e):
 - (i) the Principal makes no warranty or representation, and does not assume any duty of care to the Site Investigations Contractor, that the information, data and documents in the CQR Information is accurate, adequate, suitable or complete and the Principal accepts no responsibility for interpretations placed on the information, data and documents by the Site Investigations Contractor; and
 - (ii) the Site Investigations Contractor must perform its obligations under this Deed and prepare the Contract Materials based on its own investigations and determinations and should not rely on the information, data and documents contained in the CQR Information.
- (d) Without limiting the above or the Deed of Disclaimer, to the maximum extent permitted by law, the Principal is not bound by, and has no responsibility or liability for, any oral advice, representation or, subject to clause 22.5(e), information given or furnished by or on behalf of the NSW Government with respect to CQR or the performance of the Services.
- (e) 

22.6 Privacy Act compliance

- (a) If the Site Investigations Contractor provides any Personal Information or Sensitive Information (each as defined in the *Privacy Act 1988 (Cth)* (in this clause 22.6, "the Act")) to the Principal in connection with the Services or any Contract Material, the Site Investigations Contractor warrants to the Principal that the Site Investigations Contractor has:
 - (i) obtained the consent of each individual about whom any Personal Information or Sensitive Information is provided; and

- (ii) ensured or will ensure, within the time required by the Act, that each individual about whom any Personal Information or Sensitive Information is provided has received a written statement setting out all of the matters required by National Privacy Principle 1.3:
 - A. in relation to disclosure of the Personal Information or Sensitive Information to the Principal or any of its advisers requiring the information for the purposes set out in clause 22.6(a)(ii)B); and
 - B. disclosing that the entities referred to in clause 22.6(a)(ii)A) shall use the Personal Information or Sensitive Information for the purposes of reviewing and utilising the Contract Materials.
- (b) The Site Investigations Contractor must comply with the provisions of the Act in relation to any Personal Information or Sensitive Information provided to it by the Principal or any of its advisers.

23 DISCLOSURE OF CONTRACT INFORMATION

- (a) The Site Investigations 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 GIPA Act;
 - (ii) the *Ombudsman Act 1974* (NSW); and
 - (iii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of parliamentary accountability.
- (b) The Site Investigations Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 23(a).
- (c) If the Site Investigations Contractor reasonably believes that any part of this Deed (including as varied in accordance with the terms of this Deed) contains information which:
 - (i) falls within the definition of 'commercial-in-confidence provisions' (as that term is defined in the GIPA Act);
 - (ii) could reasonably be expected to affect public safety or security or;
 - (iii) is subject to an overriding public interest consideration against disclosure,
 the Site Investigations Contractor must advise the Principal in writing, identifying the relevant information and commercial-in-confidence provisions and providing reasons so that the Principal may consider excluding the relevant information and commercial-in-confidence provisions from publication in accordance with the GIPA Act.
- (d) The Site Investigations Contractor must comply with clause 23(c) within the following periods:
 - (i) 5 working days (as that term 'working day' is defined in the GIPA Act) of the date on which the Deed becomes effective (as that term "becomes effective" is defined in section 27(3) of the GIPA Act); and
 - (ii) 5 working days (as that term 'working day' is defined in the GIPA Act) of each date that the Deed is varied in accordance with the terms of this Deed.
- (e) If the Site Investigations Contractor fails to:
 - (i) comply with clauses 23(c) and 23(d); or
 - (ii) respond to requests for further information related to disclosure of any part of this Deed within the timeframes requested by the Principal,

then the Principal will determine, in accordance with the GIPA Act, the relevant information to be disclosed to satisfy the Principal's disclosure obligations under the GIPA Act.

- (f) The Site Investigations Contractor acknowledges that compliance with clauses 23(c) and 23(d) will enable the Principal to take account of matters that may weigh against disclosure of limited parts of this Deed under section 32 of the GIPA Act, and that these considerations are not conclusive and that the relevant information may nevertheless be disclosed.

24 PROBITY

24.1 Probity Adviser

- (a) The parties acknowledge and agree that CQR, and discussions and negotiations during the Transaction Phase in connection with CQR, will be governed by the probity requirements of the NSW Government.
- (b) The parties acknowledge and agree that the Probity Adviser's role during the Transaction Phase includes:
 - (i) ensuring that the procedures adopted for the receipt and evaluation of the Developed Binding Offer and Final Binding Offer are fair and equitable, monitoring the Transaction Phase (including evaluation and any interaction) and providing independent validation of this to the NSW Government;
 - (ii) providing guidance to the NSW Government as to how probity issues can be resolved; and
 - (iii) monitoring communications and interactions that occur between the Site Investigations Contractor and any representatives of the NSW Government in respect of CQR.
- (c) The parties acknowledge and agree that the Probity Adviser is an independent observer of the evaluation process and will not be involved in the evaluation of the Developed Binding Offer or Final Binding Offer.

24.2 Potential Probity Issues

- (a) In performing the Services, the Site Investigations Contractor must:
 - (i) use its best endeavours to identify all Potential Probity Issues throughout the Transaction Phase; and
 - (ii) immediately notify the Principal throughout the duration of the Transaction Phase of any Potential Probity Issue of which the Site Investigations Contractor becomes aware.
- (b) For each Potential Probity Issue identified by the Site Investigations Contractor or notified by the Principal, the Site Investigations Contractor must promptly submit to the Principal and the Probity Adviser written details of the procedures and arrangements the Site Investigations Contractor has implemented or intends to implement to ensure that the identified Potential Probity Issue does not adversely affect the competitiveness or probity of the SME.
- (c) The Principal may, in its discretion, make comments on the procedures and arrangements, and may request the Site Investigations Contractor to implement additional measures, which may include the execution of an appropriate deed. The Site Investigations Contractor must ensure that all of the Principal's comments are promptly incorporated into the procedures and arrangements that the Site Investigations Contractor implements.
- (d) The Site Investigations Contractor must immediately notify TfNSW of any breaches of the procedures and arrangements implemented in accordance with clauses 24.2(a) to 24.2(c).

- (e) The Principal may, in its absolute discretion, exercise any of its rights under this Deed if a Potential Probity Issue is not addressed to the satisfaction of the Principal.
- (f) Without limiting clause 24.4, the Principal may undertake its own investigations and inquiries regarding Potential Probity Issues or suspected or actual breaches of the procedures and arrangements implemented in accordance with clauses 24.2(b) and 24.2(c).

24.3 Relationship between Site Investigations Contractor and NSW Government Advisers

- (a) The Site Investigations Contractor acknowledges that Potential Probity Issues may arise where the Site Investigations Contractor (or its Provider(s) or Team Member(s)) has a relationship with an entity or person that is a NSW Government Adviser.
- (b) The Site Investigations Contractor must, prior to the engagement of an entity, confirm whether that entity (or any of its Related Entities) has been previously or is currently engaged by the NSW Government on any basis in relation to CQR. If so, the Site Investigations Contractor and that entity must obtain the Principal's written approval before being engaged by the Site Investigations Contractor (which approval may be withheld in the Principal's absolute discretion).
- (c) In addition to its other rights in relation to Potential Probity Issues, and without limiting the Principal's rights under clause 24.3(b), where the Site Investigations Contractor (or its Provider(s) or Team Member(s)) has a relationship with an entity or person that is a NSW Government Adviser, the Principal reserves the right to require the Site Investigations Contractor to put in place such procedures and arrangements as the Principal considers necessary in order to address any such Potential Probity Issue, which may include separation barrier arrangements, the appointment of an independent probity auditor and the execution of an appropriate probity deed.

24.4 Probity checks

- (a) The Principal may undertake probity checks in connection with the involvement of the Site Investigations Contractor, or any Provider or Team Member, in the Services or the SME. Such probity checks may include, in respect of the Site Investigations Contractor and each Provider or Team Member:
 - (i) investigations into commercial structure, business and credit history;
 - (ii) prior contract compliance;
 - (iii) prior dealings with the NSW Government;
 - (iv) any criminal records or pending charges;
 - (v) any Independent Commission Against Corruption investigations;
 - (vi) research into any relevant activity that is or might reasonably be expected to be the subject of regulatory investigation.
- (b) In its evaluation of the Developed Binding Offer and Final Binding Offer, the Principal may have regard to any information which it has obtained in accordance with this clause 24.4.

25 GOVERNING LAW AND JURISDICTION

- (a) This Deed is subject to the laws of the State of New South Wales.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any

proceedings have been brought in an inconvenient forum, if that venue falls within clause 25(b)(i).

26 GST

The Principal and the Site Investigations Contractor agree:

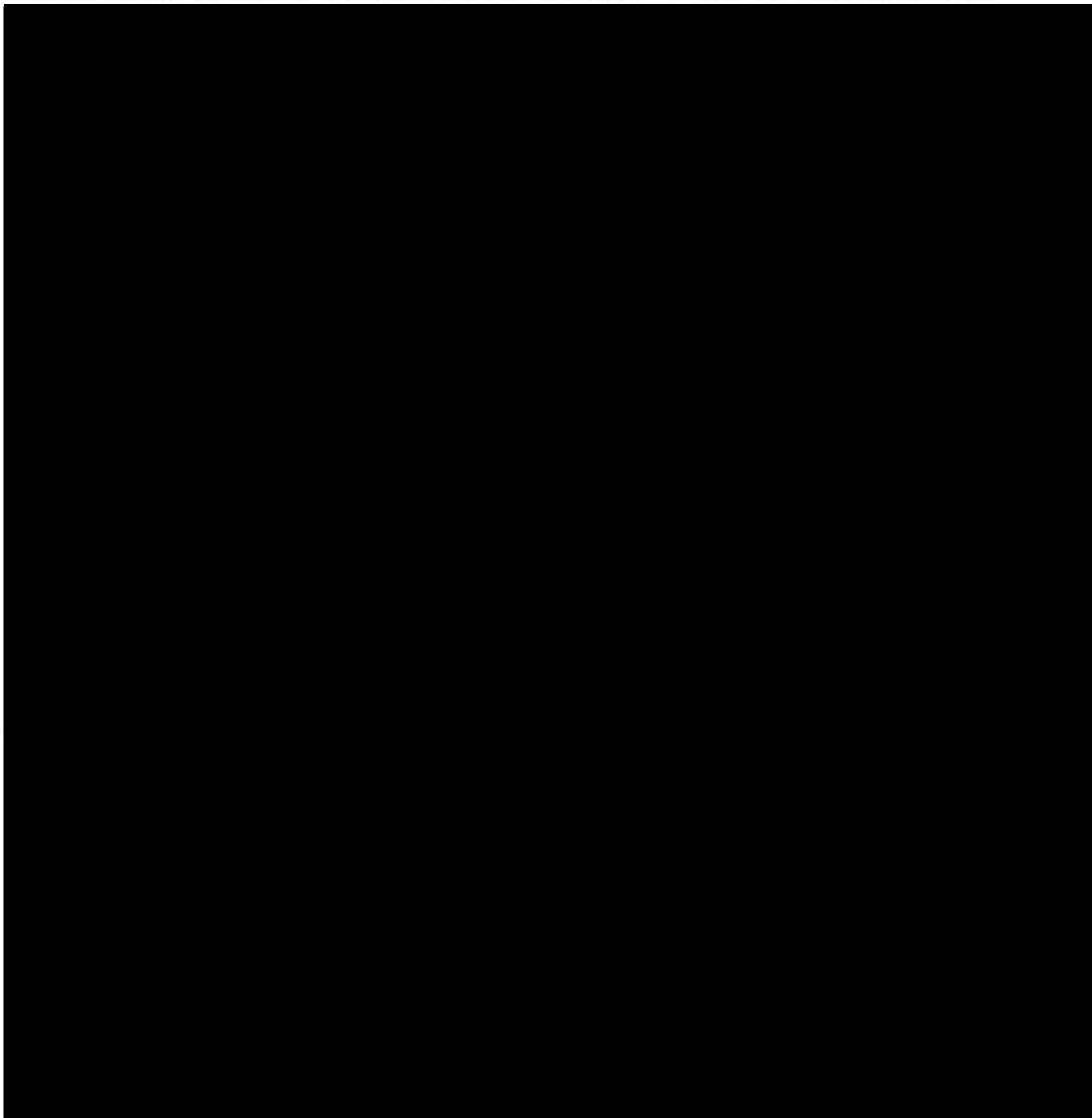
- (a) unless otherwise stated all dollar amounts referred to in this Deed are GST exclusive;
- (b) if GST is or becomes payable on a supply made by a party ("**Supplier**") under or in connection with this Deed, including the Services, the party providing the consideration for the supply ("**Recipient**") 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) any amount payable under clause 26(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 Fee) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount;
- (e) notwithstanding any other provision of this Deed, where the Recipient is the Site Investigations Contractor, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 26 or otherwise) in respect of a taxable supply made by the Principal unless the Principal issues to the Site Investigations Contractor a tax invoice that complies with the GST Law in respect of that taxable supply;
- (f) the parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Site Investigations Contractor to the Principal under or in connection with this Deed:
 - (i) the Principal will issue to the Site Investigations Contractor a recipient created tax invoice ("**RCTI**") for each taxable supply made by the Site Investigations Contractor to the Principal under this Deed;
 - (ii) the Principal will issue to the Site Investigations Contractor an adjustment note for any adjustment event;
 - (iii) the Site Investigations Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the Site Investigations Contractor that it will no longer issue a RCTI for each taxable supply made by the Site Investigations Contractor under this Deed, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Site Investigations Contractor will be required to issue tax invoices to the Principal (including under clause 17.5) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Site Investigations Contractor in respect of any such taxable supply.
- (g) each party acknowledges and warrants that at the time of entering into this Deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs;
- (h) 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 26 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);

- (i) the Site Investigations Contractor must ensure that each insurance policy referred to in clause 10 covers any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the party who suffers the loss that is claimed; and
- (j) in clauses 17.5 and 26:
 - (i) "GST" means the tax payable on taxable supplies under the GST Law;
 - (ii) "GST Law" means the *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; and
 - (iii) terms which are defined in the GST Law have the meaning provided by the GST Law.

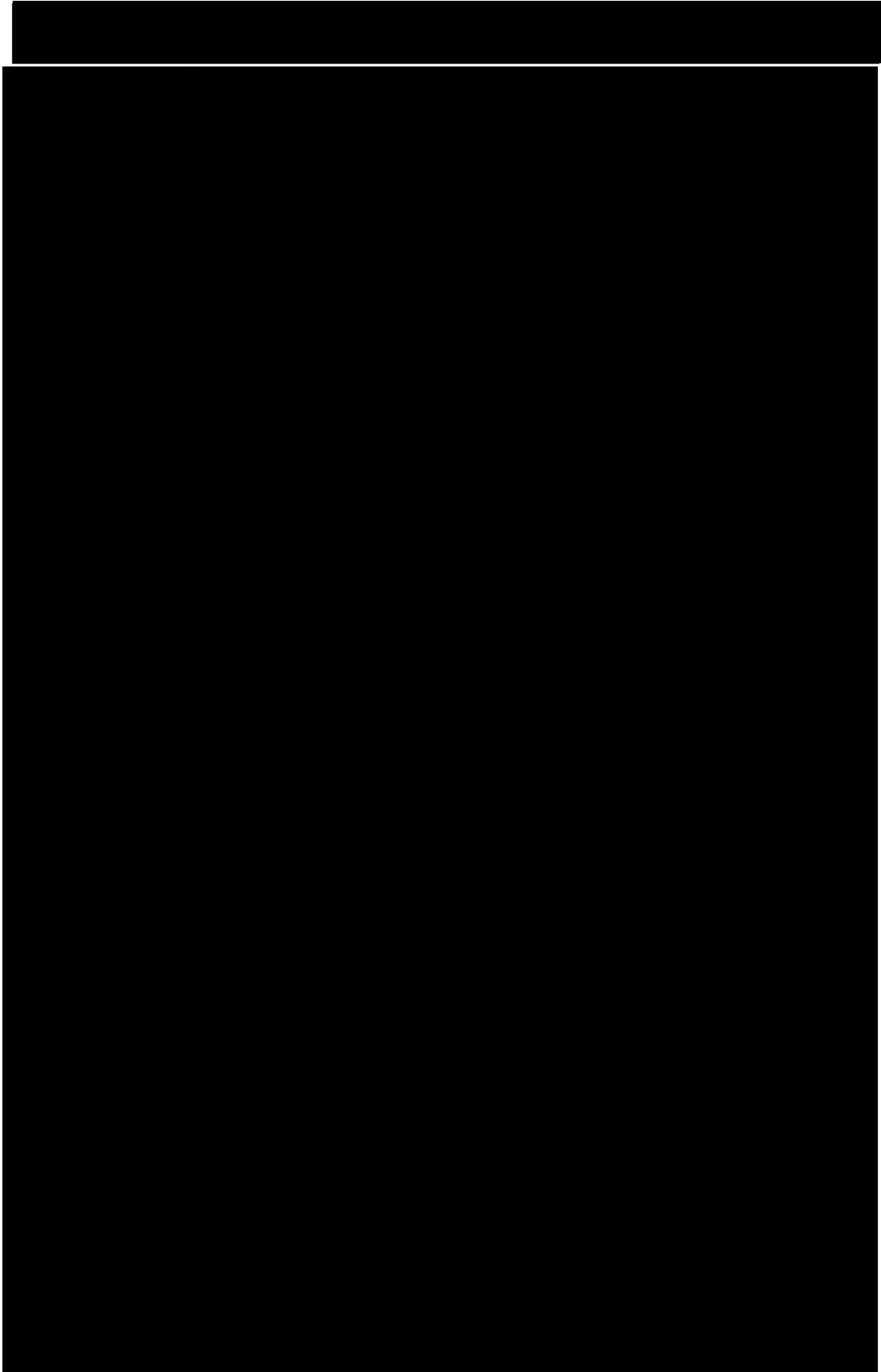
Subject to clauses 26(a) to 26(i) (inclusive), the Site Investigations Contractor must pay all taxes, duties, levies, imposts and charges which may be payable arising out of or in any way in connection with the Services.

27 LIMITATION OF LIABILITY AND EXCLUSION OF CONSEQUENTIAL LOSS

27.1



27.2



28 NO WAIVER

Failure by the Principal to enforce or compel performance of any term or condition of this Deed does not constitute a waiver of that term or condition and does not impair the right of the Principal to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

29 RETURN OF DOCUMENTS

On completion of the Services or upon the termination of this Deed, the Site Investigations Contractor must deliver to the Principal:

- (a) all Contract Material produced by the Site Investigations Contractor regardless of its stage of completion; and
- (b) the Principal's documents, samples, patterns, moulds and other information provided to the Site Investigations Contractor in carrying out those Services.

30 ENTIRE AGREEMENT

To the extent permitted by law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

31 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 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 Site Investigations Contractor and the Principal 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.

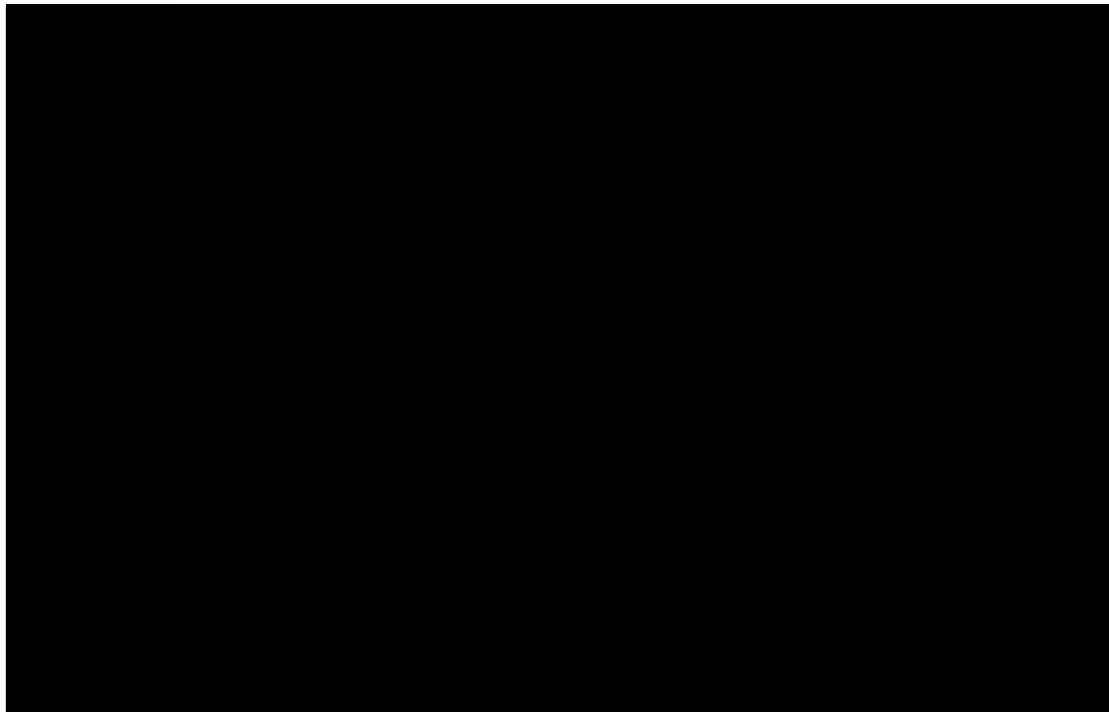
- (b) To the extent permitted by law:
 - (i) the Site Investigations Contractor must not seek to apply the provisions of part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Site Investigations Contractor (whether in contract, tort or otherwise); and
 - (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 Site Investigations Contractor (whether in contract, tort or otherwise), the Site Investigations Contractor will indemnify the Principal against any loss, damage, cost or expense which the Principal is not able to recover from the Site Investigations Contractor because of the operation of part 4 of the *Civil Liability Act 2002* (NSW).

32 SEVERABILITY

If at any time a 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.

33 ASSIGNMENT AND NOVATION



34 NOT USED

35 NSW CODE AND NSW GUIDELINES

35.1 Introduction

In addition to terms defined in this document, terms used in this clause 35 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code is available at <https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct> and the NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

35.2 Primary Obligation

- (a) The Site Investigations Contractor must at all times comply with, and meet any obligations imposed by the NSW Code and the NSW Guidelines.
- (b) The Site Investigations Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Code or the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Site Investigations Contractor engages a subcontractor or consultant, the Site Investigations Contractor must ensure that the contract imposes on the subcontractor or consultant equivalent obligations to those in this clause 35 (under the heading NSW Code and NSW Guidelines), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Site Investigations Contractor must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.

35.3 Access and information

- (a) The Site Investigations Contractor must maintain adequate records of compliance with the NSW Code and the NSW Guidelines by it, its subcontractors, consultants and Related Entities.

- (b) The Site Investigations Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Site Investigations Contractor, including to the project site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the project;
 - (v) have access to personnel; and
 - (vi) interview any person,
 as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines, by the Site Investigations Contractor, its subcontractors, consultants and Related Entities.
- (c) The Site Investigations Contractor, and its Related Entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

35.4 Sanctions

- (a) The Site Investigations Contractor warrants that at the time of entering into this Deed, neither it, nor any of its Related Entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.
- (b) If the Site Investigations Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Site Investigations Contractor, or its Related Entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

35.5 Compliance

- (a) The Site Investigations Contractor bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and the NSW Guidelines. The Site Investigations Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- (b) Compliance with the NSW Code and the NSW Guidelines does not relieve the Site Investigations Contractor from responsibility to perform the Services and any other obligation under this Deed, or from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.
- (c) Where a change in this Deed or Services is proposed, and that change may, or may be likely to, affect compliance with the NSW Code or the NSW Guidelines, the Site

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

- (i) the circumstances of the proposed change;
- (ii) the extent to which compliance with the NSW Code or the NSW Guidelines will be, or is likely to be, affected by the change; and
- (iii) what steps the Site Investigations Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Work Health and Safety Management Plan);

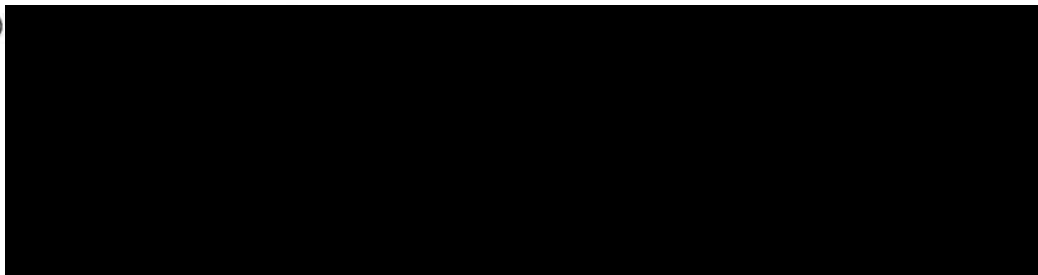
and the Principal will direct the Site Investigations Contractor as to the course it must adopt within 10 Business Days of receiving the Site Investigations Contractor's notice.

36 RELIANCE ON CONTRACT MATERIAL

- (a) The Site Investigations Contractor acknowledges that:
 - (i) subject to clause 36(a)(ii), the Principal may disclose the Contract Material on a non-reliance basis to:
 - A. tenderers submitting a tender in respect of the procurement of any works or services by the Principal in relation to CQR;
 - B. Other Contractors; and
 - C. any other person nominated by the Principal,

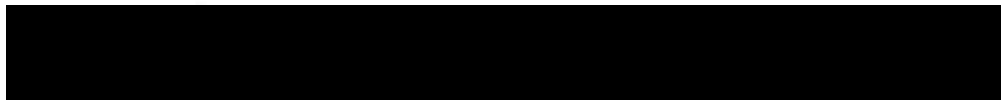
other than any contractor engaged by the Principal to perform services similar to, or to deliver, CQR); and
 - (ii) the Principal and the parties specified in clause 36(a)(i) will rely on the accuracy of the Contract Materials, provided that in the case of any party specified in clause 36(a)(i) it has first executed and delivered the deed set out in Schedule 15.

(ab)



- (b) The Site Investigations Contractor:
 - (i) subject to clause 36(a)(ii), consents to the disclosure of the Contract Material by the Principal to the parties specified in, and in accordance with, clause 36(a)(i);
 - (ii) notwithstanding any comment or review of the Contract Material by the Principal or the Principal's Representative under clause 37, must ensure that the Contract Material is correct and, subject to clause 3.1A, complete for use by the Principal and the parties specified in clause 36(a)(i); and
 - (iii) notwithstanding any comment or review of the Contract Material by the Principal or the Principal's Representative under clause 37, but subject to clause 3.1A, must indemnify the Principal from and against any Losses incurred by the Principal and the parties specified in clause 36(a)(i) arising out of, or in connection with, any accuracy or deficiency in the Contract Materials.

- (c) If the Contract Material contains any representation or statement which is inconsistent with or contradicts this clause 36 or any other obligation imposed on the Site Investigations Contractor under this Deed, the terms contained in this clause 36 or the relevant term in this Deed will prevail to the extent of that inconsistency or contradiction.
- (d) If directed by the Principal's Representative, the Site Investigations Contractor, without being entitled to any compensation, must within 10 Business Days of such direction, execute a deed:
 - (i) in the form of Schedule 15 (or such other form as is required by the Principal and acceptable to the Site Investigations Contractor); and
 - (ii) in favour of such of the persons referred to in clause 36(a) as is specified in such a direction,



- (e) This clause 36 survives termination of this Deed.

37 SUBMISSION OF CONTRACT MATERIAL FOR REVIEW BY THE PRINCIPAL'S REPRESENTATIVE

- (a) Without limiting the Site Investigations Contractors obligation to develop each Services Brief in accordance with Schedule 6, the Site Investigations Contractor must submit the Contract Material:
 - (i) in accordance with the times stated in the relevant Services Brief or Works Element Direction;
 - (ii) in the absence of a time or period in the Services Brief or Works Element Direction, by the Date for Completion; and
 - (iii) under cover of a written notice entitled "Submit for Review", which identifies:
 - A. the Contract Material; and
 - B. the provision of this Deed under which the Contract Material is submitted.
- (b) The Contract Material will be deemed not to have been submitted to the Principal's Representative unless and until:
 - (i) the Contract Material complies with the requirements in the Services Brief; and
 - (ii) the Site Investigations Contractor has otherwise complied with this clause 37, in addition to any other requirement of this Deed relating to the submission of that Contract Material.
- (c) The Principal's Representative may, after the submission of Contract Material which satisfies the requirements of clause 37(b):
 - (i) review the Contract Material, or any resubmitted Contract Material, prepared and submitted by the Site Investigations Contractor; and
 - (ii) within 10 Business Days of submission by the Site Investigations Contractor of such Contract Material or resubmitted Contract Material:
 - A. reject the Contract Material if in its opinion the Contract Material (or any part) does not comply with the requirements of this Deed, stating the nature of the non-compliance;
 - B. make comments on the Contract Material; or

- C. notify the Site Investigations Contractor that it has no (or has no further) comments to make.
- (d) If any Contract Material:
- (i) is rejected or deemed to be rejected, the Site Investigations Contractor must submit the amended Contract Material to the Principal's Representative within 10 Business Days of the date of such rejection or deemed rejection and this clause 37 will re-apply in relation to each part of the resubmitted Contract Material that was the subject of the previous rejection or deemed rejection; and
 - (ii) is not rejected and the Principal's Representative responds to the submission with comments, the Site Investigations Contractor must respond to the comments within 10 Business Days or such other period as may be directed by the Principal's Representative acting reasonably.
- If the Site Investigations Contractor fails to respond to the Principal's Representative's comments within this period in a manner satisfactory to the Principal's Representative the Contract Material will be deemed to be rejected.
- (e) Not used.
- (f) Not used.
- (g) The Principal's Representative does not assume or owe any duty of care or other responsibility to the Site Investigations Contractor to review, or in reviewing, the Contract Material submitted by the Site Investigations Contractor, including for errors, omissions or non-compliance with this Deed.
- (h) The Site Investigations 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 Site Investigations Contractor of any errors, omissions or non-compliance with the requirements of this Deed in any Contract Material submitted.
- (i) No review of, comment upon or rejection of, or failure to review or comment upon or reject, any Contract Material prepared by the Site Investigations Contractor, or any other direction by the Principal's Representative in connection with the Contract Material, will:
- (i) constitute a direction to carry out a Variation pursuant to clause 16.2, unless it is in a written document titled "Variation Direction" and describes the nature of the Variation in accordance with clause 16;
 - (ii) relieve the Site Investigations Contractor from or alter its liabilities or obligations, whether under this Deed or otherwise according to any Statutory Requirement; or
 - (iii) limit or otherwise affect the Principal's rights against the Site Investigations Contractor, whether under this Deed or otherwise according to any Statutory Requirement.
- (j) In considering any Contract Material, the Principal's Representative may consult with and take into account any views or requirements of any relevant Authority.
- (k) Unless otherwise advised by the Principal's Representative, the Site Investigations Contractor must submit the number of copies of the Contract Material stated in this Deed, or if no number is stated then:
- (i) an electronic version on CD (in both pdf and native formats), which must be virus free;
 - (ii) 1 printed original; and
 - (iii) 1 printed copy (bound).

38 DIGITAL ENGINEERING REQUIREMENTS

- (a) All Contract Materials delivered by the Site Investigation Contractor must be in accordance with the TfNSW Digital Engineering Standard Part 2 (ST-207) and the CQR Digital Engineering Execution Plan.
- (b) The Contract Materials must support the Digital Engineering requirements as stipulated in the PDSA Services Brief.

39 THE SITE AND LOCATION OF THE SERVICES**39.1 Access to the Site**

- (a) The Principal will provide access to the Site for the Site Investigations Contractor to carry out the Services in accordance with this Contract and for those durations set out in the Works Element Direction.
- (b) The Site Investigations Contractor acknowledges that nothing in this Deed confers upon the Site Investigations Contractor exclusive possession of or exclusive access to the Site.
- (c) The Principal is not obliged to give access to, and the Site Investigations Contractor must not access, any part of the Site until it has effected all insurances required to be effected by it in accordance with this Deed.
- (d) Where the Site Investigations Contractor requires additional access to any area to carry out Services which are not set out in the Works Element Direction (or at different times as set out the Works Element Direction), the Site Investigations Contractor must obtain its own access to those areas from the relevant owner or occupier of that area, and If the relevant owner or occupier fails or refuses to provide access to such areas:
 - (i) the Site Investigations Contractor must notify the Principal's Representative in writing;
 - (ii) the Principal will not be liable for the failure by the relevant owner or occupier to provide such access; and
 - (iii) the Site Investigations Contractor is not entitled to apply for an extension of time under clause 18.3.

39.2 Not used**39.3 Temporary Works**

The Site Investigations Contractor must carry out all Temporary Works required to execute the Investigations so that the Temporary Works will be fit for their intended purpose stated in, or reasonably inferred from the Services Brief.

39.4 Management and Control of the Site

At all times after being given access to the Site or a part of a Site under clause 39.1 and before the Date of Completion of the Separable Portions, the Site Investigations Contractor:

- (a) without limiting any right of the Principal or the Principal's Representative under this Deed, and subject to clause 3.9, will be responsible for the management and control of the Site;
- (b) must control access to, and the security and maintenance of, the Site or that part, except where the Principal's Representative advises otherwise;
- (c) reinstate and make good the Site following the completion of the Investigations being undertaken on that part of the Site (and where the Services Brief details a level of reinstatement and make good, to that level);
- (d) must ensure public safety on and adjacent to the Site or that part;

- (e) must provide for the continuous safe passage of the public and road users on existing roads, footpaths, access ways and cycleways affected by the Services in accordance with this Deed;
- (f) must, subject to clauses 39.1 and 39.7, and any relevant Statutory Requirement, 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 Services; and
- (g) must not impede access or Services to private property without the consent of the Principal's Representative and the relevant owner or occupier.

39.5 Latent Conditions

- (a) Latent Conditions are physical conditions on the Site or its surroundings (including artificial things and Contamination but excluding Third Party Services) which differ materially from the physical conditions which should reasonably have been anticipated by a competent and experienced contractor at the time of the Works Element Proposal if such a contractor had:
 - (i) examined all information made available in writing by the Principal to the Site Investigations Contractor for the purpose of tendering (including the Information Documents and Materials);
 - (ii) examined all information (including the Information Documents and Materials) relevant to the risks, contingencies and other circumstances having an effect on the Works Element Proposal and obtainable by the making of reasonable enquiries; and
 - (iii) inspected the Site and its surroundings.
- (b) Latent Conditions exclude weather conditions or physical conditions which are a consequence of weather conditions at the Site.
- (c) If during the execution of the Services, the Site Investigations Contractor becomes aware of a Latent Condition, the Site Investigations Contractor must:
 - (i) promptly; and
 - (ii) where possible before the physical conditions are disturbed, give written notice thereof to the Principal's Representative.
- (d) The Site Investigations Contractor must provide in that notice to the Principal's Representative a statement specifying:
 - (i) the conditions encountered and in what respects the Site Investigations Contractor considers they constitute a Latent Condition;
 - (ii) the additional work and additional resources which the Site Investigations Contractor estimates to be necessary to deal with the Latent Condition;
 - (iii) the time the Site Investigations Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Completion (if any) as a result of dealing with the Latent Condition;
 - (iv) the Site Investigations Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
 - (v) other details reasonably required by the Principal's Representative.
- (e) If a Latent Condition:
 - (i) has a direct effect on the Site Investigations Contractor carrying out the Services; and
 - (ii) directly results in an increase in the Site Investigations Contractor's costs of carrying out the Services,

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 relevant Upper Limit and Fee will be increased by the additional costs reasonably incurred by the Site Investigations Contractor in carrying out the Services as a result of the Latent Condition as determined by the Principal's Representative.

- (f) In making a valuation pursuant to clause 39.5(e), or determining an extension of time under clause 18.3, regard will not be had to any Services, additional costs or delays suffered or incurred more than 14 days before the date on which the Site Investigations Contractor gives the written notice required by clause 39.5(c).

39.6 Information Documents and Materials

- (a) Whether or not any Information Documents and Materials [REDACTED] or any part thereof form a Schedule to this Deed, the Site Investigations Contractor acknowledges that:

- (i) the Information Documents and Materials or part thereof do not form part of this Deed and that clause 39.6(c) applies to the Information Documents and Materials or part thereof; and
- (ii) where Information Documents and Materials or any part thereof form a Schedule to this Deed, they do so only for the purposes of identification of that document or part thereof.

- (b) Without limiting clause 39.6(c) but subject to clause 39.6(d):

- (i) the Site Investigations 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
- (ii) subject to clause 39.6(f), the Principal will not be liable upon any claim by the Site Investigations 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 Site Investigations 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 Site Investigations Contractor.

- (c) The Site Investigations Contractor, subject to clause 39.6(d):

- (i) warrants that it did not in any way rely upon:
 - A. any information, data, representation, statement or document made, or provided to the Site Investigations 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 39.6(c)(i) and 39.6(c)(ii).
- (d) [REDACTED]
- (e) Subject to clause 39.6(d) and 39.6(f), the Site Investigations Contractor releases and indemnifies the Principal from and against:
 - (i) any claim against them by, or liability of them to, any person; or
 - (ii) (without being limited by clause 39.6(e)(i)) any costs, expenses, losses or damages suffered or incurred by them, 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 39.6(b) and 39.6(c)(i), to or by the Site Investigations 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 Site Investigations Contractor (other than any information, data or documents which the Principal is required to provide to the Site Investigations Contractor by the terms of this Deed);
 - (iv) any breach by the Site Investigations Contractor of this clause 39.6; 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 any State or Territory legislation.
- (f) The acknowledgements, warranties, releases and indemnities referred to in clauses 39.6(a) to 39.6(c) and 39.6(e) do not affect the Site Investigations Contractor's rights under clause 22.5(e) or 39.5(e).

39.7 Things of Value Found

- (a) All valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest found on the Site (all "**Valuable Finds**") are, and will as between the Site Investigations Contractor and the Principal be and remain, the property of the Principal.
- (b) The Site Investigations Contractor must:
 - (i) immediately notify the Principal's Representative if it discovers a Valuable Find;
 - (ii) ensure the Valuable Find is protected and not lost, removed, disturbed or damaged; and
 - (iii) comply with any directions of the Principal's Representative in relation to the Valuable Find.
- (c) Despite the acknowledgements, warranties, releases and indemnities referred to in clauses 39.6(a) to 39.6(c) and 39.6(e):
 - (i) the relevant Upper Limit and Fee will be increased by the extra costs reasonably incurred by the Site Investigations Contractor as determined by the Principal's Representative in complying with the Principal's Representative's directions under this clause 39.7, or any court order or requirement of any Authority or Statutory Requirement in relation to a Valuable Find; and

- (ii) the Site Investigations Contractor will be entitled to make a claim for an extension of time under clause 18.3 in respect of any delays the Site Investigations 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 referred to in clause 39.5(a), as determined by the Principal's Representative or is a Valuable Find as contemplated under the Services Brief.

39.8 Principal's Right to Access and Inspect

- (a) Subject to clause 39.10, the Site Investigations Contractor must:
 - (i) without limiting clause 39.4, minimise disruption or inconvenience to:
 - A. the Principal, occupiers, tenants and potential tenants of the Site or any other land or buildings above or adjacent to the Site or a part thereof in their occupation or use of, or attendance upon, any part of the Site, including any occupation or use of a Separable Portion or a part thereof; and
 - B. others having a right of access to the Site or any other land or buildings above or adjacent to the Site; and
 - (ii) at all times:
 - A. give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to:
 - (aa) the Services;
 - (bb) the Site; or
 - (cc) any other areas where the Services are being carried out, including unobstructed vehicular access through the Site; and
 - B. provide the Principal and the Principal's Representative with every reasonable facility necessary for the inspection of the Services, including the Site Investigations Contractor's compliance with the Authority Approvals.

39.9 Waste Disposal

- (a) The Site Investigations Contractor must remove from the Site and dispose of any Contamination or other waste pursuant to its obligations under this Deed to a licensed waste facility in accordance with all relevant Statutory Requirements.
- (b) The Site Investigations 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; and
 - (ii) procure and provide evidence of such Authority Approvals to the Principal's Representative upon request.
- (c) The Site Investigations 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 Statutory Requirements.

- (d) The Site Investigations 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 Site Investigations Contractor to comply with any obligation under this clause, provided that the Site Investigations Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractor of the Principal or an agent of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty.

39.10 Principal not in Control

The Site Investigations Contractor and Principal acknowledge that nothing in this Deed including the right to inspect pursuant to clause 39.8 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 Services or the Site; or
(b) the Principal has any responsibility for any act or omission by the Site Investigations Contractor or its subcontractors or agents including compliance or non-compliance with any relevant Statutory Requirements or this Deed.

39.11 Co-operation with Other Contractors

Without limiting or being limited by clause 3.11, the Site Investigations Contractor must:

- (a) permit Other Contractors to carry out their work or services;
(b) fully co-operate with Other Contractors;
(c) carefully coordinate and interface the Services with the work or services carried out or to be carried out by Other Contractors; and
(d) carry out the Services so as to minimise any interfering with, disrupting or delaying the work or services of Other Contractors.

39.12 Third Party Services

- (a) Without prejudice to clause 39.5, the Site Investigations Contractor must:
- (i) obtain and pay for any Third Party Services it needs to perform its obligations under this Deed;
 - (ii) relocate, remove, modify, support, protect, reinstate and provide all Third Party Services necessary for the Site Investigations Contractor to comply with its obligations under this Deed;
 - (iii) subject to clause 39.5, assume the risk of the existence, location, condition and availability of all Third Party Services required for the execution of the Services;
 - (iv) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Site Investigations Contractor to comply with its obligations under this Deed, including any such devices reasonably required by the Principal's Representative;
 - (v) despite any other provision in this Deed to the contrary, ensure that no Third Party 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 Services;
 - (vi) cooperate and coordinate with the owners of all Third Party Services, and implement their requirements as part of the Services; and

- (vii) 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 Third Party Services arising out of or in any way in connection with the Services, provided that the Site Investigations 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 of the Principal or an agent of the Principal contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.
- (b) Subject to clause 39.5, the Site Investigations 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 Third Party Services required for the execution of the Services.

40 DEFECTS

40.1 Defects Liability

- (a) Subject to clause 40.2, the Site Investigations Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.
- (b) Without limiting the previous paragraph, the Site Investigations Contractor must rectify any Defects in any Separable Portion which existed at Completion of that Separable Portion as soon as possible after Completion of that Separable Portion.
- (c) When rectifying Defects which existed at Completion, the Site Investigations Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Services or Other Contractors as is reasonably possible.
- (d) The operation of this clause 40 is separate and independent from the operation of clauses 3.3 and 3.4.

40.2 Defect Notification

If, at any time during the performance of the Services and prior to the expiry of the Defects Liability Period, the Principal's Representative discovers or believes that there is a Defect, the Principal's Representative may give the Site Investigations Contractor a direction which identifies the Defect and does one of the following:

- (a) requires the Site Investigations Contractor to:
 - (i) rectify the Defect (including by amending the Contract Material) within a specified time period; and
 - (ii) take all such steps as are reasonably necessary to:
 - A. mitigate the effect on the Principal of the failure to perform the Services in accordance with this Deed; and
 - B. put the Principal (as closely as possible) in the position in which it would have been if the Site Investigations Contractor had performed the Services in accordance with this Deed; or
- (b) advises the Site Investigations Contractor that the Principal will accept the Services despite the Defect, in which event the Principal will be entitled to recover from the Site Investigations Contractor any additional costs (as reasonably determined by the Principal's Representative) which will be incurred by the Principal as a result of the Defect, including any costs incurred by the Principal in having the Defect rectified by an Other Contractor provided the Principal has taken all reasonable steps to mitigate any costs incurred; or

- (c) advises the Site Investigations Contractor that the Principal will accept the Services despite the Defect, in which event:
 - (i) the value of the Services, as determined by the Principal's Representative or in accordance with clauses 17.4(b) or 17.4(c) will be a debt due and payable by the Site Investigations Contractor to the Principal which may be deducted from the Fee; and
 - (ii) the Site Investigations Contractor will have no entitlement to make any payment claim against the Principal arising out of or in connection with the Defect.

40.3 Rectification of Defect

- (a) If a direction is given under clause 40.2(a), the Site Investigations Contractor must, at its own cost, rectify the Defect:
 - (i) within the time specified in the Principal's Representative's instruction; and
 - (ii) so as to minimise the delay and disruption to the performance of the Services.
- (b) If the Site Investigations Contractor fails to comply with a direction under clause 40.3(a), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Site Investigations Contractor with respect to the Defect under this Deed or otherwise at law, give the Site Investigations Contractor a direction under clauses 40.2(b) or 40.2(c).

40.4 No Claim for Correction of Defect

Subject to the Principal's obligation to mitigate under 40.2(b) or 40.2(c), where a direction is given under clause 40.2(a), the Site Investigations 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.

40.5 Extension of Defects Liability Period

If:

- (a) the Principal's Representative gives the Site Investigations Contractor a notice under clause 40.2(a) during any Defects Liability Period; and
- (b) the Site Investigations Contractor rectifies the Defect (or the part notified),

the relevant Defects Liability Period for the services required by the notice will be extended by the period set out in the Contract Particulars, commencing upon completion of the rectification of the Defect (or the part notified).

40.6 Defect Rectification by Other Contractor

Where a direction is given under clause 40.2(b):

- (a) without limiting or otherwise affecting clauses 3.11 or 39.11, the Site Investigations Contractor must not impede any Other Contractor from having sufficient access to the Site to rectify the Defect or carry out the Variation; and
- (b) any costs, losses or damages suffered or incurred by the Principal (as reasonably determined by the Principal's Representative) 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 Site Investigations Contractor to the Principal.

40.7 Rights Not Affected

Neither the Principal's rights, nor the Site Investigations Contractor's liability, whether under this Deed or otherwise according to any Statutory Requirement in respect of Defects, whether before or after the expiration of any relevant Defects Liability 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 40 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 40.2.

41 NOT USED

42 CLAUSES SURVIVE TERMINATION

- (a) Clauses 1, 6, 7, 8, 9, 10, 13, 19, 21.3, 21.4, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 36, 40, 42 and 43 and any other provisions of this Deed which are expressed to survive termination or by implication of their nature (together the **Surviving Clauses**) will survive rescission, termination or expiration of this Deed.
- (b) If this Deed is rescinded or terminated, no party will be liable to any other party under this Deed except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this Deed occurring before such rescission or termination.
- (c) No right or obligation of any party will merge on completion of any transaction under this Deed, and all rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.
- (d) No provision of this Deed which is expressed to survive the termination or expiry of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination or expiry of this Deed.

43 NOTICES

- (a) At any time and from time to time the Principal's Representative may notify the Site Investigations Contractor of an electronic portal or document management system to be used for the purposes of this Deed. 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 Site Investigations Contractor to use the electronic portal or document management system;
 - (iv) address details for the Principal, the Principal's Representative and the Site Investigations 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 before the date referred to in clause 43(a)(ii), be delivered or posted to the relevant address or sent to the email address shown in the Contract Particulars (or to any new address or email address notified by the intended recipient); and
- (c) A notice is taken to be given in the case of:
 - (i) delivery by hand, on the day of delivery;
 - (ii) post, at the time when, in due course of the post, it would have been delivered at the address to which it is sent; and

- (iii) email, at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply.
- (d) In relation to any notice under clauses 19, 20 or 21:
 - (i) the sender will only be permitted to give a notice by email under clause 43(b) if the notice is concurrently delivered by hand or post in accordance with clause 43(b); and
 - (ii) the notice will only be taken to be given at the same time as the concurrent notice is taken to be given under clause 43(c)(i) or 43(c)(ii) (as applicable).
- (e) On and from the commencement date for use of the electronic platform referred to in clause 43(a), all notices must:
 - (i) be sent through the electronic platform in accordance with the requirements set out in clause 43(a); and
 - (ii) in the case of notices listed in clause 43(d) a copy of the notice sent through the electronic platform must be printed and delivered or posted to the relevant address as set out in clause 43(b) (in which case the deemed time of receipt for the notice will be the deemed time of receipt of delivered or posted notice and not the time of receipt through the electronic platform).
- (f) With respect to notices sent by email or through the electronic platform, an attachment to a notice will only form part of a notice if it is uploaded to the electronic platform in:
 - (i) pdf format;
 - (ii) a format compatible with Microsoft Office; or
 - (iii) such other format as may be agreed between the parties in writing from time to time.

SCHEDULE 1 – CONTRACT PARTICULARS

Principal:	<p>Transport for NSW ABN 18 804 239 602 Address: Level 44, 680 George Street Sydney NSW 2000 Tel: 02 9200 0200 Email: CQ-Procurement@transport.nsw.gov.au with a copy to [REDACTED]</p>
Site Investigations Contractor:	<p>Lendlease Construction Pty Limited ABN 97 000 098 162 Address: Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000 Contact: The Site Investigations Contractor's Representative (as per contact details below)</p>
BIM Management Plan Guidelines (clauses 1.1 and 38(b)(ii))	Digital engineering and CAD manual issued by the Principal.
Commencement Date: (clause 1.1)	The date of this Deed or, if this Deed is undated, the date on which the last party executes this Deed.
The party responsible for payment of the Long Service Levy is (Clause 3.10)	Site Investigations Contractor
Confidential Information: (clause 1.1)	The Draft Services Brief, Services Brief, all Information Documents and Materials and any other information, documents or reports that may be or are provided by the Principal to the Site Investigations Contractor (unless the Principal's Representative confirms in writing that specific information, documents or reports are not Confidential Information).
Date for Completion (Planning Services): (clause 1.1)	A13010 21 July 2023

Date for
Completion (of
each of the
relevant Separable
Portions for a
Works Element
Investigation)
(clause 1.1)

The date included in a Works Element Direction.

**Planning
Services Fee:**
(clause 1.1)

[REDACTED]

**Time period for
provision of the
Safety Report:**
(clause 3.2(b))

When requested by the Principal as required by clause 295 of the *Work Health and Safety Regulation 2017* (NSW).

**Minimum Level of
Professional
Indemnity
Insurance:**
(clause 10.1)

[REDACTED]

**Time for
maintaining
Professional
Indemnity
Insurance:**
(clause 10.1)

7 years.

**Minimum Level of
Public Liability
Insurance:**
(clause 10.2)

[REDACTED]

**Minimum Level of
Asbestos
Liability
Insurance:**
(clause 10.4)

[REDACTED]

**Minimum Level of
Environmental
and Pollutant
Liability
Insurance:**
(clause 10.5)

[REDACTED]

Site
Investigations
Contractor's
Representative:
(clause 11.1)

[REDACTED]

Tel:

[REDACTED]

Email:

[REDACTED]

Key People:
(clause 11.2)

D&C Project Director: [REDACTED]

Senior Project Manager: [REDACTED]

Senior Design Manager: [REDACTED]

Services Manager: [REDACTED]

Principal's
Representative:
(clause 11.3)

[REDACTED]

Tel:

[REDACTED]

Email:

Rates for the
valuation of
Variations:
(clause 16.3)

As set out in the Schedule 5 or a relevant Works Element Direction (as applicable).

Times for
Payment Claims:
(clause 17.1)

On or from the Payment Claim Date.

Expert
Determination
final and binding
amount:
(clause 19.3(d)(iii))

[REDACTED]

Limit of Site
Investigations
Contractor's
Liability:
(clause 27)

[REDACTED]

Defects Liability
Period
(clause 40)

The Defects Liability Period for a Separable Portion is the period commencing on the Date of Completion of a Separable Portion (as applicable) and expiring 12 months after the Date of Completion of the last Separable Portion to achieve Completion (as applicable).

**Extension to
Defects Liability
Period**

(clause 40.5)

12 months from the date that the Defect is rectified.



SCHEDULE 2 – NOT USED

SCHEDULE 3 – FORM OF STATUTORY DECLARATION AND SUBCONTRACTOR'S STATEMENT

FORM OF STATUTORY DECLARATION

Statutory Declaration	Oaths Act (NSW) Ninth Schedule
I,	Insert full name of Declarant
Of	Insert address
do solemnly and sincerely declare that:	
1. I am the representative of:	Insert name of Contractor, and ABN if applicable
..... (ABN.....)	
("the Contractor")	
in the Office Bearer capacity of:	Insert position title of Declarant
.....	
2. The Contractor has a contract with:	Insert name of Principal and ABN
..... (ABN.....)	
to carry out	Insert name of Contract and Contract No.
("the Contract") [Contract No.]	
3. I personally know the facts which I have set out in this declaration.	
4. All employees who have at any time been engaged by the Contractor for work done under the Contract:	
a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and	
b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,	
with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:	
Employee:	Insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.
Amount unpaid or not accrued:	
.....	
.....	
5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).	
6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.	
7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.	
8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):	
a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and	
b) that all their employees and subcontractors, as at the date of the making of such a declaration:	

<p>i) have been paid all remuneration and benefits due and payable to them by; or</p> <p>ii) had accrued to their account all benefits to which they are entitled from;</p> <p>the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and</p> <p>c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,</p> <p>except for the following subcontractors to the Contractor who have failed to provide such a declaration:</p> <p>Subcontractor:</p> <p>Due amount unpaid:</p> <p>.....</p> <p>.....</p>	<p>Insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim</p>
<p>9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:</p> <p>Employee, subcontractor or supplier:</p> <p>Amount unpaid or not accrued:</p> <p>.....</p> <p>.....</p>	<p>Insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.</p>
<p>10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.</p> <p>11. Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:</p> <p>a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;</p> <p>b) under Schedule 2 Part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and</p> <p>c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.</p> <p>12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.</p> <p>13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:</p> <p>a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and</p> <p>b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.</p> <p>14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.</p>	

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at: on
(place) (day) (month) (year)

.....
(signature of Declarant)

in the presence of an authorised witness, who states:

I,
(Name of authorised witness)

(* Please cross out any text that does not apply)

1. * I saw the face of the person.

OR

* I did not see the face of the person because the person was wearing a face covering,
but I am satisfied that the person had a special justification for not removing the covering.

2. * I have known the person for at least 12 months.

OR

* I have not known the person for at least 12 months,
but I have confirmed the person's identity using an
identification document and the document I relied on was:
(describe identification document relied on)

.....
(signature of authorised witness)

.....
(date)

.....
(name of authorised witness)

.....
(Justice of the Peace / Solicitor of the Supreme Court of New South Wales)

[or other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn
outside the State of New South Wales, any person having authority to administer an oath in that place.

Authorised witness must print or stamp his or her full name, qualification and address before whom the declaration is made.
JPs must include their registration number.]

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: *[business name of head contractor]*

ABN: *[ABN]*

* 1. has entered into a contract with: *[business name of subcontractor]*

ABN: *[ABN]*

Contract Number/identifier: *[contract number/identifier]*

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature:

Date:

Full name:

Position/Title:

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number / identifier	Date of works (period)	Date of payment claim (head contractor claim)

Annexure B

SUBCONTRACTOR'S STATEMENT

Note to the parties

For the purpose of this Subcontractor's Statement:

- "the subcontractor" is the Site Investigations Contractor; and
- "the principal contractor" is Transport for NSW

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION

(Note 1 - see back of form)

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

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

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

Subcontractor: ABN:
(Business name)

of:
(Address of subcontractor)

has entered into a contract with: ABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier:
(Note 3)

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

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

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

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. *You must tick one box.* (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature: Full Name:

(g) Position/Title Date

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

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, schedule 2 part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'
Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au Office of State Revenue website www.osr.nsw.gov.au of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au Copies of the



Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 can be found at www.legislation.nsw.gov.au.

SCHEDULE 4 – FORM OF STATEMENT OF INTERESTS AND ASSOCIATIONS

This form is completed by the Site Investigations Contractor when directed by the Principal as per clause 8.

Date:

Name:

Organisation:

To: Transport for NSW
[Principal]

In relation to: [name of project in full]

Declaration

I [insert full name] of
..... [insert business address]

agree and acknowledge that, except for the matters disclosed below:

1. To the best of my knowledge and belief, I do not have:
 - (a) any financial or other interest, either directly or indirectly in;
 - (b) any immediate family members (spouse, children, parents or siblings) or close friends with any financial or other interest in;
 - (c) any other interest or association, either directly or indirectly with,
the entities listed below.

Disclosure

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)

(if further space is required please attach a signed separate letter)



I undertake to:

1. notify the Principal as soon as possible after I become aware of any matter which could affect the accuracy or completeness of the statements made in this deed or which would make them incorrect if this deed was given again; and
2. make a further updated declaration as soon as practicable.

I confirm that the statements set out in this deed are true and correct as at the date indicated below.

Executed as a Deed Poll

by the Recipient:

in the presence of:

Recipient

Witness

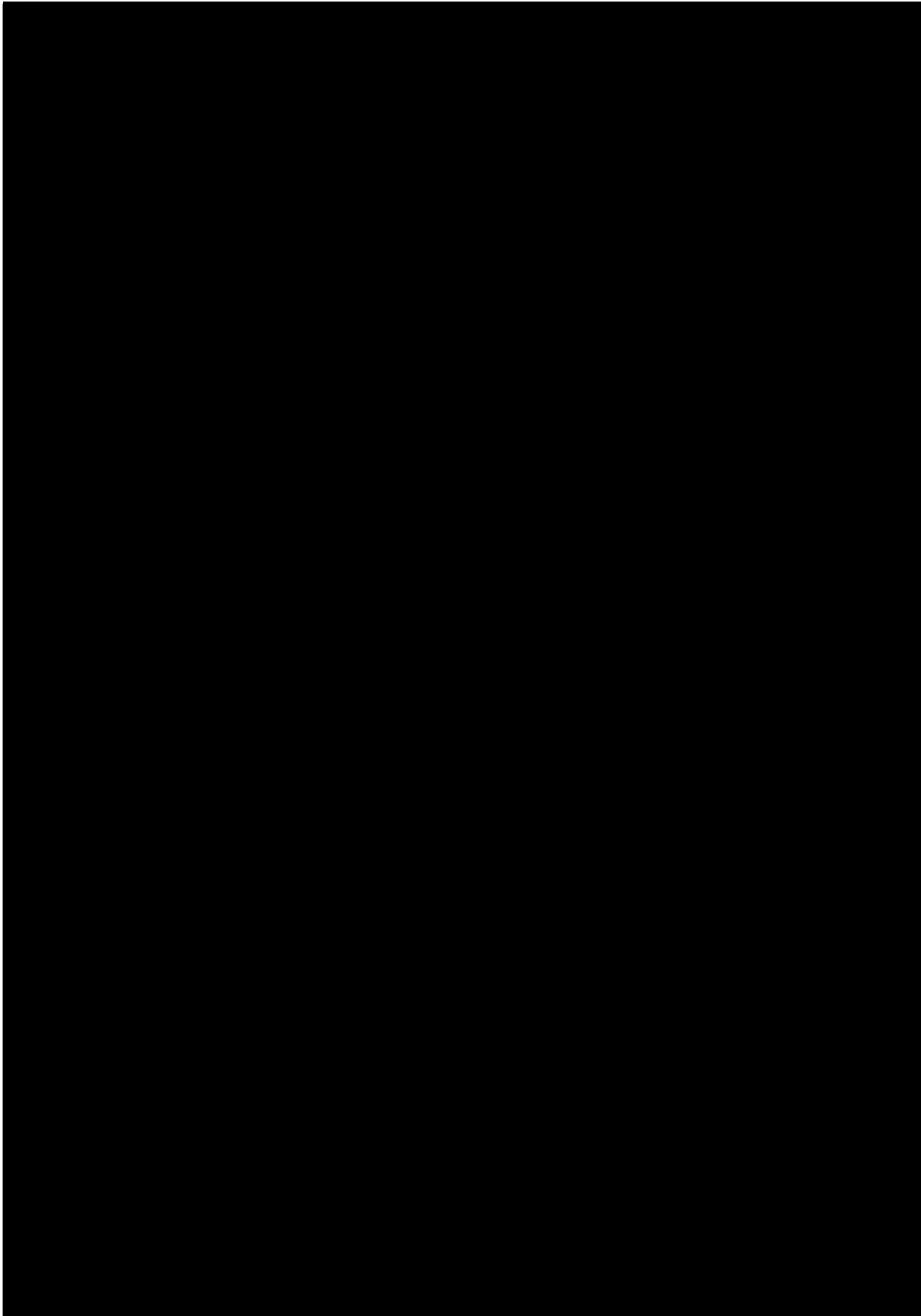
Name (please print)

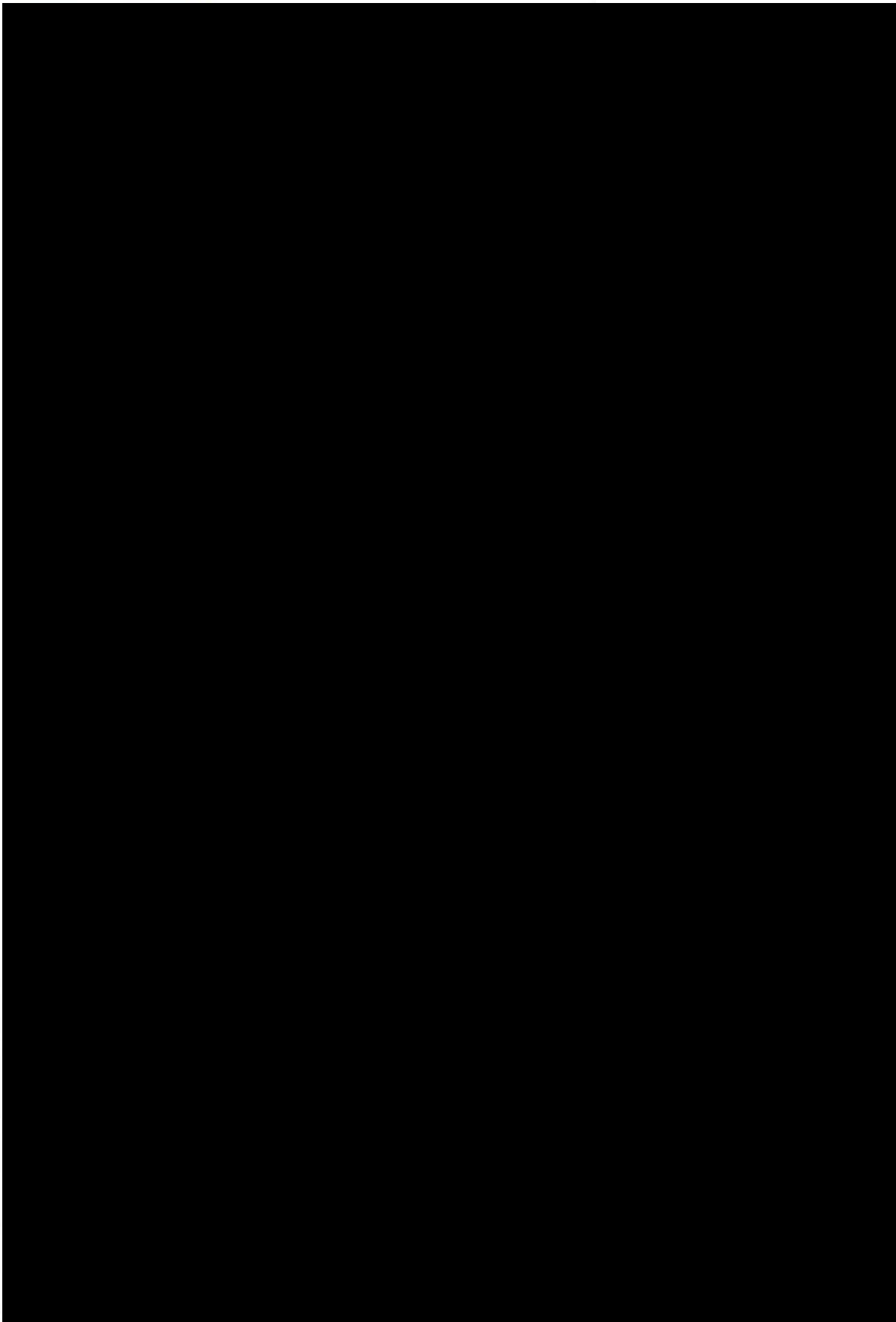
Name (please print)

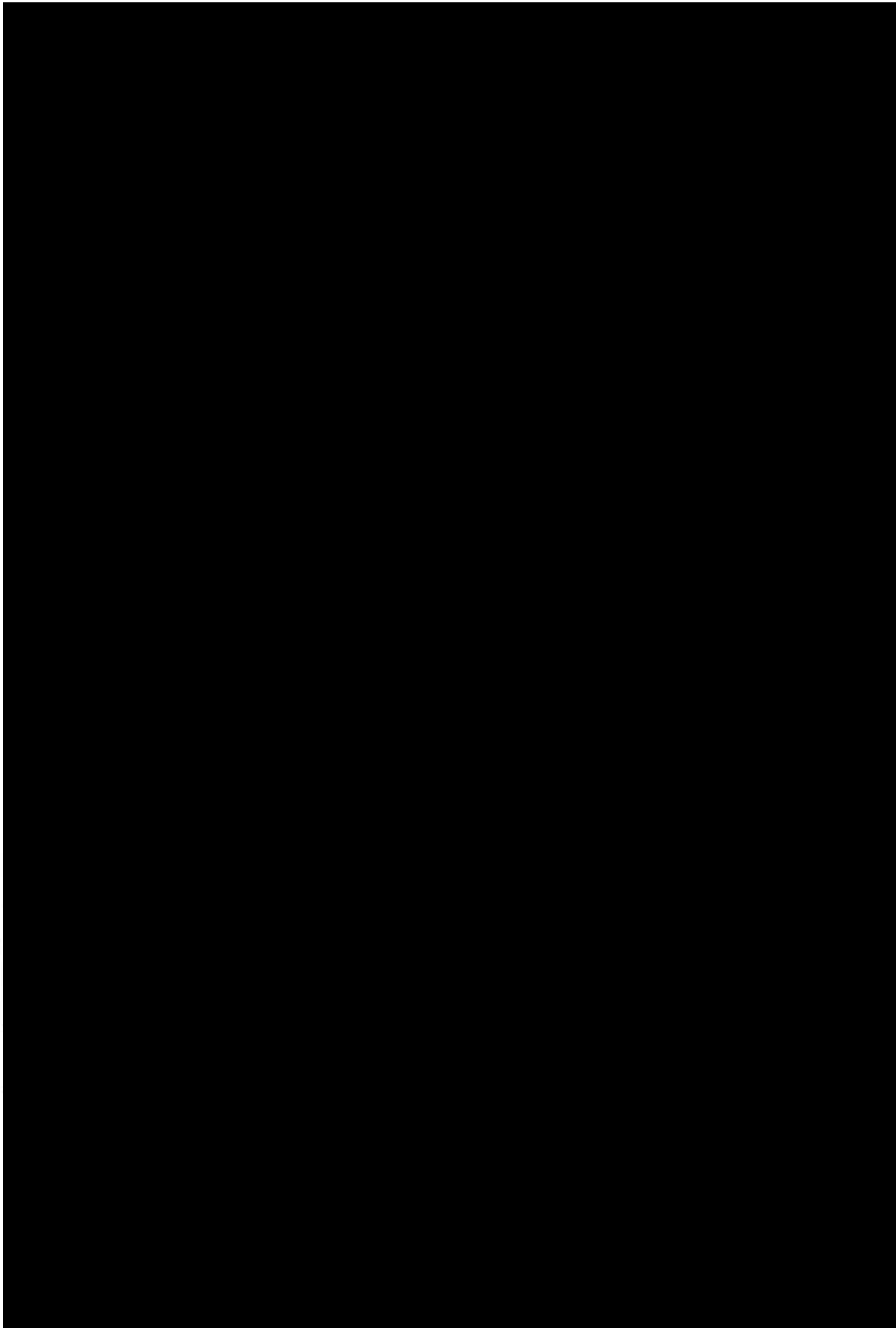
Date

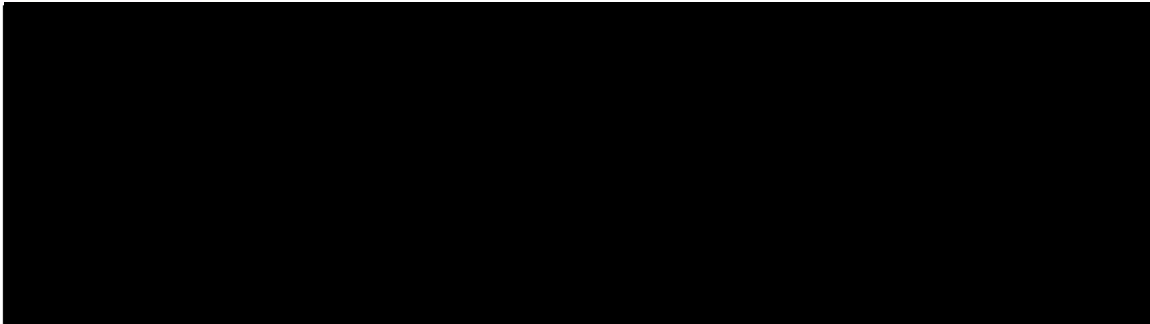
Date

SCHEDULE 5 – SCHEDULE OF RATES









SCHEDULE 6 – WORKS ELEMENT DEVELOPMENT**Planning Phase Services****1. Service Brief Development**

- (a) The parties acknowledge and agree that it is their mutual intention to develop and define the Investigations through the process set out in this Schedule 6.
- (b) From the Commencement Date, the Site Investigations Contractor must develop the Draft Services Brief to further define the scope and deliverables of the Investigations to be performed in relation to each Works Element and which will identify for that Works Element:
 - (i) the Site Investigations Contractor's desired timeframe and key milestones for performance of the Investigations; and
 - (ii) any approvals (where applicable) that are required for the performance of the Investigations.

(each a **Services Brief**)

- (c) Along with each Services Brief the Site Investigations Contractor will submit a non-binding, preliminary, itemised cost estimate (in the order of 10-20 line items of cost build-up), for the Works Element for the purpose of assisting TfNSW's understanding and approval of the associated Services Brief.

2. Approval of a Services Brief

- (a) Following receipt of a Services Brief in accordance with clause 1(c) of this Schedule 6, the Principal's Representative must, within 10 Business Days, by written notice to the Site Investigations Contractor:
 - (i) approve the Services Brief in respect of that Works Element; or
 - (ii) provide comments on the Services Brief in respect of that Works Element or seek further information or clarification from the Site Investigations Contractor to determine whether to approve the Services Brief in respect of that Works Element and the Site Investigations Contractor must provide any such information or clarification as reasonably required by the Principal within 10 Business Days after receipt of such request from Principal (after which this clause 2(a) of this Schedule 6 will reapply to the Services Brief in respect of that Works Element).

3. Works Element Proposal

- (a) Following the approval of the Services Brief by the Principal in accordance with clause 2(a)(i) of this Schedule 6, the Site Investigations Contractor must provide a proposal to the Principal to perform the Investigations of the relevant Works Element in accordance with the approved Services Brief for that Works Element (**Works Element Proposal**).
- (b) The Works Element Proposal must include:
 - (i) the scope of the Works Element to be delivered;
 - (ii) the areas proposed to constitute the Site for the purpose of the Works Element, including details on any site specific access permits or approvals;
 - (iii) a works methodology which outlines how the Works Element will be undertaken safely. This should include, but not be limited to, drawings or diagrams of the works; plant and equipment lists; works and exclusions zones; pedestrian management, Temporary Works and traffic control details;

- (iv) the estimated duration of the Investigations of that Works Element;
- (v) a deliverables schedule for that Works Element;
- (vi) a list of exclusions and assumptions for that Works Element;
- (vii) an estimate of the Investigations Costs of that Works Element which is to be prepared on an open book basis and include:
 - A. any amounts for preliminaries and supervision of the Site Investigations Contractor (which must be in accordance with relevant rates or prices set out in Schedule 5);
 - B. the proposed amounts payable to subcontractors, consultants or suppliers and whether such amounts are proposed to be paid as a lump sum, schedule of rates or a combination of lump sum pricing and schedule of rates;
 - C. any applicable fees (including the Long Service Levy where applicable);
 - D. any applicable overheads;
 - E. any provisions and / or contingencies and the basis for such amounts and the manner in which they are proposed to be managed,

which, in each instance, must not include any amounts previously priced as part of a separate Works Element and approved by the Principal;
- (viii) the Investigations Margin for that Works Element which shall be a fixed lump sum calculated on the basis of the estimate of the Investigations Costs of that Works Element multiplied by [REDACTED]
- (ix) the proposed Upper Limit in respect of that Works Element (which shall be the aggregate of the estimated Investigations Costs and the Investigations Margin);
- (x) any proposed milestones or conditions to payment of any part of the Fee in respect of that Works Element;
- (xi) the subcontractors, consultants or suppliers it proposes to engage in respect of the Investigations for that Works Element;
- (xii) documentary evidence illustrating that any contestable element of that Works Element has been contested and/or tendered out on arms' length terms to ensure value for money for the NSW Government; and
- (xiii) [REDACTED]

4. Works Element Direction

- (a) Following receipt of a Works Element Proposal in accordance with clause 3(a) of this Schedule 6, the Principal's Representative must, within 10 Business Days, by written notice to the Site Investigations Contractor:
 - (i) approve the Works Element Proposal in respect of that Works Element (**Works Element Direction**); or

- (ii) provide comments on the Works Element Proposal in respect of that Works Element or seek further information or clarification from the Site Investigations Contractor to determine whether to approve the Works Element Proposal in respect of that Works Element and the Site Investigations Contractor must provide any such information or clarification as reasonably required by the Principal within 10 Business Days after receipt of such request from Principal (after which this clause 4(a) of this Schedule 6 will reapply to the Works Element Proposal in respect of that Works Element).
- (b) Following the receipt of the Site Investigations Contractor's additional information or clarification under clause 4(a)(ii) of this Schedule 6, the Principal may at its absolute discretion elect not to proceed with the Works Element in which case it will give notice to the Site Investigations Contractor and the Site Investigations Contractor will not carry out the Works Element.
- (c) The Work's Element Direction constitutes approval by the Principal's Representative of:
 - (i) the area, or areas, to constitute the Site for that Works Element;
 - (ii) the duration of the Investigations in respect of that Works Element (which shall be the basis upon which the Date for Completion of the relevant Separable Portion is calculated);
 - (iii) the estimate of the Investigations Costs of that Works Element;
 - (iv) the Investigations Margin of that Works Element;
 - (v) the Upper Limit of that Works Element;
 - (vi) the Site Investigations Contractors proposed subcontractors, consultants or suppliers for the purpose of clause 5(a) of the General Conditions.

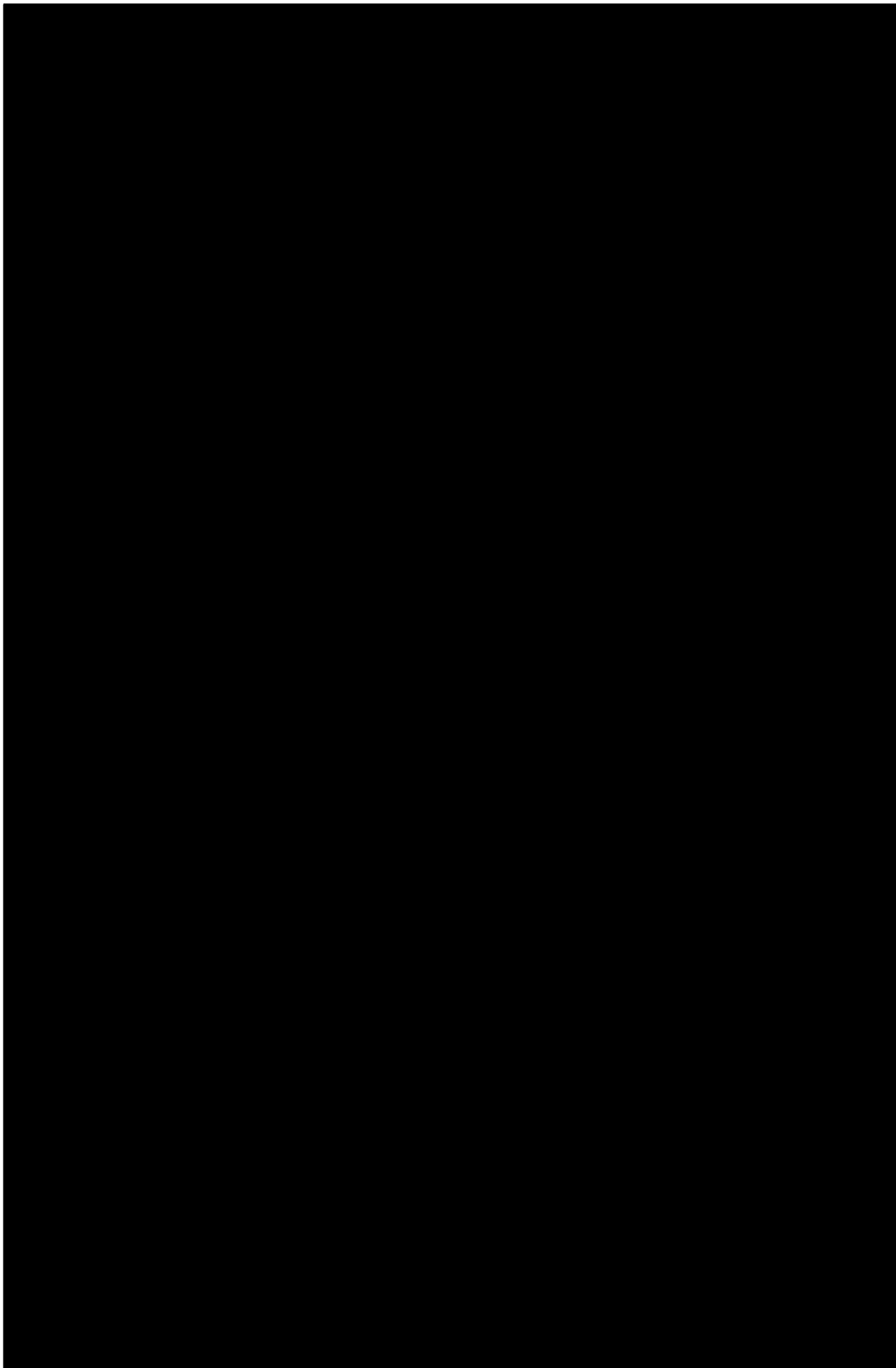
5. [REDACTED]

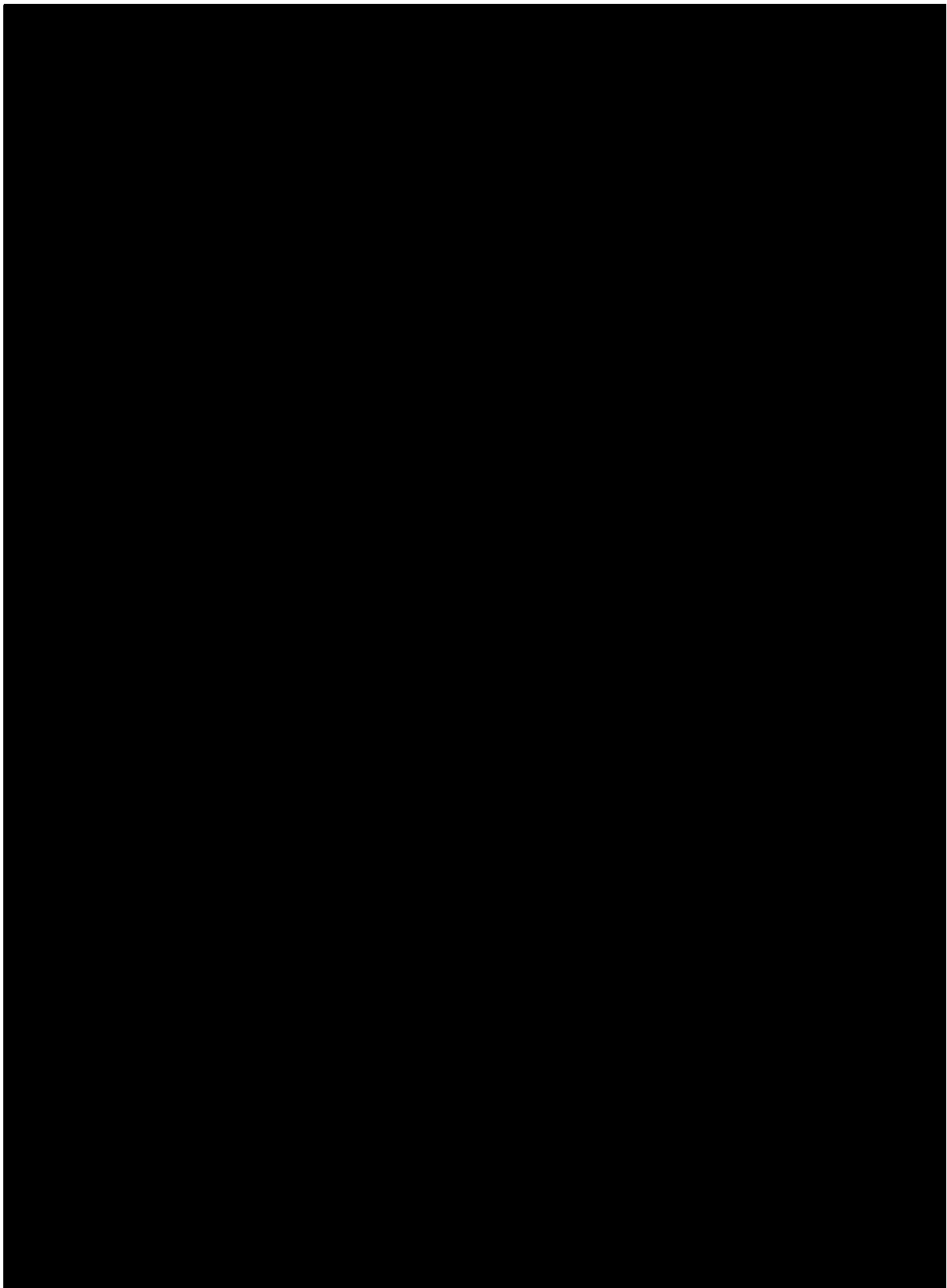
[REDACTED]



Schedule 7 –







SCHEDULE 8B – SITE INVESTIGATIONS CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION

(Definition of "Final Completion" in Clause 1.1 and Clause 18.8)

SITE INVESTIGATIONS CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION	
SITE INVESTIGATIONS CONTRACTOR:	
<p>I hereby certify that Final Completion has been achieved by the Site Investigations Contractor in accordance with the requirements of the Deed (including all Variation orders detailed in (a) below) between the Principal and the Site Investigations Contractor.</p> <p>I further certify that:</p> <ul style="list-style-type: none">(a) All Variation orders (including concessions) are listed in the attached compliance register;(b) All identified Defects (including any non-conformities have been satisfactorily rectified and their documentation closed out); and(c) All required documentation has been submitted. <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the Separable Portion / the Services.</p> <p>SIGNATURE: _____ DATE: / /</p> <p><i>(Site Investigations Contractor's Representative)</i></p>	

SCHEDULE 9 – DEED OF NOVATION

(Clause 33)

Deed of Novation

[
ABN []]

[
ABN []]

[
ABN []]

Deed of Novation made at _____ on _____

Parties [insert name] ABN [insert] of [insert] (Retiring Party)
 [insert name] ABN [insert] of [insert] (Continuing Party)
 [insert name] ABN [insert] of [insert] (Substitute Party)

Recitals

- A The Retiring Party and the Continuing Party are parties to the Contract.
- B The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"**Claim**" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"**Contract**" means the agreement between the Retiring Party and the Continuing Party described in the Schedule.

"**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 the Contract or necessary to be produced by the Site Investigations Contractor to design and construct the Works and the Temporary Works and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of the Contract.

"**Effective Date**" means [insert date].

"**GST**" means the Goods and Services Tax as defined in the A New Tax System (Goods and Services) Act 1999 (Cth.).

"**Liability**" means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

"**Related Entity**" has the meaning ascribed to that term in section 9 of the Corporations Act 2001 (Cth).

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation; and
- (k) a reference to **\$** or **dollar** is to Australian currency.

2. Condition Precedent to Novation

Clause 3 of this deed will have no force and effect until the Effective Date.

3. Novation

3.1 Novation

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party will be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

- (a) The Substitute Party:
 - (i) will be bound by and must comply with the terms of the Contract and will enjoy the rights and benefits conferred on the Retiring Party under the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the Contract,

in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.

- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

3.3 Release by Continuing Party

- (a) The Continuing Party releases the Retiring Party from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract.

- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the Contract.

3.4 Insurance

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party will take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under of the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

4. Ongoing Rights of Retiring Party

4.1 Direct Enquiries

In addition to any other rights which the Retiring Party may have, the Continuing Party and the Substitute Party each agree that the Retiring Party may make enquiries directly of the Continuing Party for the purpose of establishing whether the Continuing Party is complying with its obligations under the Contract.

4.2 Retiring Party to have benefit of Promises

- (a) The Continuing Party warrants in favour of the Retiring Party that in performing the Services it will comply with its obligations under the Contract and that the Retiring Party will continue to have the benefit of all promises, undertakings, covenants and warranties made or given by the Continuing Party under the Contract as if the Retiring Party remained a party to the Contract
- (b) Without limiting the above, the Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence in performing the Services including in issuing any certificates it is required to issue under the Contract and further acknowledges that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in issuing those certificates and acknowledges that:
 - (i) in performing the Services it will owe a duty of care to the Retiring Party; and
 - (ii) it is aware that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in performing the Services and the warranties given by the Continuing Party in this deed.

4.3 Report by Continuing Party

The Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence to ensure that the design intent of the Works as contained in the Design Documentation in existence at the date of execution of this deed, is reflected in the completion of the Design Documentation and in the execution of the Works.

Without limiting the above, the Continuing Party must conduct such inspections of the Works at such times and in such detail as may reasonably be expected of a consultant engaged in a project of the size and complexity of the Works.

The Continuing Party must act in good faith and in the best interests of the Retiring Party and promptly advise the Retiring Party about any matter in which the Continuing Party has been instructed by the Substitute Party to provide the Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including:

- (a) any instruction or direction which it receives, or any work or services it becomes aware of, which in the reasonable opinion of the Continuing Party, is not in accordance with any provision of the Contract including where the Substitute Party's instructions:
 - (i) in relation to design are not consistent with the Contract or may result in the Works to be constructed not being fit for their intended purpose; or

- (ii) require the Continuing Party to issue a certificate under the Contract where the conditions for the issue of that certificate under the Contract have not been satisfied; and
 - (b) any non-conformity of any Design Documentation produced pursuant to the Contract, or to the Design Documentation in existence at the date of this deed, upon becoming aware of the non-conformity.
- 5. Overriding effect**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.
- 6. Representations and warranties**
- 6.1 Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.
- 6.2 Authorisations**

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.
- 6.3 Binding obligations**

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.
- 7. Duties, costs and expenses**
- 7.1 Stamp duty**

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including, but not limited to, any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).
- 7.2 Costs**

Each Party must pay its own legal costs and expenses in negotiating, preparing and executing this deed.
- 7.3 GST**

The parties agree that:

 - (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
 - (b) the party receiving the payment will provide a tax invoice; and
 - (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.
- 8. General**
- 8.1 Governing law**

This deed is governed by and must be construed according to the laws of the State or Territory stated in Schedule 1.

8.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State or Territory stated in Schedule 1, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

8.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

8.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the 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) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

8.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

8.6 Severance

If at any time a 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.

8.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

8.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of each other party.



Schedule 1

Contract
(Clause 1.1)

.....

**Governing Law and
Jurisdiction**
(Clause 1.1 and 8.1)

.....



Executed as a deed.

Executed by [Retiring Party and ABN] by or
in the presence of:

Signature of Director

Name of Director in full

Executed by [Continuing Party and ABN] by
or in the presence of:

Signature of Director

Name of Director in full

Executed by [Substitute Party and ABN] by
or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

SCHEDULE 10 – EXPERT DETERMINATION AGREEMENT

Expert Determination Agreement

[Insert name of Principal]

Principal

[Insert name of Site Investigations Contractor]

Contractor

[Insert name of Expert]

Expert

Expert Determination Agreement made at _____ on _____

Parties [Insert name and address of Principal] ("Principal")

 [Insert name and address of Site Investigations Contractor] ("Site
Investigations Contractor")

 [Insert name and address of Expert agreed between the Parties or
appointed pursuant to clause [to be inserted] of the Contract] ("Expert")

Recitals

- A. The Principal and the Site Investigations Contractor (together "**the Parties**" and each "**a Party**") are parties to a contract (the "**Contract**") for *[to be inserted]*.
- B. By written notice dated *[to be inserted]*, the *[insert Principal or Site Investigations Contractor as applicable]* has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 19.3 of the Contract (the "**Matter**").
- C. Pursuant to clause 19.3 of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative part

1. APPOINTMENT OF EXPERT

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) The Parties agree that:
 - (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence and natural justice do not apply to the determination; and
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

2. CONFIDENTIALITY

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

3. COSTS AND FEES

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) The Parties agree as between themselves that:
 - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

4. EXCLUSION OF LIABILITY AND INDEMNITY

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

5. CO-OPERATION OF THE PARTIES

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

6. GOVERNING LAW

This Agreement is governed by and is to be construed in accordance with the laws in force in the State of New South Wales.

7. JURISDICTION

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the courts to which the appeals from those courts may be made.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).



Schedule 1 - The Matter

[To be inserted when it comes time for expert determination]

Schedule 2 - Rules for Expert Determination Process

1. Commencement

Except as provided in clause 4.3 of these Rules, the expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

2. Written Submissions

2.1 Within 7 days after the date this process begins, Party A (i.e. the Party who gave notice of dispute under clause 19.1 of the Contract) must, in addition to any particulars provided by Party A under clause 19.1 of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.

2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.

2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.

2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

3. Conference

3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney.

3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.

3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.

3.4 The Parties:

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

3.5 The conference must be held in private.

3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

4. General

4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Contract.

4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:

- (a) with the prior consent of the Parties;
- (b) as may be required by law; or
- (c) as may be required in order to enforce the determination of the Expert.

4.3 The Expert must:

- (a) inform the Parties of:

- (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,
- immediately upon becoming aware of any such circumstances; and
- (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise terminate the proceedings.

5. The Determination

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the Expert's acceptance of appointment, the Expert must:

- (a) determine the Matter between the Parties; and
- (b) notify the Parties of that determination.

5.2 The determination of the Expert must:

- (a) be in writing stating the Expert's determination and giving reasons;
- (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
- (c) meet the requirements of the Contract.

5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties in the circumstances set out in clause 19.3(iii) of the Contract.

5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

6. Costs

Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

7. Modification

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS

Code of Conduct for an Expert

1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.



Schedule 3 - The Expert's Fees and Disbursements

[To be inserted when it comes time for expert determination]

Signed as an agreement.

Signed for and on behalf of the Principal
by
[insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]

Signed for and on behalf of the Site
Investigations Contractor by
[insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]



Signed by the Expert *[insert name]* in the
presence of:

[Signature]

[Name of witness]

[Signature of witness]



SCHEDULE 11 – DRAFT SERVICES BRIEF

SCHEDULE 12– ACTION IN COMPLYING WITH PLANNING APPROVAL

(Clause 3.16)

Not applicable



SCHEDULE 13 – NOT USED



SCHEDULE 14 – NOT USED

SCHEDULE 15 – FORM OF THIRD PARTY DEED

(Clause 36(d))

Deed ("Deed") made at [insert location] on [insert date]

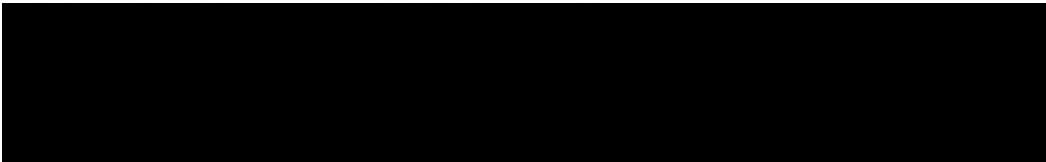
Parties: [Insert entity name] (ABN [Insert entity ABN]), of [Insert entity address] (the Site Investigations Contractor)

[Insert entity name] (ABN [Insert entity ABN]), of [Insert entity address] (the Beneficiary).

Recitals

- A. Transport for NSW (**TfNSW**) of Level 44, 680 George Street, Sydney NSW 2000, is responsible for delivering the Circular Quay Renewal Project (**CQR**).
- B. As part of CQR, TfNSW is procuring investigation services to provide certain information for the CQR site and surrounding areas to progress the future planning, concept and detailed designs for CQR on behalf of the New South Wales Government (**Services**), and has entered into a contract (**Site Investigations Contract**) with the Site Investigations Contractor in relation to such Services.
- C. It is a condition of the Site Investigations Contract that the Site Investigations Contractor executes this Deed.

Operative Terms

- 1. The Site Investigations Contractor has complied, and must at all times comply, with its obligations under the Site Investigations Contract.
- 2. 
- 3. This Deed is governed by the laws of the State of New South Wales.
- 4. This Deed may not be revoked or otherwise modified without the prior written consent of the Beneficiary.
- 5. Where terms used in this Deed are defined in the Site Investigations Contract, those terms have the meaning given to them in the Site Investigations Contract.



EXECUTED AS A DEED.

Signed, sealed and delivered by [insert
company name of Site Investigations
Contractor] ABN [insert ABN] in accordance
with section 127 of the Corporations Act 2001
(Cth):

Signature of Director

Signature of Company Secretary/Director

Full Name of Director

Full Name of Company Secretary/Director

Signed, sealed and delivered by [insert
company name of Beneficiary] ABN [insert
ABN] in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of Director

Signature of Company Secretary/Director

Full Name of Director

Full Name of Company Secretary/Director

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