

Sydney Metro City & Southwest Metro – Errant and Hostile Vehicle Mitigation Treatments for the Southwest Metro Project

Early Contractor Involvement Deed

Sydney Metro Principal

Martinus Rail Pty Ltd



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Early Contractor Involvement Deed

Date 22 December 2023

Parties Sydney Metro ABN 12 354 063 515, a NSW Government agency constituted by

section 38 of the Transport Administration Act 1988 (NSW) and located at Level 43,

680 George Street, Sydney NSW 2000 (Principal); and

Martinus Rail Pty Ltd ABN 90 117 147 645 of Unit 1, 23-27 Waratah Street,

Kirrawee NSW 2332 (Contractor).

Background

- A. The Principal is responsible for undertaking the Project.
- B. The Project will be implemented in stages, with the initial stage being the ECI Phase. At the completion of the ECI Phase, the Principal may engage the Contractor to undertake the Early Works under an Early Works Contract and/or the Works under a design and construction contract.
- C. The Contractor has been engaged by the Principal to participate in the ECI Phase and perform the ECI Activities in accordance with this Deed.

Operative part

1. Contractor's obligations

1.1 Key obligations

The Contractor must:

- (a) carry out the ECI Activities in an open, consultative and collaborative manner with the Principal and its Associates;
- (b) immediately commence carrying out the ECI Activities;
- regularly and diligently progress the performance of the ECI Activities so as to achieve each ECI Milestone by the relevant ECI Milestone Date;
- (d) keep the Principal's Representative fully and regularly informed about all matters affecting and relating to the performance of the ECI Activities;
- (e) ensure that the ECI Activities and the Final Proposal:
 - (i) deliver efficiencies and overall value for money for the Principal; and
 - (ii) are fit for their intended purpose as stated in or reasonably ascertainable from this Deed; and
- (f) develop a Final Proposal for the Works taking into account all of the above and the other requirements of this Deed.

1.2 Commitment to open book

(a) The Contractor must keep and maintain all records and other documentation referred to in this Deed or that are reasonably necessary for, or prepared in connection with, the performance of the ECI Activities (ECI Records).



- (b) The ECI Records must comply with, where applicable, good accounting practices, standards and procedures.
- (c) The Contractor must make the ECI Records available to the Principal (or any independent estimator or quantity surveyor appointed by the Principal) upon request at any time (not including any ECI Records that are the subject of legal professional privilege or are confidential lawyer/client communications).

1.3 Cooperation

The Contractor must:

- (a) fully co-operate with any Other Contractors;
- carefully co-ordinate the performance of the ECI Activities with any services and works provided by Other Contractors;
- (c) not interfere with, disrupt or delay services and works provided by any Other Contractors;
- (d) provide any assistance to the Principal reasonably necessary to facilitate the effective provision by any Other Contractors of services and works for the Project;
- (e) execute any cooperation and integration deeds, master interface protocols deed poll or similar documents required by the Principal with Other Contractors within 5 Business Days of a request by the Principal; and
- (f) attend any governance groups and committees established in connection with the Project or the Southwest Metro Project as described in the documents referred to in paragraph (e).

1.4 Warranties unaffected

The Contractor acknowledges and agrees that:

- (a) the Contractor's warranties, obligations and Liabilities under this Deed remain unaffected; and
- (b) the Contractor will bear and continue to bear full liability and responsibility in accordance with this Deed for the performance of the ECI Activities,

notwithstanding any receipt or review of, comment on, rejection or approval of, permission to use or deemed permission to use, or expression of satisfaction or dissatisfaction with any document or information provided by the Contractor, by or on behalf of the Principal or a Principal Associate.

1.5 Engineering Authorisation

The Contractor represents and warrants that if it or any of its subcontractors will carry out Asset Lifecycle Services, that they are a TAO and have obtained TAO Authorisation to carry out the Asset Lifecycle Services and maintain TAO Authorisation as long as the ECI Activities are carried out.

1.6 AMB Compliance

The Contractor must (and must ensure that its subcontractors and all personnel for which the Contractor is responsible):

(a) implement and comply with any AMB Requirements applicable to the Asset Lifecycle Services;



- (b) immediately notify the Principal's Representative in writing of any non-compliance with clauses 1.5 and 1.6;
- (c) cooperate fully with the AMB in the performance of the AMB's functions;
- (d) provide access to premises and resources as reasonably required by the AMB, including so that the AMB can effectively carry out its review, surveillance and audit functions;
- (e) comply with the directions, instructions and requirements issued by the AMB;
- (f) notify the AMB of any matter that could reasonably be expected to affect the exercise of the AMB's functions;
- (g) 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
- (h) 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.

2. Purpose and scope of ECI Phase

The purpose and scope of the ECI Phase is:

- (a) for the Contractor to perform the ECI Activities:
 - (i) in accordance with this Deed, including to prepare the Contract Documentation and develop a Final Proposal for the Works;
 - (ii) so as to familiarise itself with the nature of the work which will be required to be undertaken as part of the Works; and
 - (iii) so as to enable the Principal to observe the performance of the Contractor in undertaking the ECI Activities;
- (b) for the Contractor to prepare all design of the Works and the Temporary Works (including the Design Documentation);
- (c) to enable the Principal to observe and experience the reality of working with the Contractor; and
- (d) to enable the Principal to determine whether to engage the Contractor to undertake the Works or the Early Works (or both).

3. Administration

3.1 Principal's Representative

- (a) The Principal may perform its obligations under this Deed through the Principal's Representative.
- (b) The Contractor acknowledges that the Principal's Representative will give directions and carry out all its other functions under this Deed as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.



- (c) The Contractor will provide all assistance necessary to ensure the Principal's Representative can fulfil the responsibilities, perform those roles and functions and exercise those rights.
- (d) The Principal has initially selected the person named in Item 11 of Schedule 2 as the Principal's Representative for the purposes of this Deed. The Principal may, from time to time, change the Principal's Representative by giving notice in writing to the Contractor.

3.2 Contractor's personnel

- (a) The Contractor must:
 - employ the individuals nominated by the Contractor and listed in Item 2 of Schedule 2 in the positions specified in Item 2 of Schedule 2 or equivalent positions;
 - (ii) subject to clause 3.2(a)(iii), not replace the individuals referred to in clause 3.2(a)(i) without the Principal's Representative's prior written approval which will not be unreasonably withheld; and
 - (iii) if any of the individuals referred to in clause 3.2(a)(i):
 - A. dies;
 - B. becomes unable to continue in their positions due to illness:
 - C. resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the Corporations Act 2001 (Cth)); or
 - D. becomes the subject of a direction under clause 3.2(b),

replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative.

- (b) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person from a Project Site and the ECI Activities. The Contractor must then cease to engage that person in the ECI Activities and must appoint a replacement.
- (c) The Contractor must ensure that any person the subject of a direction under clause 3.2(b) is not again employed in the ECI Activities or on a Project Site.

4. Final Proposal

4.1 Development of Final Proposal and Contract Price

- (a) The Contractor must develop a Final Proposal for the Works in accordance with this clause 4.
- (b) The parties acknowledge that the Final Proposal must be developed and submitted in stages in accordance with the ECI Milestones.
- (c) In developing its Final Proposal, the Contractor must have regard to the requirements of the Draft D&C Contract and the obligations and liabilities of the contractor under the Draft D&C Contract.



- (d) The Contractor must prepare its Final Proposal (including its proposed Contract Price):
 - in a transparent, open book manner, working collaboratively with the Principal and the Principal's Associates; and
 - (ii) by:
 - actively seeking innovative solutions through the implementation of value engineering processes;
 - B. using competitive tendering processes to obtain input costs;
 - C. using the best production and productivity rates from other similar projects;
 - D. having the estimating process, inputs and procurement processes used to obtain quotations for input costs reviewed by the Principal and (if required by the Principal) a third party engaged by the Principal; and
 - E. demonstrating to the Principal's satisfaction the competitive nature of prices for activities proposed to be undertaken inhouse by obtaining quotations and/or benchmarking from the open market and obtaining any further market comparison if so requested by the Principal's Representative;
 - (iii) using a percentage for profit and overheads that does not exceed the percentage specified in Schedule 6
 - (iv) using rates that do not exceed the relevant rates contained in Schedule 6 and Schedule 9: and
 - (v) in a manner which:
 - A. is sufficiently detailed to enable analysis of each component of cost making up the Contract Price; and
 - B. fully discloses all assumptions, decisions, costings, contingencies and variances in the Contract Price.
- (e) The Final Proposal must:
 - (i) be in a form approved by the Principal; and
 - (ii) incorporate the information, details and documentation set out in Schedule 5 and such other information reasonably required by the Principal.
- (f) At any time prior to the relevant Submission Date and Time, the Principal may advise the Contractor in writing of any additional documents or further information that the Principal reasonably requires to be incorporated into the Final Proposal and the Contractor must incorporate the additional documents or further information into its Final Proposal.
- (g) The Contractor must submit its Final Proposal to the Principal by no later than the relevant Submission Date and Time.
- (h) The Principal may request the Contractor to submit:



- copies of supporting documentation concerning the Final Proposal including copies of quotations, prices, estimates, quantities and the like; and
- (ii) details of the conduct and outcome of any competitive tendering processes pursuant to which input prices have been incorporated into the Final Proposal.

4.2 Contractor's warranties

The Contractor warrants that it will:

- (a) exercise proper professional skill, care and diligence in the development of all aspects of its Final Proposal and the performance of the ECI Activities;
- (b) develop its Final Proposal on the basis that:
 - all technical solutions will be robust and fit for the purposes stated in or reasonably ascertainable from the Draft D&C Contract (including the Works Brief), and will satisfy the requirements of the Works Brief and the Draft D&C Contract;
 - (ii) the information contained in its Final Proposal will be accurate and complete on the date on which it is submitted and may be relied upon by the Principal in determining whether or not to engage the Contractor to undertake the Works; and
 - (iii) the ECI Activities will be performed in accordance with this Deed; and
- (c) promptly notify the Principal of any changes in circumstances that may cause the information:
 - (i) contained in a Final Proposal;
 - (ii) provided to the Principal prior to or during the ECI Phase in relation to the Contractor or the Project,

to become inaccurate or incomplete in a material respect.

4.3 Validity of Final Proposal

The Contractor's Final Proposal (or a relevant part thereof) will remain valid and capable of acceptance by the Principal until the date that is 90 days from the relevant Submission Date and Time.

4.4 Probity

- (a) The Principal has appointed the Principal's Probity Adviser who will, among other matters, be responsible for oversight of the process and procedures of the ECI Phase.
- (b) The Contractor must provide (or procure) access for the Principal's Probity Adviser to the records, books, accounts and personnel of the Contractor.



5. Provision of information

5.1 Provision of information by the Principal

In performing the ECI Activities, the Contractor must encourage open, honest and efficient sharing of information, including in relation to opportunities for innovation in design and construction and the results of site investigations.

5.2 Project Site access

- (a) The Contractor must not enter any Project Site for any reason, including to carry out any site investigations, without the Principal's Representative's prior written consent (which the Principal's Representative may withhold in its absolute discretion).
- (b) If the Principal grants the Contractor access to a Project Site during the ECI Phase:
 - (i) the Contractor must:
 - A. comply with:
 - any protocols or requirements specified by the Principal from time to time; and
 - the reasonable directions of the Principal in accessing a Project Site;
 - B. obtain all licences, authorisations, approvals and consents necessary to perform any ECI Activities on a Project Site;
 - if requested by the Principal, successfully complete safety awareness training as a pre-condition to conducting any site investigations;
 - D. when accessing a Project Site, minimise disruption or inconvenience to the Principal and any occupiers of the Project Site (including Other Contractors) in their occupation or use of, or attendance upon, any part of the Project Site;
 - E. at all reasonable times give the Principal's Representative, the Principal and any authorised person access to a Project Site or any areas off-site where the Contractor is performing the ECI Activities;
 - F. co-operate with any Other Contractor performing works on or in the vicinity of a Project Site;
 - G. co-ordinate the ECI Activities with the work of those Other Contractors;
 - H. keep the Project Site clean and tidy and free of refuse;
 - make good any damage to a Project Site caused by it (or on its behalf) in connection with the inspection of, or access to, that Project Site; and
 - J. to the extent not prohibited by law, 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 Contractor's failure to discharge the duties imposed on a principal contractor by the



WHS Legislation that the Contractor is required to discharge in accordance with clause 5.2(b)(ii)D; and

(ii) the Principal:

- A. is not obliged to provide the Contractor with sole access to a Project Site;
- B. is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain adequate access to carry out the ECI Activities:
- C. may engage others to work upon or in the vicinity of a Project Site at the same time as the Contractor; and
- D. unless otherwise stated in Item 15 of Schedule 2, appoints the Contractor as principal contractor for all construction work carried out in connection with this Deed (if any), and the Contractor must discharge the responsibilities imposed on a principal contractor by the Work Health & Safety Regulation 2017 (NSW) and comply with the Sydney Metro Principal Contractor Health and Safety Standard. The Principal authorises the Contractor to exercise such authority of the Principal as is necessary to do this.

5.3 Communication with Stakeholders

The Contractor must not communicate (verbally or otherwise) with any Stakeholders in relation to any aspect of the Project, the Works or the Early Works without the Principal's prior written consent.

5.4 Disclaimer

- (a) The Contractor acknowledges that:
 - (i) the Information Documents and Materials are provided to the Contractor by the Principal as a guide only for the Contractor's information:
 - (ii) any Information Document and Materials may be incorrect;
 - (iii) the Contractor must make its own enquiries to determine the accuracy and adequacy of any Information Document and Materials;
 - (iv) to the extent that the Principal is not the author or source of any Information Document and Materials, it does not adopt the Information Document and Materials and merely passes the Information Document and Materials on to the Contractor;
 - (v) the Principal:
 - A. is not responsible for; and
 - B. makes no representation or warranty in respect of,

the contents of the Information Documents and Materials or any advice or information given by the Principal with respect to the Project, the Works, the Early Works or the Information Documents and Materials, including the accuracy, adequacy, suitability or completeness of any reports, data, test results, samples, reports or geotechnical



investigations, opinions, recommendations, findings or other information contained in the Information Documents and Materials;

- (vi) neither the Principal nor any of its officers, employees, consultants or agents makes any representation that all information in the Principal's control or possession in relation to the Project, the Works or the Early Works has been provided to the Contractor; and
- (vii) neither the Principal nor any of its officers, employees, consultants or agents, warrants, guarantees or makes any representation, or assumes any duty of care, or (to the extent permitted by law) accepts any liability, with respect to the completeness, accuracy, adequacy or correctness of any Information Document and Materials.
- (b) The Contractor warrants that:
 - (i) it will not rely upon the Information Documents and Materials as being accurate, adequate, suitable or complete; and
 - (ii) it will make its own independent evaluation of the Information Document and Materials' accuracy, adequacy, suitability and completeness,

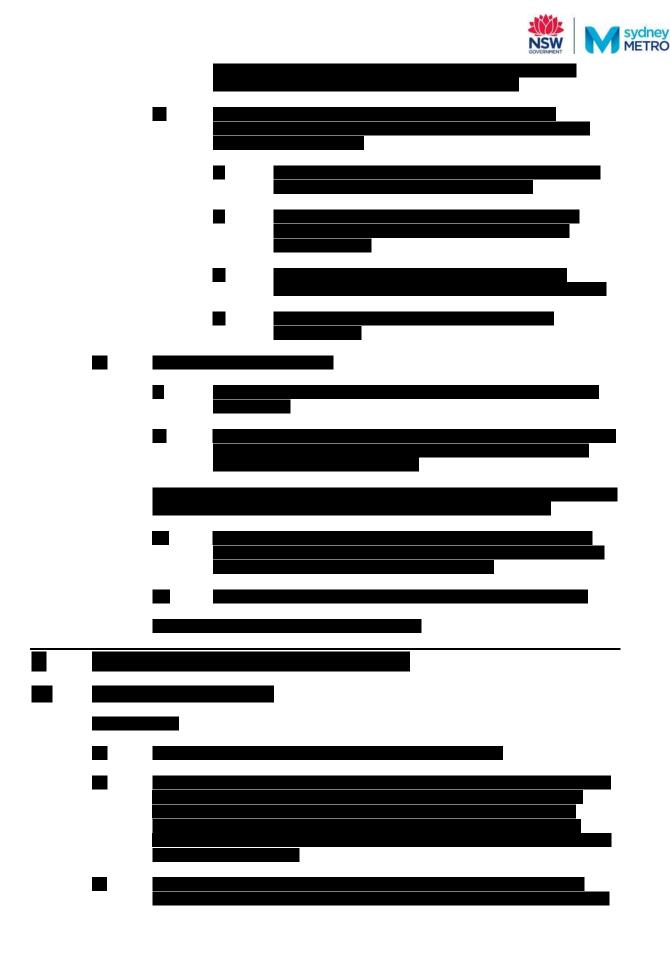
for the purpose of performing the ECI Activities or preparing its Final Proposal.

- (c) The Contractor irrevocably releases and indemnifies the Principal (and its officers, employees, consultants and agents) from and against:
 - (i) any Claim against them (or any of them) by, or liability of them (or any of them) to, any person; or
 - (ii) without limiting clause 5.4(c)(i), any costs, losses or damages suffered or incurred by them (or any of them),

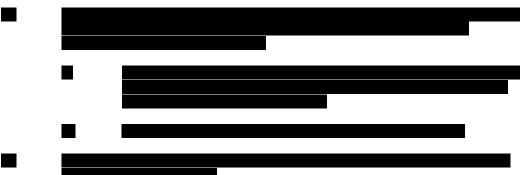
arising out of or in connection with:

- (iii) the provision of, or the purported reliance upon, or use of, the Information Documents and Materials by the Contractor or any other person to whom the Information Documents and Materials are disclosed by the Contractor; or
- (iv) the Information Documents and Materials:
 - A. being relied upon; or
 - B. otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in section 18 and 29 (respectively) of the Australian Consumer Law 2010 (Cth) or any equivalent provisions of State or Territory legislation).





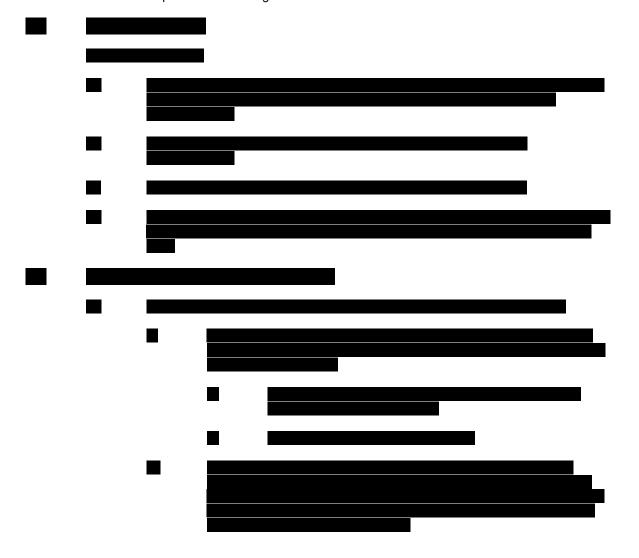


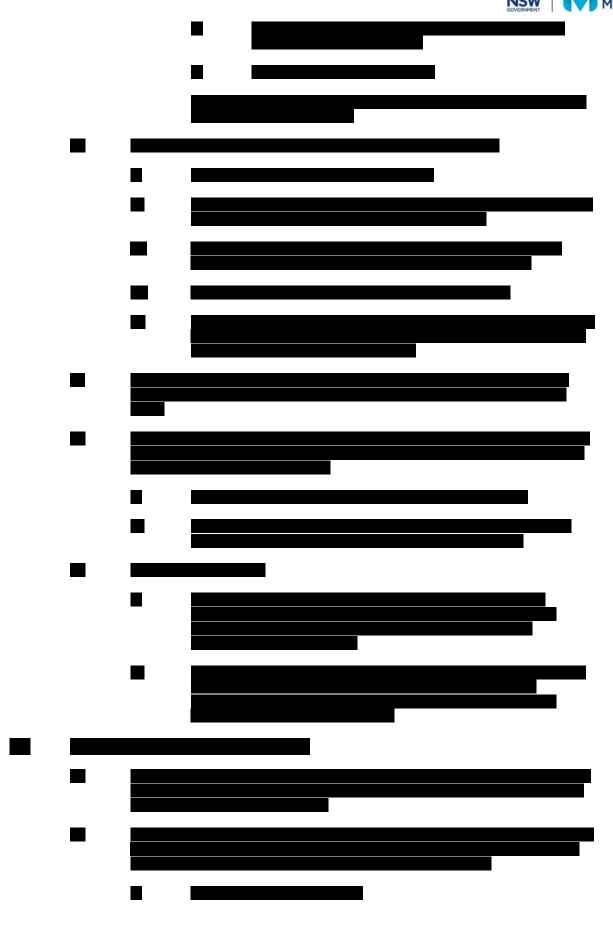


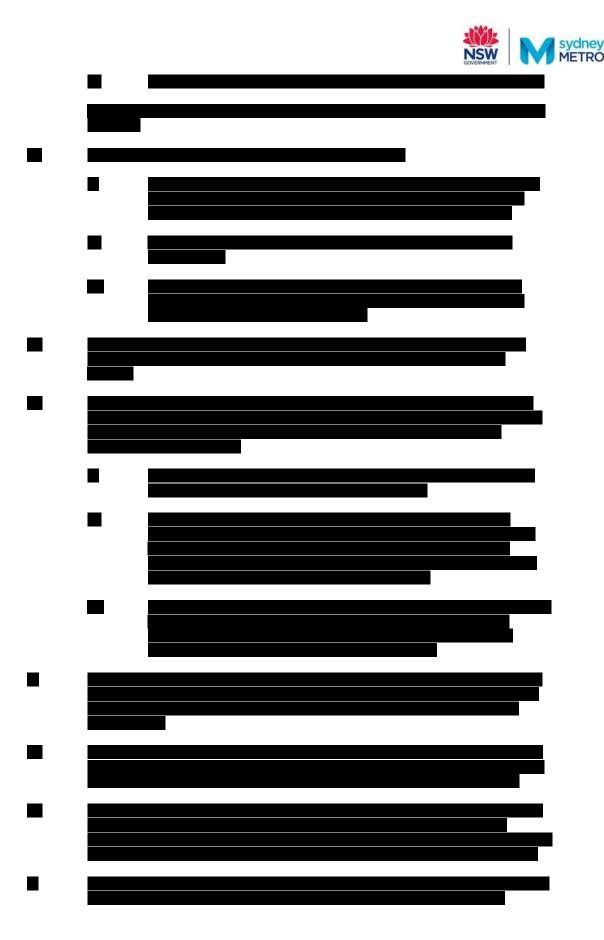
6.2 Contractor not relieved

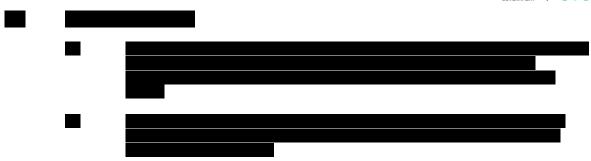
No submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the ECI Program or the Delivery Program) prepared by the Contractor, by the Principal's Representative in connection with the program, will:

- (a) relieve the Contractor from or alter its liabilities or obligations under this Deed; or
- (b) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Deed.









7. Early Works

7.1 Invitation to undertake Early Works

- (a) As part of the ECI Activities, the Principal may request the Contractor to:
 - identify any possible Early Works to improve Project delivery that may be undertaken by the Principal prior to any D&C Contract being entered into; and
 - (ii) provide reasons to the Principal's Representative why it would be beneficial to the Principal for any such works to be carried out as Early Works.
- (b) The Principal may invite the Contractor to submit an offer in accordance with clause 7.2 to execute any Early Works:
 - (i) identified by the Contractor pursuant to clause 7.1(a); or
 - (ii) as otherwise identified by the Principal.
- (c) Any invitation made by the Principal to the Contractor under clause 7.1(b) to undertake any Early Works must set out:
 - (i) the scope of the Early Works;
 - (ii) the basis on which the offer is sought;
 - (iii) any timeframe for the completion of the Early Works; and
 - (iv) any other relevant particulars.

7.2 Early Works Offer

- (a) The Contractor must submit a written offer to the Principal for undertaking the relevant Early Works (**Early Works Offer**) within 10 Business Days after receipt of an invitation from the Principal under clause 7.1(b) or as otherwise agreed with the Principal.
- (b) The Early Works Offer must:
 - (i) be in a form approved by the Principal's Representative;
 - (ii) satisfy the requirements set out in the invitation;
 - (iii) to the extent that it has been prepared on the basis of input prices, contain copies of the input prices;



- (iv) be made on the basis of the terms and conditions of the Draft D&C Contract; and
- (v) contain such other information reasonably requested by the Principal.

7.3 Acceptance or rejection of Early Works Offer

- (a) The Principal may engage the Contractor to undertake any Early Works on the terms of the Early Works Offer or any other terms agreed by the Parties (**Early Works Contract**).
- (b) The Contractor acknowledges:
 - (i) the Principal is not obliged to accept any Early Works Offer;
 - (ii) the Principal may undertake any Early Works itself or engage an Other Contractor to undertake such Early Works; and
 - (iii) the execution of any Early Works does not form part of the ECI Activities.
- (c) If the D&C Contract is entered into for the Project when the Early Works are still being carried out by the Contractor:
 - (i) the Early Works Contract will be deemed to have been rescinded; and
 - (i) the Early Works will be deemed to form part of the Works and all Early Works performed and money paid under the Early Works Contract will be deemed to have been performed and paid under the D&C Contract and will be included in the Contract Price.

7A Design and Design Documentation

7A.1 Contractor's design

The Contractor:

- (a) must prepare and complete the design of the Works and the Temporary Works (including the Design Documentation), so that it is fit for its intended purpose and otherwise complies with the requirements of this Deed;
- (b) warrants that:
 - it has fully and carefully reviewed the Works Brief including any Preliminary Design; and
 - (ii) the completed design of the Works and the Temporary Works as represented in the Design Documentation will:
 - A. satisfy the requirements of the Works Brief (including any Preliminary Design) and the other requirements of this Deed;
 and
 - B. be fit for its intended purposes; and
 - (iii) construction in accordance with the completed design of the Works and the Temporary Works will satisfy the requirements of the Works Brief (including any Preliminary Design) and the other requirements of this Deed.



7A.2 Preliminary Design

- (a) Without limiting clause 7A.1, the Contractor:
 - (i) acknowledges and agrees that, prior to the Commencement Date, the Preliminary Design was created by the Principal and the Principal's agents and consultants, and that it is aware that the Preliminary Design is incomplete and may contain ambiguities, errors, inconsistencies, discrepancies or omissions;
 - (ii) warrants, subject to clause 6.4, that it has checked and carefully reviewed and considered the Preliminary Design to ensure that it complies with the requirements of this Deed, including that it is fit for the intended purpose of the Works; and
 - (iii) acknowledges and agrees that:
 - A. the Contractor's design obligations under this clause 7A, and the Contractor's warranties (including under clause 7A.1), obligations and liabilities under this Deed and at Law, remain unaffected; and
 - B. the Contractor's obligations to carry out the ECI Activities and complete the Design Documentation in accordance with this Deed remain unaffected by, and it will bear and continue to bear full liability and responsibility for the carrying out of the ECI Activities and the completion of the Design Documentation in accordance with this Deed at its cost,

notwithstanding any one or more of the following:

- that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Preliminary Design;
- D. that any ambiguities, errors, inconsistencies, discrepancies or omissions exist in the Preliminary Design; or
- E. that prior to the Commencement Date any part of the Preliminary Design is described or represented by the Principal as having been completed to any particular design stage (including "Approved for Construction", "Preliminary Design Review", "System Concept Review", "Critical Design Review" or otherwise) (Relevant Design Stage), and despite any such description or representation:
 - an ambiguity, error, inconsistency, discrepancy or omission exists in the Preliminary Design which is inconsistent with the Preliminary Design having achieved the Relevant Design Stage; or
 - 2) the Contractor is otherwise required to perform work which is required to be undertaken in order for the Preliminary Design to satisfy the requirements of the Relevant Design Stage, whether or not that work has been undertaken prior to the Commencement Date.
- (b) The Contractor:



- must prepare the Design Documentation in a manner consistent with the Preliminary Design (where applicable); and
- (ii) must give the Principal written notice, and seek its written approval, if the Contractor is of the opinion that it is required to deviate from the Preliminary Design in preparing the Design Documentation, providing detailed reasons as to why the Design Documentation cannot be prepared in a manner consistent with the Preliminary Design.

7A.3 Design Documentation

- (a) The Contractor must submit all Design Documentation:
 - (i) progressively to the Principal's Representative; and
 - (ii) at the times set out in:
 - A. the Works Brief; and
 - B. the ECI Program.
- (b) The Contractor must upon each submission of the Design Documentation to the Principal's Representative for review (including at the completion of the design of each design package) ensure that the Design Documentation is accompanied by the following documents:
 - the Contractor's Certificate of Design Compliance in the form of Schedule 12:
 - (ii) a register of records of design verification and reviews applicable to the design package and other compliance records required by this Deed (all records being satisfactorily completed and signed);
 - (iii) a register of any outstanding design non-conformities and unresolved issues;
 - (iv) a register of deficiency notices and evidence of their close out; and
 - a register of concessions (if any) granted for non-conforming Design Documentation.

7A.4 NAC or Sub NAC Review of Design Documentation

- (a) The Principal's governance structure for the management of network assurance is detailed in the Sydney Metro Network Assurance Procedure (set out in the Works Brief) (Network Assurance Committee or "NAC").
- (b) The Principal's governance structure for the management of network assurance to works on the existing Sydney Trains network is detailed in the Sydney Metro Network Assurance Sub Procedure (set out in the Works Brief) (**Sub Network Assurance Committee or "Sub NAC"**).
- (c) Where the Contractor has submitted Design Documentation relating to a Control Gate for the review of the Principal's Representative, the Contractor must in relation to any Design Documentation relating to a Control Gate which is designated as Control Gate 3, Control Gate 4 or Control Gate 5 submit all documentation necessary and to a sufficient standard to enable acceptance for any Design Documentation in the form required by the Principal to the Principal for review (Network Assurance Submission or "NAS"). The Principal will determine:



- (i) whether the correct Control Gate has been completed in the NAS;
- (ii) if the NAS has been completed correctly with all relevant information provided; and
- (iii) the Contractor's processes are appropriately applied and the output of the ECI Activities have been validated.

which will be deemed to be suitable for submission to the NAC or Sub NAC.

- (d) If the Principal has made a determination under paragraph (c), the Principal will submit the NAS to the NAC or Sub NAC (as the case may be) on behalf of the Contractor prior to such meeting with the NAC or Sub NAC following which:
 - (i) the Contractor must:
 - A. provide any materials which it intends to present at that meeting in relation to the NAS to the Principal for review (at least 2 Business Days prior to a meeting); and
 - B. amend the Contractor's presentation if reasonably requested by the Principal;
 - (ii) the Contractor must attend all meetings requested by the Principal, NAC or Sub NAC and may at its own cost invite up to two subject matter experts to present the NAS to the NAC or Sub NAC; and
 - (iii) the Principal will advise the Contractor whether the NAS has been approved by the NAC or Sub NAC and if the NAS has been rejected the Principal shall inform the Contractor and the process under paragraph (c) and (d) shall reapply.
- (e) The Contractor agrees that in complying with this clause 7A.4:
 - (i) it will review and abide by any conditions imposed by the NAC or Sub NAC in relation to the NAS which are deemed necessary and to a sufficient standard to enable acceptance by the NAC or Sub NAC as the case may be; and
 - (ii) the Contractor must do all reasonable things to keep itself informed of any timetables in relation to this clause 7A.4 during the ECI Activities.
- (f) The Principal's obligations under clause 7A.4 do not:
 - (i) create any liability for the Principal in respect of the content of the Design Documentation; or
 - (ii) relieve the Contractor of its obligations in this Deed in respect of the Design Documentation.
- (g) The Contractor must cooperate with the Principal's Representative to facilitate the review of the Design Documentation.

7A.5 Copies of Design Documentation

(a) The Contractor must, in accordance with clause 7A.3, progressively submit to the Principal's Representative the number of copies specified in Item 3 of Schedule 2, of all Design Documentation, whether complete or work in progress, which it intends will be used for to use for design or construction purposes.



- (b) The Contractor must give the Principal's Representative the number of copies specified in Item 3 of Schedule 2 of:
 - all survey information used in the design of the Works and the Temporary Works; and
 - (ii) all final Design Documentation.

7A.6 Independent Certifier

The Contractor acknowledges and agrees that:

- (a) the Principal may at any time engage an independent certifier to review and certify any Design Documentation prepared under this Deed;
- (b) the Contractor must provide any assistance required by any such independent certifier in fulfilling its functions.

7A.7 Third Party Agreements

- (a) The Contractor:
 - acknowledges that the Principal has entered or will enter into the Third Party Agreements;
 - (ii) must:
 - A. comply with the conditions and requirements of the Third Party Agreements; and
 - B. assist the Principal in any way that the Principal reasonably requires to enable the Principal to comply with the Third Party Agreements,

to the extent relevant to the ECI Activities; and

- (iii) must, where a Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, to the extent relevant to the ECI Activities, provide such document, notice or information to the Principal (and not to the Third Party) within a reasonable time sufficient for the Principal to review and comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;
- (iv) must, in carrying out the ECI Activities:
 - A. ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement; and
 - B. otherwise act consistently with the terms of the Third Party Agreement.

8. Contract Documentation

(a) The Contractor must submit all Contract Documentation progressively to the Principal's Representative in accordance with the ECI Program under this clause 8.



- (b) The Contractor must prepare the Contract Documentation:
 - (i) in accordance with this Deed;
 - (ii) so that it is fit for its intended purpose;
 - (iii) so that it is free from any inconsistency, discrepancy, ambiguity, inadequacy, deficiency, error or omission; and
 - (iv) so that to the extent that it addresses like or interrelated subject matter, the Contract Documentation is coordinated and consistent.
- (c) The Principal's Representative may:
 - (i) review any Contract Documentation (including any resubmitted Contract Documentation) prepared by the Contractor; and
 - (ii) in its reasonable opinion, reject the Contract Documentation which does not comply with the requirements of this Deed and the Contractor must submit amended Contract Documentation to the Principal's Representative,

within:

- (iii) 20 Business Days of submission by the Contractor of such Design Documentation or resubmitted Design Documentation; or
- (iv) if the Design Documentation is subject to review by a Third Party under a Third Party Agreement and the timeframe for review is longer than 20 Business Days, the timeframe permitted for review under the relevant Third Party Agreement.
- (d) The Principal's Representative does not assume or owe any duty of care to the Contractor to review or in reviewing the Contract Documentation submitted by the Contractor for any inconsistency, discrepancy, ambiguity, inadequacy, deficiency, error or omission or compliance with this Deed.
- (e) No review or approval of, comments upon, rejection of, or failure to review or comment upon or reject, any Contract Documentation prepared by the Contractor or any other direction by the Principal's Representative in respect of the Contract, Documentation will:
 - relieve the Contractor from, or alter or affect, the Contractor 's liabilities or responsibilities whether under the Deed or any D&C Contract or otherwise at law; or
 - (ii) prejudice the Principal's rights against the Contractor whether under the Deed or any D&C Contract or otherwise at law.

9. Independent advisers

- (a) The Contractor acknowledges and accepts that the Principal may appoint advisers including:
 - (i) the Principal's Probity Adviser;
 - (ii) an insurance adviser;
 - (iii) construction, engineering or technical reviewers;



- (iv) an independent estimator;
- (v) commercial advisers; and
- (vi) legal advisers,

to be accountable independently and directly to the Principal to evaluate the Final Proposal, to perform any task required by the Principal and to provide independent reports and validation of any aspect of the Final Proposal or the ECI Activities.

- (b) The Contractor acknowledges and accepts that the Principal may appoint an independent estimator (or other person nominated by the Principal) to review the performance of the ECI Activities, including the development of any cost estimates, at times required by the Principal.
- (c) The Contractor must give the independent estimator access to all documents or information, or provide any assistance, reasonably required by the independent estimator to carry out any review required by the Principal.
- (d) The Principal must bear all of the costs of any independent advisers appointed under this clause 9.
- (e) The Contractor must not approach or otherwise communicate (verbally or otherwise) with any advisers of the Principal in relation to any aspect of the Project, the Works or the Early Works without the Principal's prior written consent.

10. Review of Final Proposal

10.1 Consideration of Final Proposal

- (a) After the relevant Submission Date and Time, the Principal will:
 - review and evaluate the Final Proposal which has been developed by the Contractor and submitted to the Principal, including the extent to which the Final Proposal satisfies the requirements in clause 1.1(e) of this Deed;
 - (ii) review any comments in respect of the Final Proposal received from its independent advisers;
 - (iii) consider the views, experiences and responses of key stakeholders of the Principal involved in the ECI Phase;
 - (iv) without limiting the Principal's rights under this Deed, determine whether the Contractor will be engaged to undertake the Works; and
 - (v) notify the Contractor in writing of its decision.
- (b) The Contractor must honestly and openly answer any questions which the Principal and its independent advisers may have in connection with the Final Proposal.
- (c) The Principal may, in its absolute discretion, after any Submission Date and Time:
 - have further discussions with the Contractor to clarify or confirm any elements of its Final Proposal; or
 - (ii) work together with the Contractor to agree on adjustments or revisions to the Final Proposal.



10.2 Decision of the Principal

If, following consideration of the Final Proposal under clause 10.1, the Principal notifies the Contractor in writing under clause 10.1(a)(v) that:

- (a) the Contractor will be engaged to undertake the Works (or a part thereof), then clause 10.3(c) will apply; or
- (b) the Contractor will not be engaged to undertake the Works, then clause 10.4 will apply.

10.3 Draft D&C Contract

The Contractor agrees that:

- (a) it accepts the terms of the Draft D&C Contract;
- (b) if (either before or after submission of the Final Proposal) the Principal requires any changes to the form of Draft D&C Contract, to which the Contractor agrees, the Parties will make such changes to the Draft D&C Contract;
- (c) if it is notified that the Principal intends to engage it to undertake the Works (or a part thereof), it will promptly execute the Draft D&C Contract, amended only:
 - (i) to complete any missing details required in the Draft D&C Contract; and
 - (ii) for any changes required by the Principal (and agreed by the Parties) in accordance with clause 10.3(b).

and the Contractor must deliver the executed document to the Principal; and

(d) if applicable, the Contractor must continue to perform the ECI Activities and submit further stages of the Final Proposal to complete ECI Milestones that have not been completed at the time of execution of the D&C Contract and, if the Principal elects to engage the Contractor to perform the Works the subject of any stages of the Final Proposal submitted after entry into the D&C Contract, the relevant Works will be directed as a Variation to the D&C Contract.

10.4 Consequences of not being engaged to undertake the Works

- (a) If the Contractor is notified under clause 10.2(b) that it will not be engaged to undertake the Works or if the time period referred to in clause 4.3 expires without the Contractor having been notified under clause 10.2(a) that it will be engaged to undertake the Works, the Final Proposal (or relevant part thereof) will cease to have any effect.
- (b) Nothing in clause 10.4(a) limits the obligation of the Contractor to continue to perform the ECI Activities that remain to be performed upon expiry of the time period referred to in clause 4.3 (unless otherwise directed by the Principal's Representative).

10.5 Acknowledgements

The Contractor acknowledges and agrees that:

- (a) there is no guarantee that the Contractor will be engaged to undertake the Works;
- (b) the Principal may, in its absolute discretion and without giving reasons, at any time do any one or more of the following:



- (i) decide that a D&C Contract will not be executed by the Principal;
- (ii) decide that the Project or the Works will not proceed;
- (iii) extend any Submission Date and Time or any ECI Milestone Date;
- (iv) require additional information from the Contractor;
- (v) consider or refuse to consider the Contractor's Final Proposal if it:
 - is submitted by any means other than in accordance with this Deed;
 - B. is submitted after the relevant Submission Date and Time; or
 - C. does not conform with this Deed in any respect;
- (vi) negotiate on any aspect of the Final Proposal;
- (vii) have any other person other than the Contractor undertake all or part of the Project or the Works;
- (viii) take into consideration any substantiated information from any source relating to the performance of the Contractor (including its financial capacity);
- (ix) cease consideration of the Contractor in relation to the Project and terminate this Deed if at any time the Principal is concerned about the corporate financial assessment or any other aspect of the Contractor;
- enter into a design and construction deed or other form of contract with another entity in relation to the Project or the Works;
- (xi) accept a substitution of, withdrawal of, or addition to any of the parties comprising the Contractor;
- (xii) accept a non-conforming Final Proposal or a Final Proposal that is received after the relevant Submission Date and Time;
- (xiii) cease consideration of the Contractor in relation to the Project and terminate this Deed if at any time the Principal is significantly concerned about the Contractor's performance of its obligations under this Deed; or
- (xiv) take such other action as it considers, in its absolute discretion, appropriate in relation to the Project;
- (c) its Final Proposal, and the Contractor's commitments and obligations under this Deed, remain unaffected notwithstanding:
 - the Principal's co-operation and participation in the development of the Final Proposal, including the involvement of the Principal's Representative and any independent advisers appointed by the Principal; and
 - (ii) any receipt or review of, or comment or direction on, the development of the Final Proposal or any of the inputs into the Final Proposal by the Principal, the Principal's Representative or anyone acting on behalf of the Principal, during the ECI Phase or at any other time, or any failure by the Principal, the Principal's Representative or anyone acting on behalf of the Principal to receive or review or provide comment or direction on



the development of the Final Proposal or any of the inputs into the Final Proposal;

- (d) it cannot rely on or assume that the Final Proposal will be accepted by the Principal or that the Principal will award the D&C Contract to the Contractor or otherwise procure the Contractor to undertake the construction of the Works;
- (e) nothing in this Deed may be construed as an indication or representation to the Contractor by the Principal that the Contractor will be engaged to undertake the Works;
- (f) no contract exists and no rights or obligations arise between the Parties in respect of the Works unless and until the Parties enter into a written contract in relation to the Works;
- (g) it is not entitled to make any Claim against the Principal or any Principal's Associate for any Liabilities incurred by the Contractor arising out of or in connection with the Principal:
 - (i) not proceeding with the construction phase or cancelling the Project; or
 - (ii) proceeding with the construction phase, including on the basis of any of the options set out in clause 10.5(b); and
- (h) without limiting clauses 1.2, 9, 13.8, 17 or 23.12, the Principal may use the Contract Documentation and the Contractor's Final Proposal for any purpose including:
 - (i) finalising the design of the Works;
 - (ii) engaging an Other Contractor to construct the Works on a "construct only" basis (or otherwise);
 - (iii) conducting a tender process in respect of the Works; or
 - (iv) proceeding on the basis of any of the options set out in clause 10.5(b).

10.6 Liability and Indemnity

If the Principal:

- (a) considers (acting reasonably) that:
 - the Contractor has failed to comply with this Deed;
 - (ii) the Contractor has notified the Principal that it does not intend to submit:
 - A. a Final Proposal for the Works; or
 - B. a Final Proposal for the Works that complies with the requirements of this Deed;
 - (iii) the Contractor has failed to submit a Final Proposal for the Works that is in all material respects compliant with the requirements of this Deed on or before the relevant Submission Date and Time;
 - (iv) the Contractor is seeking to introduce, either formally or informally, whether in writing or otherwise, any variations or additions to:



- A. its Final Proposal which were not identified by the relevant Submission Date and Time and which were not otherwise sought by the Principal; or
- B. the terms of the Draft D&C Contract which were not sought by the Principal during the ECI Phase;
- (v) the Contractor has failed to use reasonable endeavours to finalise the D&C Contract;
- (vi) circumstances have occurred in which the Principal is entitled to be indemnified by the Contractor pursuant to this Deed; or
- (vii) the Contractor has withdrawn from participation in the ECI Phase; or
- (b) terminates this Deed in accordance with clause 19.3,

the Contractor must indemnify the Principal against all Claims, loss or damage arising out of the circumstances identified in clause 10.6(a) or 10.6(b), but the Contractor's liability to indemnify the Principal will be reduced proportionately to the extent that any act or omission of the Principal causes or contributes to any Claim, loss or damage the subject of the indemnity.

10.7 No Claim

The Contractor acknowledges and agrees that if it is engaged to undertake the whole or any part of the Project or the Works, it will not be entitled to:

- any relief from any obligation, responsibility or Liability nor will the rights of the Principal be limited or otherwise affected in any way; or
- (b) make, and nor will the Principal be liable upon, any Claim,

whether under the D&C Contract (or any other contract entered into in respect of the Project or the Works) or otherwise at law arising out of, or in any way in connection with, the Contractor's performance of the ECI Activities or its other obligations under this Deed or any act or omission of the Principal, Contractor or their Associates in connection with this Deed.

11. Variations

11.1 Variation Order

The Principal's Representative may instruct the Contractor to carry out a Variation by:

- (a) a written direction entitled "Variation Order"; or
- (b) an oral instruction confirmed by a written direction entitled "Variation Order".

11.2 Cost of Variation

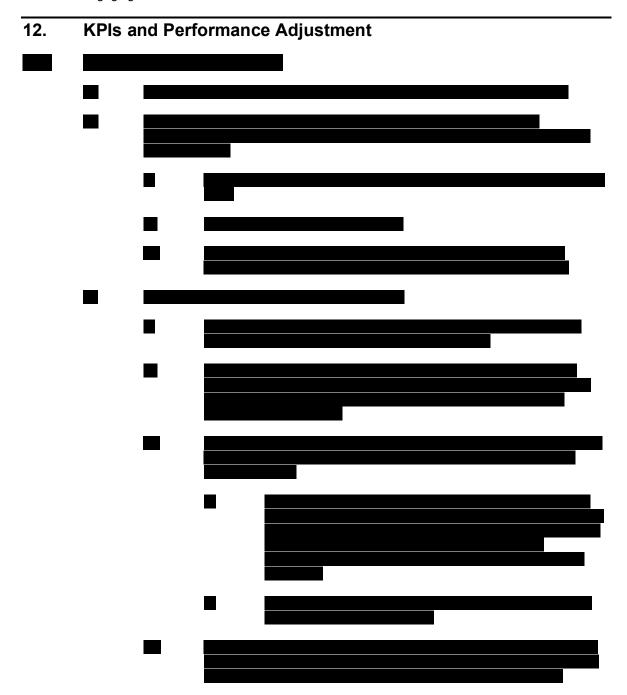
The ECI Fee will be adjusted for all Variations which have been the subject of a Variation order issued by the Principal's Representative under clause 11.1 by:

- (a) an amount determined by the Principal's Representative using any rates or prices which appear in Schedule 6 or Schedule 9 to the extent they are applicable to, or it is reasonable to use them for valuing, the Variation; or
- (b) to the extent clause 11.2(a) does not apply, a reasonable amount to be agreed between the Parties or, failing agreement, determined by the Principal's Representative.



11.3 Omissions and Deletions

If a Variation the subject of a direction by the Principal's Representative omits any part of the ECI Activities, the Principal may thereafter carry out this omitted work either itself or by engaging others.



12.2 Performance Adjustments

This clause 12.2 only applies if specified in Schedule 2.

(a) The Parties acknowledge and agree that:



- failure to achieve KPIs may lead to a Performance Adjustment in accordance with Schedule 8;
- (ii) the Performance Adjustments which may be made by the Principal in accordance with Schedule 8 are intended to reflect the anticipated diminution in the value of the ECI Activities in the event that the KPIs are not achieved;
- (iii) the Performance Adjustments:
 - A. do not reflect any potential cost, expense, loss, damages, Liability or Claim (other than anticipated diminution in value of the ECI Activities) which may arise from or in connection with any failure to achieve the KPIs; and
 - B. are not intended to apply as liquidated damages;
- (iv) each of the Parties require a formula for calculation of that diminished value that is able to be readily applied without unnecessary administrative costs, delay or difficulty; and
- (v) there are many and varied matters which form part of the diminished value which the Principal may suffer, many of which are difficult or impossible to calculate with precision.
- (b) To the extent permissible, the Contractor excludes and expressly waives any right of the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of the Performance Adjustments as penalties, or the enforceability or recoverability of the Performance Adjustments.
- (c) If the Performance Adjustment regime set out in Schedule 8 is found for any reason to be void, invalid or otherwise unenforceable, so as to disentitle the Principal from making a Performance Adjustment, the Principal will be entitled to recover from the Contractor, and the Contractor must pay on a full indemnity basis general damages at law arising out of or in connection with any loss suffered by the Principal as a result of an event, action or omission which would have entitled the Principal to make any of the Performance Adjustments, up to the full amount of the applicable adjustment, if the relevant provision of this Deed had not been found void, invalid or otherwise unenforceable.
- (d) The liability of the Contractor in respect of any cost, expense, loss, damages, Liability or Claim which may arise out of or in connection with any failure to achieve the KPIs is not affected, reduced or otherwise limited to or by the Performance Adjustments.

13. Payment

13.1 ECI Fee

The Principal must pay the Contractor the ECI Fee.

13.2 Payment Claim

The Contractor must give the Principal a claim for payment as follows:

- (a) on the last Business Day of the month during the ECI Phase for the ECI Activities performed during the past month in accordance with this Deed;
- (b) which are in a form reasonably required by the Principal; and



(c) which include evidence reasonably required by the Principal of the ECI Activities performed.

13.3 Payment Statement

The Principal must within 10 Business Days of receiving a payment claim under clause 13.2 give the Contractor a payment statement which states:

- (a) the value of work completed;
- (b) the amount already paid to the Contractor (if any);
- (c) the amount which the Principal believes to be then payable by the Principal to the Contractor; and
- (d) if the amount in clause 13.3(c) is less than the amount claimed in the payment claim, the reason why the amount in clause 13.3(c) is less than the amount claimed in the payment claim.

The Contractor must within 5 days of receipt of a payment statement issue a tax invoice in the name of the Principal to the Principal for the amount stated as then payable in the payment statement.

13.4 Payment

The Principal must within 15 Business Days of receiving the Contractor's payment claim issued in accordance with clause 13.2, pay the Contractor the amount set out as then payable in the relevant payment statement.

13.5 Payment of workers and subcontractors

The Contractor must with each payment claim under clause 13.2 provide the Principal with:

- (a) a written statement for the purposes of, and which complies with, section 127 of the Industrial Relations Act 1996 (NSW), section 175B of the Workers Compensation Act 1987 (NSW) and Schedule 2 Part 5 of the PayRoll Tax Act 2007 (NSW), and a supporting statement made under section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW), which is in a form approved by the Principal, each of which cover the period covered by the relevant payment claim; and
- (b) copies of all relevant certificates of currency in respect of workers compensation insurance which the Contractor has in place in connection with the ECI Activities.

13.6 Payment on account only

Neither the issue of a payment statement nor payment of moneys will be evidence that any part of the ECI Activities has been carried out satisfactorily.

13.7 Unfixed plant or materials

- (a) The Parties may agree in writing that the Contractor may order plant or materials intended for the Works before the Contractor is engaged to undertake the Works.
- (b) The Contractor is only entitled to make a claim for payment for plant or materials intended for incorporation in the Works but not yet incorporated, and the Principal is only obliged to make payment for such plant or materials, if:



- the Principal has agreed in writing that the Contractor may order such plant or materials and that the Principal will pay for such plant and materials before their incorporation in the Works (as applicable);
- (ii) unless the Principal agrees in writing, the Contractor provides evidence of:
 - A. ownership of the plant or materials;
 - identification and labelling of the plant and materials as the property of the Principal;
 - C. adequate and secure storage and protection;
- (iii) security acceptable to the Principal in the form of an unconditional undertaking on terms and issued by an Institution approved by the Principal in an amount equal to the payment claimed for the unfixed plant and materials has been provided by the Contractor to the Principal; and
- (iv) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative.
- (c) The only such unfixed plant or materials to be allowed for in a payment statement are those that have become or (on payment) will become the property of the Principal. Upon a payment against a payment statement that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest in the Principal.
- (d) If clause 10.4 applies, the Contractor must immediately deliver to the Principal any unfixed plant and materials intended for incorporation in the Works that have been paid for by the Principal.
- (e) The security provided in accordance with clause 13.7(b)(iii) will be released once:
 - (i) if the Contractor is engaged to undertake the Works, the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose; or
 - (ii) if clause 13.7(d) applies, once the Contractor has complied with its obligations under clause 13.7(d).
- (f) If the Contractor is engaged to undertake the Works, any amounts paid to the Contractor under this clause 13.7 will form part of the Contract Price under the D&C Contract and will be deemed to have been paid under the D&C Contract and will be included in the Contract Price.

13.8 **Audit**

At any time during the ECI Phase, the Principal or its nominated auditor has the right to inspect and audit the records kept for the purposes of performing the ECI Activities or making a claim for payment.

13.9 Set off

The Principal may at any time withhold, set-off or deduct from moneys otherwise due to the Contractor:

(a) any debt or other moneys due from the Contractor to the Principal; or



(b) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under this Deed or otherwise at law.

13.10 Taxes

The Contractor must pay all Taxes that may be payable in respect of the ECI Activities.

13.11 General Provisions Relating to GST

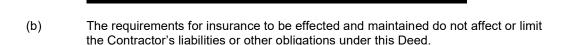
- (a) The Parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Deed are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (Supplier) under or in connection with this Deed or the ECI Activities, the party (Recipient) providing consideration for the supply must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 13.11(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier, subject to the issue of a tax invoice by the Supplier to the Recipient.
- (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 ECI 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) Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to:
 - enable or assist the other party to claim input tax credits to the maximum extent possible; or
 - (ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Deed.
- (f) 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 13.11 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).
- (g) In this clause 13.11:
 - (i) **GST** or **Goods and Services Tax** means the tax payable on taxable supplies under the GST Legislation;
 - (ii) **GST Legislation** means *A New Tax System (Goods and Services Tax)*Act 1999 and any related Act imposing such tax or legislation that is acted to validate, recapture or recoup such tax;
 - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation; and



(iv) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

14. Insurance

14.1 Insurances



14.2 Public liability insurance

- (a) Before commencing the ECI Activities, the Principal will effect and maintain for the duration of the ECI Phase, a public liability policy.
- (b) The policy will:
 - (i) be in the joint name of the Parties;
 - (ii) cover the:
 - A. respective rights and interests; and
 - B. liabilities to third parties,

of the Parties, the Principal's Representative, consultants and subcontractors from time to time, whenever engaged in the ECI Activities;

- (iii) cover the parties' respective liability to each other for loss or damage to property and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy); and
- (iv) be for an amount in respect of any one occurrence of not less than the sum in Item 8 of Schedule 2.

14.3 Professional indemnity insurance

Before commencing the ECI Activities, the Contractor must effect and maintain for a period of 6 years after the completion of the ECI Phase, a professional indemnity insurance policy for an amount in respect of any one claim of the sum in Item 9 of Schedule 2.

14.4 Workers' compensation

- (a) The Contractor must insure its liability (including its common law liability), as required under any Statutory Requirement, to its employees engaged in doing anything for the purpose of exercising or performing the Contractor's rights or obligations under this Deed.
- (b) Where permitted by law the workers' compensation policies required by this clause 14.4 must be endorsed to:



- (i) indemnify the Principal against any liability which it may incur to such employees, arising by virtue of a Statutory Requirement and at common law; and
- (ii) provide cover in respect of each and every claim for an amount not less than the minimum specified in any Statutory Requirement.

14.5 Evidence of insurance

By no later than 10 Business Days after the Commencement Date, the Contractor must produce evidence to the satisfaction of the Principal, whether by certificate of currency or otherwise, that:

- (a) the insurances referred to in this clause 14, that are required to be effected by the Contractor, are taken out and maintained; and
- (b) all premiums in respect of the policies of insurance contemplated by this clause 14, that are required to be effected by the Contractor, have been paid and are up to date.

14.6 Obligation to assist

The Contractor must provide the Principal, and any person nominated by the Principal (including the Principal's insurance adviser), with all assistance and cooperation that the Principal reasonably considers is necessary (including providing all information and making available relevant personnel) to enable the Principal to procure and implement the insurance policies which the Principal will effect and maintain under the D&C Contract (if any).

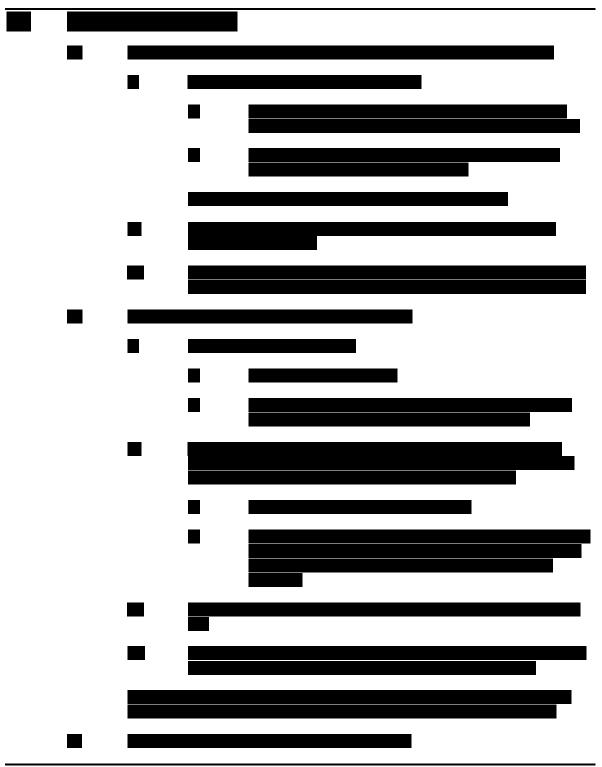
15. Indemnity

- (a) The Contractor will indemnify the Principal against:
 - (i) any loss of or damage to property of the Principal; and
 - (ii) any liability to or Claims by any person against the Principal in respect of:
 - A. loss of or damage to any property; or
 - B. personal injury (including mental as well as bodily injury), disease, illness or death,

arising out of or in connection with any act or omission of the Contractor or its Associates in performing the ECI Activities or its other obligations under this Deed, whatever the cause, including breach of this Deed, tort (including negligence) or breach of statute or otherwise.

- (b) The Contractor must indemnify the Principal against any loss suffered or Liability incurred by the Principal arising out of or in connection with any breach of this Deed by the Contractor.
- (c) The Contractor's liability to indemnify the Principal under clauses 15(a) and 15(b):
 - includes legal costs in connection with the Claim against the Principal (on a solicitor and own client basis and whether incurred by or awarded against the Principal); and
 - (ii) will be reduced proportionally to the extent that an act or omission of the Principal or its Associates contributed to the loss, damage, injury, disease, illness or death.





17. Reliance

- (a) The Contractor acknowledges and agrees that the Reports to be provided as part of the ECI Activities may be:
 - (i) relied upon by the Principal;



- (ii) provided for information to any other persons who may be involved on the Project; and
- (iii) provided to, and relied upon by, any successful tenderers engaged by the Principal on the Project (if applicable), including Other Contractors engaged to construct the Works.
- (b) If requested by the Principal, the Contractor must promptly execute and provide to the Principal a Reliance Letter in relation to the Reports.
- (c) The Contractor warrants to the Principal the accuracy and adequacy of the Reports and that the Reports will be fit for the purpose intended under this Deed.
- (d) The Contractor acknowledges that the Principal has entered into this Deed in reliance upon the acknowledgments and warranties in this clause 17.

18. Intellectual Property

18.1 Ownership of Contract Documentation and methods of working

- (a) Subject to clause 18.1(c)(vii):
 - title to and Intellectual Property in or in relation to the Contract
 Documentation prepared by the Contractor will vest upon its creation for
 the purposes of this Deed in the Principal;
 - (ii) to the fullest extent permitted by law, the Contractor hereby assigns to the Principal all of its rights, title, and interests in, and to, all Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor, whenever created; and
 - (iii) upon request by the Principal, the Contractor must do all things necessary to vest that title or that Intellectual Property in the Principal.
- (b) The Principal grants to the Contractor a licence to use and reproduce the Contract Documentation for the ECI Activities.
- (c) The Contractor:
 - (i) warrants and must ensure that the Contract Documentation and any methods of working do not and will not infringe any Intellectual Property;
 - (ii) must indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property in connection with the ECI Activities or the Contract Documentation, except to the extent that such actual or alleged infringement arises as a direct result of:
 - A. the Principal having provided the Contractor with material which this Deed permits the Contractor to use for the purpose of the ECI Activities or the Contract Documentation; and
 - B. the provision of that material to the Contractor being an infringement of a third party's Intellectual Property rights;
 - (iii) must ensure that all Design Consultancy Subcontracts contain provisions to the same effect as clause 18.1(a);



- (iv) must obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from any Design Consultants;
- must, where requested by the Principal's Representative, obtain such an acknowledgement from other subcontractors;
- (vi) must obtain an assignment to the Principal from any third party who owns any Intellectual Property right in the Contract Documentation;
- (vii) must, if it is unable to obtain the assignment referred to in clause 18.1(c)(vi), grant or have granted to the Principal an irrevocable licence (including the right to sublicence):
 - A. to use the Contract Documentation for the Project and the Works;
 - B. which arises immediately upon the creation of the Contract Documentation:
 - C. which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the Works; and
 - which will survive the termination of this Deed on any basis;
 and
- (viii) must ensure that the Intellectual Property created for the purposes of this Deed is not used, adapted or reproduced other than for the purposes of this Deed without the prior written approval of the Principal.

18.2 Delivery up of Contract Documentation

If this Deed is frustrated or terminated, or where clause 10.4 applies, the Contractor must:

- (a) immediately deliver the original and all sets and copies of all Contract
 Documentation (whether complete or not), including fully detailed electronic
 versions in unlocked native format (with all logic links intact and nothing hidden,
 restricted or protected), then in existence to the Principal; and
- (b) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation.

18.3 Moral rights

- (a) The Contractor:
 - (i) warrants that the Principal's use of the Contract Documentation, or any other work provided by the Contractor under this Deed, will not infringe any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction; and
 - (ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with the ECI Activities or the Contract Documentation.
- (b) For the purposes of clause 18.3(a), the Principal's use of the Contract Documentation includes the Principal's right to reproduce, publish, copy, adapt,



communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or part of the Works to which the Contract Documentation or any other work provided by the Contractor under this Deed relates:

- (i) with or without attribution of authorship;
- (ii) in any medium; and
- (iii) in any context and in any way it sees fit.

18.4 Design Consultancy Subcontract

- (a) If:
 - (i) this Deed is terminated;
 - (ii) the Contractor is notified under clause 10.2(b) that it will not be engaged to undertake the Works; or
 - (iii) the time period referred to in clause 4.3 expires without the Contractor having been notified under clause 10.2(a) that it will be engaged to undertake the Works:

the Contractor must promptly, at the request of the Principal, deliver to the Principal a Novation Deed in respect of any Design Consultancy Subcontract notified by the Principal, executed by the Contractor and the relevant counterparty to the Design Consultancy Subcontract (**Design Consultant**).

- (b) The Contractor:
 - (i) irrevocably appoints the Principal as its attorney with full power and authority to execute the Novation Deed on its behalf and agrees to ratify and confirm such action taken by the Principal; and
 - (ii) must ensure that each Design Consultancy Subcontract includes a clause requiring the Design Consultant to irrevocably appoint the Principal as its attorney with full power and authority to execute the Novation Deed on its behalf and agree to ratify and confirm such action taken by the Principal.
- (c) The Principal or a third party contractor nominated by the Principal may give effect to the novation of any Design Consultancy Subcontract the subject of a Novation Deed executed in accordance with clause 18.4(a) by executing the relevant Novation Deed.

18.5 Survival

This clause 17 survives the termination of this Deed.

19. Termination

19.1 No fault termination

- (a) The Principal may, at any time, in its absolute discretion and with immediate effect, terminate this Deed by giving the Contractor a written notice of termination.
- (b) If the Principal terminates this Deed under clause 19.1(a), the Contractor:



- will be entitled to payment of the following amounts as determined by the Principal's Representative:
 - A. for work carried out prior to the date of termination, the amount which would have been payable if this Deed had not been terminated and the Contractor submitted a payment claim under clause 13.2 for work carried out to the date of termination; and
 - B. the cost of plant and materials reasonably ordered by the Contractor under clause 13.7 and for which it is legally bound to pay provided that:
 - the value of the plant or materials have not been previously paid or included in the amount payable under clause 19.1(b)(i)A; and
 - 2) title in the plant and materials vests in the Principal upon payment; and
- (ii) must take all steps possible to mitigate the costs referred to in clause 19.1(b)(i)B.
- (c) The amount to which the Contractor is entitled under clause 19.1(b):
 - (i) will, excluding any entitlement to payment under clause 19.1(b)(i)B, not exceed the ECI Fee: and
 - (ii) will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Deed other than for the amount payable under this clause 19.1(b).
- (d) This clause 19.1(b) will survive the termination of this Deed by the Principal under clause 19.1(a).

19.2 Default

A Default for the purposes of this clause 19 occurs where the Contractor:

- (a) commits a material breach of this Deed;
- (b) fails to submit a Final Proposal that complies with the requirements of this Deed (in the Principal's reasonable opinion) on or before the relevant Submission Date and Time; or
- (c) is the subject of an Insolvency Event.

19.3 Termination for Default

- (a) If the Contractor commits a Default and such Default remains unremedied 10
 Business Days after receipt of notice by the Contractor from the Principal requiring
 the Default to be remedied to the Principal's reasonable satisfaction, the Principal
 may terminate this Deed by serving a notice under this clause 19.3 which notice
 specifies the Default.
- (b) Where the Principal has terminated this Deed under this clause 19.3, the Parties will have the same rights, remedies and liabilities as if the Contractor repudiated



this Deed and the Principal elected to treat this Deed to be at an end and recover damages.

19.4 Consequences of termination

- (a) On termination of this Deed:
 - the Contractor must promptly return to the Principal all copies of information and documentation provided by the Principal for the purposes of this Deed; and
 - (ii) must comply with clause 18.2.
- (b) The Contractor warrants, notwithstanding the termination of this Deed, that it will not do, or omit to do, anything to prevent the Principal from carrying out the Project, the Works or the Early Works.

19.5 Rights preserved

The expiry or termination of this Deed will not affect any rights of a Party against the other Party in respect of any act, omission, matter, or thing occurring or under this Deed prior to that expiry or termination.

19.6 Survival

This clause 19 survives the termination of this Deed.

20. Modern Slavery

- (a) The Contractor warrants that:
 - it is not aware (including through the making of reasonable inquiries), of any Modern Slavery occurring within its operations or supply chain (or in those of any entity it owns or controls); and
 - (ii) as at the Commencement Date:
 - A. it (and any entity it owns or controls or subcontractor of the Contractor) has not been convicted of any Modern Slavery Offence; and
 - B. it is not aware of any circumstance within its operations (or in those of any entity it owns or controls) that could give rise to an official investigation or prosecution of a Modern Slavery Offence.
- (b) The Contractor agrees that it must:
 - (i) at all times:
 - comply, and take reasonable steps to ensure any entity it owns or controls complies, with the Modern Slavery Laws;
 and
 - B. take reasonable steps (including developing strategies, due diligence processes and training) to ensure that:
 - Modern Slavery is not occurring (whether directly or indirectly) in the operations and supply chains of



the Contractor and any entity it owns or controls; and

- it (and any entity it owns or controls) does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery;
- (ii) provide to the Principal any MS Information and other assistance, as reasonably requested by the Principal (and within the time required by the Principal), to enable the Principal to meet its obligations under the Modern Slavery Laws including cooperating in any Modern Slavery audit undertaken by the Principal (including by a third party on behalf of the Principal) or the NSW Audit Office, providing reasonable access to the Principal's auditors to interview the Contractor's personnel and disclosing the source, place and country of origin of goods, plant, equipment or other materials and work or services being procured or supplied under or in connection with this Deed;
- (iii) comply with any policies, procedures, investigations or additional conditions relating to Modern Slavery notified in writing by the Principal to the Contractor from time to time during the term of this Deed; and
- (iv) without limiting the Contractor's obligations at law, at all times during the performance of the ECI Activities and for a period of seven (7) years after the last ECI Activities finishes, the Contractor must:
 - A. maintain; and
 - B. promptly upon request from the Principal, give the Principal, access to, and/or copies of,

a complete set of records in the possession or control of the Contractor to trace, so far as practicable, the supply chain of all goods, plant, equipment or other materials and work or services provided under this Deed and to enable the Principal to assess the Contractor's compliance with this clause 20.

- (c) The Contractor must not (and must ensure any entity it owns or controls does not) at any time engage in any Modern Slavery Practice.
- (d) If the Contractor is a 'reporting entity' for the purposes of any Modern Slavery Law, it must provide to the Principal a copy of any report or statement (unredacted) it has prepared under the Modern Slavery Law within 7 days of providing that report or statement in accordance with the Modern Slavery Law, and otherwise, promptly upon the Principal's request.
- (e) If the Contractor becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Contractor must take reasonable steps to respond to and remedy the occurrence, including in accordance with any internal Modern Slavery strategy and procedures of the Contractor and any relevant code of practice, code of conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board. The Contractor must immediately notify the Principal in writing of the actual or suspected occurrence of Modern Slavery and the steps it is taking to respond to and remedy the occurrence, which must be satisfactory to the Principal.
- (f) The Contractor must promptly notify the Principal in writing if it becomes aware of any change in the Contractor's operations or supply chain (including in respect of any entity that it owns or controls) which may:



- give rise to a position where any information (including any MS Information) that has been provided by the Contractor to the Principal under this clause 20 is incorrect, inadequate or incomplete; or
- (ii) otherwise put the Contractor in breach of this clause 20 or result in any inconsistency with any of the original attestations or warranties given by the Contractor under this clause 20,

and if the Contractor gives notice under this clause 20(f) the Contractor must thereafter promptly provide any further information that may be requested by the Principal.

- (g) The Contractor must take reasonable steps to ensure all subcontracts contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 20, having regard to the nature and origin of the procurement.
- (h) The Contractor consents to the Principal sharing MS Information obtained from the Contractor in respect of Modern Slavery pursuant to this clause 20, with any other NSW Government agency or entity and, without limiting any other provision of this clause 20, the Contractor:
 - (i) agrees that the communication of MS Information to any NSW Government agency is a communication falling within section 30 of the Defamation Act 2005 (NSW); and
 - (ii) releases and indemnifies the Principal and the State of New South Wales from and against any claim (of any kind or nature) in respect of any matter arising out of such communications, including the use of the MS Information by the recipient.

21. Financial Reporting and Notifications

21.1 Financial reporting

- (a) The Contractor is not obligated to comply with any requirements of this clause 21 that would otherwise put the Contractor (or any entity comprising the Contractor), in breach of any applicable laws or the listing rules of any recognised stock exchange.
- (b) The Contractor is not obligated to comply with any requirements of this clause 21 to the extent that the Contractor (or any entity comprising the Contractor), has provided the relevant documents or information to the Principal on a separate project or pursuant to a separate contract.
- (c) The Contractor must give the Principal its most recent audited financial statements (as applicable) for the Contractor (or any entity comprising the Contractor):
 - (i) if the Contractor (or any entity comprising the Contractor) is not a Listed Entity, annually (not later than 3 months from the end of the Financial Year) and half-yearly (not later than 9 months from the end of the Financial Year) once prepared;
 - (ii) if the Contractor (or any entity comprising the Contractor) is a Listed Entity, when Publicly Notified on an annual and half-yearly basis; or
 - (iii) at any other time as requested by the Principal,

but where audited financial statements are not available for the relevant period, then management accounts including profit and loss, balance sheets and cash flow statements.



- (d) The Contractor must prepare (or procure the preparation of) the accounts and financial statements required under clause 21.1(c) in compliance with all applicable laws and, without limitation, in accordance with the accounting principles generally accepted in Australia or the place of incorporation of the relevant entity and consistently applied.
- (e) Without limiting its obligations under clause 21.1(c), the Contractor must also provide a document in the form set out in 0 setting out the information required by 0 at the times the information is required by that 0.
- (f) The Contractor must provide the documents and information required under clauses 21.1(c) and 21.1(e) from the Commencement Date until the ECI Activities have been completed.
- (g) The Contractor is not required to provide any documents or information under this clause 21.1 once the ECI Activities have been completed.
- (h) If the Principal becomes aware of a Financial Capacity Event or Financial Reporting Event in relation to the Contractor (or any entity that comprises the Contractor), the Principal may request the Contractor to provide information which is required by the Principal, provided that, in the case of a Listed Entity, the relevant information is Publicly Notified or is Reportable Information.
- (i) The Contractor warrants that each of the documents and information required to be provided to the Principal in accordance with this clause 21 will be accurate, complete and correct in all respects.

21.2 Financial Assessment

Without limiting or otherwise restricting any other clause under this Deed, the Contractor acknowledges and agrees that:

- (a) the Principal may, in its absolute discretion, either itself, or through the engagement of private sector service providers, undertake financial assessments which will be based upon the documents and information required to be provided to the Principal in accordance with clause 21, including information which is Publicly Notified or Reportable Information (**Financial Assessment**) of the Contractor (or any entity that comprises the Contractor);
- (b) the Financial Assessment may be undertaken at half yearly or yearly intervals from the Commencement Date, or at any other time required by the Principal; and
- (c) if requested by the Principal's Representative, it must, within 10 Business Days of receiving such request, provide any documents, information, and evidence as is required by the Principal's Representative under, out of, or in connection with the Financial Assessment (but in the case of any Listed Entity, only where such documents, information and/or evidence is Publicly Notified or is Reportable Information). The Principal's Representative may request such documents, information and evidence in addition to any other documents, information and evidence otherwise required to be provided by the Contractor under this clause 21.

21.3 Financial Reporting Events

Notwithstanding any other clause of this deed, but subject to clause 21.1(a) and 21.1(b), the Contractor must notify the Principal as soon as any Financial Reporting Event occurs or has occurred.



21.4 Confidentiality

Subject to clause 23.12, the Principal must keep confidential any information provided or communicated by the Contractor pursuant to this clause 21, except for any information:

- (a) which is in the public domain through no default of the Principal;
- (b) which is disclosed to NSW Treasury or the Principal's advisors or consultants who are subject to a duty of confidentiality to the Principal; or
- (c) the disclosure of which is:
 - (i) required by Statutory Requirements or to obtain legal advice in relation to this deed:
 - (ii) made following the written consent of the Contractor;
 - (iii) given to a court in the course of proceedings to which the Principal is a party; or
 - (iv) for the purposes of performing the Principal's obligations under this deed.

21.5 Financial Mitigation Plan

- (a) Subject to the requirements of all Statutory Requirements the Principal may notify the Contractor if a Financial Capacity Event has occurred. In determining if a Financial Capacity Event has occurred, the Principal may have regard to the documents, information, evidence and notifications provided by the Contractor under this clause 21 and any other information it considers relevant in its absolute discretion.
- (b) Following the occurrence of a Financial Capacity Event, the Contractor must meet with the Principal within 5 Business Days of the date of the notice provided pursuant to clause 21.5(a) (or such longer period as the Principal's Representative may agree) to discuss the nature of the Financial Capacity Event and its implications in respect of the obligations and liabilities of the Contractor under this Deed.
- (c) The meeting is also for the purpose of:
 - (i) discussing any effect of the Financial Capacity Event on the ability of the Contractor to continue to perform its obligations and meet its Liabilities under this Deed, including the timely performance of the ECI Activities and how any adverse effect will be mitigated;
 - (ii) identifying the information relating to the Contractor (or any entity that comprises the Contractor), that the Principal reasonably requires under this clause 21 and the timing for the provision of that information to the extent such information:
 - A. may be disclosed to the Principal without breaching any confidentiality obligations; and
 - B. in the case of any Listed Entity, has been Publicly Notified or is Reportable Information; and
 - (iii) specifying the form, duration and content of the Financial Mitigation Plan required to be prepared by the Contractor (if the Principal, acting reasonably, requires a Financial Mitigation Plan to be prepared in



response to the Financial Capacity Event) which must include details of the measures the Contractor proposes to take to avoid, mitigate or minimise any adverse effect of the Financial Capacity Event on the matters described in clause 21.5(c)(i).

- (d) The Parties agree that the measures set out in the Financial Mitigation Plan for the purposes of clause 21.5(c)(iii) must be consistent with those reasonable measures that the governing body of the Contractor (as applicable) determines are in the best interest of the Contractor (as applicable) in accordance with their duties and obligations under applicable laws.
- (e) If a Financial Mitigation Plan is required by the Principal, the Contractor must prepare and submit the Financial Mitigation Plan to the Principal's Representative within 15 Business Days of the meeting held pursuant to clause 21.5(a).
- (f) The Principal's Representative may:
 - (i) review any Financial Mitigation Plan submitted under clause 21.5(e); and
 - (ii) if the Financial Mitigation Plan submitted does not, in the opinion of the Principal (acting reasonably), satisfy the requirements of clause 21.5 for the avoidance, mitigation or minimisation of any adverse effect of a Financial Capacity Event, notify the Contractor of its opinion within 10 Business Days of the date of submission of the Financial Mitigation Plan, providing written reasons.
- (g) Subject to clause 21.5(h), if the Contractor receives a notice under clause 21.5(f)(ii), the Contractor will, within 10 Business Days (or such longer period as the Principal's Representative may agree) submit an amended Financial Mitigation Plan, or relevant part of it, to the Principal's Representative to the extent required to satisfy the requirements of clause 21.5. If requested by either party, the Principal and the Contractor must meet within 5 Business Days to discuss the Financial Mitigation Plan.
- (h) The Contractor is not required to agree to any amendments to a Financial Mitigation Plan required by the Principal's Representative to the extent it can demonstrate, to the satisfaction of the Principal (acting reasonably), that to do so would result in a breach of directors' duties pursuant to any applicable laws, as notified by the Contractor to the Principal, including detailed reasons.
- (i) The Contractor must diligently implement a Financial Mitigation Plan submitted under clause 21.5(e) incorporating any amendments required by clause 21.5(g).
- (j) The Contractor:
 - must promptly update the Financial Mitigation Plan to take into account any events or circumstances, including any additional Financial Capacity Event or Financial Reporting Event, which occurs or comes into existence and which has any effect on the matters described in clause 21.5(f); and
 - (ii) must promptly submit each update of the Financial Mitigation Plan to the Principal's Representative, in which case clauses 21.5(f) and 21.5(g) shall again apply and the Contractor must comply with the then current Financial Mitigation Plan until the 10 Business Days period under clause 21.5(f) has elapsed.
- (k) The Contractor may notify the Principal's Representative at any time if the Contractor reasonably believes that a Financial Capacity Event that is the subject of the Financial Mitigation Plan has been adequately mitigated in accordance with the Financial Mitigation Plan and/or no longer subsists.



- (I) If the Contractor gives a notice under clause 21.5(k) and the Principal's Representative agrees (acting reasonably) that the Financial Capacity Event has been adequately mitigated and/or no longer subsists:
 - (i) the Principal's Representative must promptly provide written notice to the Contractor confirming this; and
 - (ii) the Contractor will be relieved of its obligation to comply with the relevant Financial Mitigation Plan under this deed from the date of such notice.
- (m) This clause 21 is without prejudice to and will not lessen or otherwise affect:
 - the Contractor's obligations or liabilities under this Deed or otherwise according to Statutory Requirements; or
 - (ii) any of the Principal's rights against the Contractor, whether under this deed or otherwise according to Law, which arise as a result of or in connection with any of the matters dealt with in this clause 21, including any rights arising under clause 19.
- (n) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the performance of any of its obligations under this clause 21.

22. Resolution of Issues

22.1 General

- (a) The Parties acknowledge and agree that any Issues which may arise between the Parties under this Deed will be minimised, if not eliminated.
- (b) Each Party agrees to immediately notify the other of any matter which may amount to or result in an Issue between the Parties in relation to this Deed.
- (c) An Issue that arises in connection with this Deed will be resolved, wherever possible, at the level where the Issue initially arises.

22.2 Referral to Representatives

- (a) If, within 5 Business Days of an Issue being notified to a Party under clause 22.1(b), it has not been resolved by the Parties, then the Issue will be referred to the Representatives.
- (b) The Representatives will attempt to resolve the Issue (including by reducing the resolution to writing signed by the Representatives) within 5 Business Days of the Issue being referred to the Representatives. The Issue will not be taken to have been resolved by the Representatives until the resolution has been reduced to writing signed by all Representatives and will not be binding on the Parties until so reduced to writing and signed by all Representatives.

22.3 Parties to continue to perform

Subject to any clause in this Deed to the contrary, each Party must continue to perform its obligations under this Deed, notwithstanding any Issue under this clause 21.

22.4 Survival

The Parties agree that this clause 21 survives termination of this Deed.



23. General

23.1 Service of Notices

- (a) Any notice or other communication given by one Party to the other (**Notice**), unless the contrary intention appears, will only be effective if it is in writing.
- (b) To be valid, a written Notice under this Deed must be delivered by hand, prepaid express post or email, addressed in accordance with the contact details for the receiving Party stated in Item 14 of Schedule 2.
- (c) A Notice, consent or other communication that complies with this clause 23.1 is regarded as given and received:
 - (i) if it is sent by prepaid express post:
 - A. within Australia 2 Business Days after posting; or
 - B. to or from a place outside Australia 4 Business Days after posting; and
 - (ii) if it is sent by email (whether or not containing attachments) the earlier of:
 - A. the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
 - B. receipt by the sender of an automated message confirming delivery; and
 - C. the time of receipt as acknowledged by the recipient in writing,

provided that:

- D. the communication will be taken to be so given by the sender and received by the recipient regardless of whether the email or any of its attachments is opened by the recipient; and
- E. if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (d) If a communication delivered or sent under this clause 23.1 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause 23.1(c).
- (e) The Parties may agree that a document control system (e.g. Aconex or similar) (**DCS**) will be used for giving Notices under or in connection with this Deed. If the parties agree to use a DCS for this purpose:
 - (i) the Parties must agree the terms of use of the DCS including the commencement date for use, access and training requirements, prior to the DCS being used for any purpose in connection with this Deed; and
 - (ii) any costs of the DCS will be at the cost of the Contractor.



23.2 Governing law and jurisdiction

- (a) This Deed is governed by the law in force in New South Wales.
- (b) Each Party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

23.3 Invalidity and enforceability

If any term or part of this Deed is or becomes for any reason invalid or unenforceable at law, then in that event, that term or part of this Deed will be and be hereby deemed to be severed from this Deed without thereby affecting the remainder of this Deed and the remainder of this Deed will continue to be valid and enforceable in all things.

23.4 Waiver

No Party to this Deed may rely on the words or conduct of any other Party as a waiver of any right unless the waiver is in writing and signed by the Party granting the waiver.

In this clause 23.4:

- (a) **conduct** includes delay in the exercise of a right;
- (b) **right** means any right arising under or in connection with this Deed and includes the right to rely on this clause 23.4; and
- (c) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

23.5 Amendments

Amendment of this Deed must be in writing and signed by the Parties.

23.6 Entire agreement

This Deed states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

23.7 Electronic signature

Each Party warrants that immediately prior to entering into this Deed, it has unconditionally consented to:

- (a) the requirement for a signature under any law being met; and
- (b) any other Party to this Deed executing it,

by any method of electronic signature that other Party uses (at that other Party's discretion), including signing on an electronic device or by digital signature.

23.8 Counterparts

This Deed may be executed in any number of counterparts by or on behalf of a Party and by the Parties in separate counterparts. Each counterpart constitutes the Deed of each Party who has executed and delivered that counterpart.



23.9 Electronic communication

Without limitation, the Parties agree that this Deed may be exchanged by hand, post or any electronic method that evidences a Party's execution of this Deed, including by a Party forwarding a copy of its executed counterpart by hand, post or electronic means to the other Party.

23.10 Assignment

The Contractor must not, without the Principal's prior written approval (which must not be unreasonably withheld), assign, mortgage, novate, charge or encumber this Deed or any part of it or any right, benefit, money or interest under this Deed.

23.11 Costs

Each Party must pay its own costs and disbursements in connection with the negotiations, preparation and execution of this Deed.

23.12 Confidentiality

- (a) The Contractor acknowledges and agrees that the Confidential Information is owned by the Principal and is confidential and secret.
- (b) The Contractor must:
 - (i) not use the Confidential Information for any purpose whatsoever except the Permitted Purpose;
 - (ii) keep confidential all Confidential Information (subject to disclosure permitted under clause 23.12(c));
 - (iii) not copy or duplicate (or allow the copying or duplication of) any Confidential Information except for the purposes of disclosure of Confidential Information provided for in clause 23.12(c).
- (c) The Contractor may only disclose Confidential Information to:
 - (i) those specifically nominated by the Principal; or
 - (ii) any person who:
 - has a need to know (and only to the extent that each has a need to know) the Confidential Information for the Permitted Purpose;
 - B. is aware that the Confidential Information must be kept confidential and may only be used for the Permitted Purpose; and
 - has signed and delivered a Confidentiality Undertaking to the Contractor.
- (d) Within 3 Business Days of receiving a request to do so, the Contractor must provide the Principal with copies of any or all of the Confidentiality Undertakings required to be signed and delivered under this Deed.
- (e) The Contractor must:



- ensure, at all times, that each person to whom Confidential Information has been disclosed under clause 23.12(c) complies with the Confidentiality Undertaking;
- (ii) notify the Principal immediately if it becomes aware of a suspected or actual breach of this clause 23.12 or a Confidentiality Undertaking or any unauthorised disclosure, copying or use of Confidential Information;
- (iii) immediately take all reasonable steps to prevent or stop any such suspected or actual breach or unauthorised disclosure or use; and
- (iv) provide all reasonable assistance requested by the Principal from time to time regarding enforcement of any Confidentiality Undertaking (including assisting the Principal in commencing, conducting and settling enforcement proceedings, at the Contractor's cost payable on demand).
- (f) The Contractor must indemnify the Principal against any claim, costs, penalties, losses, damage, expense, loss or liability suffered or incurred by the Principal arising out of or in any way in connection with a breach under clause 23.12 and any Confidential Undertaking provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal may have contributed to the liability, claim, costs, losses, damages, fines or penalties.
- (g) The obligations of confidentiality under this Deed do not apply to any person to the extent that the obligations apply to information that:
 - (i) prior to the Commencement Date was rightfully known to and in the possession or control of that person and not subject to an obligation of confidentiality on that person (it being acknowledged that all information provided in, or in connection with, this the ECI Phase was, and is, subject to such an obligation of confidentiality);
 - (ii) the Principal has consented in writing to it being disclosed, provided that any such disclosure may only be made in accordance with the terms and conditions (if any) of that consent; or
 - (iii) subject to clauses 23.12(h) (j), that person is required by law or the binding requirement of a recognised stock exchange to disclose.
- (h) If a person is required by law or the binding requirement of a recognised stock exchange to disclose any of the Confidential Information, that person must immediately give notice to the Principal setting out full details of the circumstances of the proposed use or disclosure and the relevant information proposed to be used or disclosed.
- (i) The person must give the Principal a reasonable opportunity to challenge in a court of law or other appropriate forum whether the proposed use or disclosure is in accordance with clause 23.12(g)(iii).
- (j) In addition, if the person is or anticipates being legally compelled to disclose Confidential Information, the Contractor must, at the direction of the Principal:
 - assist and take such steps as will permit the Principal to oppose or restrict that disclosure:
 - (ii) take all lawful measures available to oppose or restrict that disclosure; and



- (iii) if that disclosure is legally required, make disclosure on terms which preserve the confidentiality of the Confidential Information to the maximum extent possible, and the Principal will pay the reasonable costs of the relevant person in acting in accordance with such a direction from the Principal.
- (k) The Contractor must:
 - establish and maintain effective security measures to safeguard
 Confidential Information from access or use not authorised by this Deed;
 - (ii) keep Confidential Information under its control;
 - (iii) establish and maintain effective and auditable procedures for ensuring compliance with this clause 23.12;
 - (iv) provide all reasonable assistance requested by the Principal in relation to any proceedings the Principal may take against any person for unauthorised use, copying or disclosure of Confidential Information, or failure to comply with the provisions of this clause 23.12; and
 - (v) if required by the Principal, cease to use any Confidential Information and, at the Principal's option:
 - A. return it to the Principal;
 - B. destroy it and certify that destruction to the Principal;
 - C. destroy it and permit a representative of the Principal to witness that destruction; or
 - D. deal with it in some other manner nominated by the Principal and reasonably acceptable to the Contractor.
- (I) The obligations of confidentiality under this Deed survive the termination of this Deed.

23.13 Disclosure by the Principal

- (a) The Contractor acknowledges that the Principal may disclose this Deed (and information concerning the terms of this Deed) under or in accordance with any one or more of the following:
 - (i) the Government Information (Public Access) Act 2009 (NSW);
 - to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability;
 and
 - (iii) any other law.
- (b) The 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 23.13(a).

23.14 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor (including any information provided under clause 21.2 available to NSW government departments or agencies. Such information may include, but need not be



limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Deed.

23.15 Conflicts of interest

The Contractor must:

- (a) disclose to the Principal the full particulars of any real or apparent conflict of interest which arises or may arise in connection with this Deed or the performance of the ECI Activities, immediately upon becoming aware of the conflict of interest whether that conflict concerns the Contractor or any person employed or retained by the Contractor for or in connection with the performance of the ECI Activities;
- (b) not allow itself to be placed in a position of conflict of interest or duty in regard to any of its rights or obligations under this Deed (without the prior consent of each other) before it participates in any decision in respect of that matter; and
- (c) ensure that its Associates also comply with the requirements of clauses 23.15(a) and 23.15(b) when acting in connection with this Deed or the performance of the ECI Activities.

23.16 Publicity or media statements

- (a) The Contractor acknowledges and accepts that it must not issue any information, publication, document or article relating to this Deed, the Project, the Works, the Early Works or the ECI Activities without the prior written approval of the Principal.
- (b) The Contractor must immediately refer to the Principal any media or Stakeholder enquiries relating to this Deed, the Project, the Works, the Early Works or the ECI Activities.

23.17 Relationship of the Parties

- (a) Other than as expressly authorised pursuant to this Deed, the Contractor has no authority to, and must not:
 - (i) enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Principal; or
 - (ii) take any act or step to bind or commit the Principal in any manner, whether as a disclosed agent of the Principal or otherwise.
- (b) The Contractor is an independent contractor of the Principal. The employees, agents and subcontractors of the Contractor will not be deemed to be employees, agents or subcontractors of the Principal and each Party must pay all costs associated with its employees.
- (c) This Deed is not intended to create, nor will it be construed as creating, any partnership, joint venture or fiduciary obligation with regard to, or as between, the Parties

23.18 Corporate power and authority

Each Party represents and warrants to the others that it has full power to enter into and perform its obligations under this Deed and that when executed it will constitute legal, valid and binding obligations under its terms.

23.19 No representation or reliance

Each Party acknowledges that it:



- (a) (or any person acting on its behalf) has not made any representation or other inducement to enter into this Deed, except for representations or inducements expressly set out in this Deed; and
- (b) does not enter into this Deed in reliance on any representation or other inducement by or on behalf of each other, except for any representation or inducement expressly set out in this Deed.

23.20 The Principal's statutory functions

Nothing contained in or implied by this Deed or any document contemplated by this Deed has the effect of constraining:

- (a) the Principal's, or placing any fetter on the Principal's, statutory rights, duties, powers and functions, including those contained or referred to in any Statutory Requirement; and
- (b) the Auditor-General for the State of New South Wales or placing any fetter on its statutory rights, duties, powers and functions.

23.21 Statutory Requirements

- (a) The Contractor must comply, and ensure that its Final Proposal and all work done in connection with the ECI Activities and this Deed complies, with the requirements of all applicable Statutory Requirements.
- (b) Without limiting clause 23.21(a), the Contractor must not:
 - enter any improper or anti-competitive contract, arrangement or understanding with any other person in connection this Deed, the Project, the Works or the Early Works; or
 - (ii) offer any incentives, gifts or other favours to any person who is in any way involved with, or in a position to influence, or capable of providing technical or other advice to, those who are involved in any way with the evaluation of the Final Proposal.

23.22 Corrupt Conduct

The Principal may direct to have removed, within a stated time, from any part of the ECI Activities, any person engaged in carrying out the ECI Activities (including an Associate) who has been found to have engaged in corrupt conduct (as defined by the Independent Commission Against Corruption Act 1988 (NSW)) by the Independent Commission Against Corruption.

23.23 Privacy Act compliance

In relation to any personal information (as defined in the Privacy Act 1988 (Cth) (**Privacy Act**)) provided by a Contractor during the ECI Phase or as part of its Final Proposal, the Contractor warrants to the Principal that:

- (a) the Contractor, as the case may be, has obtained the consent of each individual about which any sensitive information (as defined in the Privacy Act) is provided; and
- (b) the Contractor, as the case may be, has ensured or will ensure, within the time required by the Privacy Act, that each individual about whom any personal information (as defined in the Privacy Act) is provided has received a written statement setting out all of the matters required by National Privacy Principle 1.3:



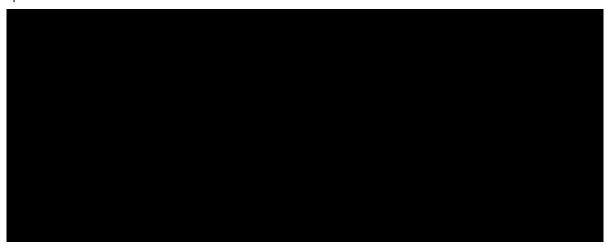
- (i) in relation to disclosure of the personal information to the Principal or any of its officers, employees, agents or advisers requiring the information for the purposes of reviewing and assessing the Final Proposal; and
- (ii) disclosing that the Principal or any of its officers, employees, agents or advisers will use the personal information for the purposes of reviewing and assessing the Final Proposal.

The Contractor must comply with the provisions of the Privacy Act in relation to any personal information provided to it by the Principal or any of its officers, employees, agents or advisers.



Executed as a deed.

Signed, for Sydney Metro (ABN 12 354 063 515) by its duly authorised delegate in the presence of:



Executed by Martinus Rail Pty Ltd (ABN 90 117 147 645) in accordance with section 127 of the *Corporations Act 2001* (Cth):





Schedule 1 - Definitions and interpretation

1. Definitions

In this Deed:

Anti-slavery Commissioner means the Anti-slavery Commissioner appointed under the Modern Slavery Act 2018 (NSW).

Associate means, in respect of a Party, any officer, employee, agent, subcontractor, supplier or consultant of that Party and their respective officers, employees, agents, subcontractors, suppliers and consultants.

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday in Sydney; or
- (c) 27, 28, 29, 30 or 31 December.

Claim means any claimed entitlement for an increase in the ECI Fee or payment of money (including for costs, debt, damages or indemnity) under or arising out of or in connection with this Deed, in contract, in tort including negligence, in equity, under any statute, or otherwise.

Commencement Date means 8 January 2024.

Confidential Information means the following, whether or not in tangible or electronic form (however disclosed):

- (a) all information directly or indirectly disclosed by or on behalf of the Principal or its Associates to the Contractor or its Associates, whether before or after execution of this Deed which is connected directly or indirectly with the Project, the Works or the Early Works or the involvement of a person with the Project, the Works or the Early Works;
- (b) all other information in relation to or connected with the Principal or its Associates in relation to the Project, the Works or the Early Works in the possession or control of the Contractor or its Associates including:
 - (i) information contained in or connected with this Deed;
 - (ii) all past, current and prospective financial, trading and business information;
 - (iii) all concept designs, preliminary designs, other designs and specifications; and
 - (iv) any information concerning geotechnical, hydrological, contamination or environment matters:
- (c) the fact that the Contractor has had, will have, or is having discussions with the Principal or its Associates in connection with the Project;
- (d) the fact and terms of any discussions, negotiations or agreements between the Principal or any of its Associates and the Contractor or any of its Associates;
- (e) all material disclosed in meetings by or on behalf of the Principal or any of its Associates in connection with the Project, the Works or the Early Works;



- (f) all notes, data and other records based on, referring to or incorporating any information referred to in paragraphs (a) to (e); and
- (g) all copies of the information and those notes, data and other records referred to in any of paragraphs (a) to (e),

but excludes:

- (h) information which was in the public domain before the Commencement Date; or
- (i) information which comes into the public domain after the Commencement Date, except through disclosure by the Contractor or any of its Associates in contravention of this Deed or any other obligations of confidence.

Confidentiality Undertaking means an undertaking in the form set out in Schedule 4.

Consequential Loss means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

Contract Documentation means all documentation in computer readable or written forms brought into (or required to be brought into) existence as part of, or for the purpose of, performing the ECI Activities (whether before or after the Commencement Date), including any Design Documentation.

Contract Price means the proposed contract price to be developed by the Contractor under this Deed for the design and construction of the Works, which is proposed to form the "Original Contract Price" (as defined in the Draft D&C Deed).

Contractor's Representative means the person referred to in Item 12 of Schedule 2, or any other person nominated by the Contractor from time to time in writing to the Principal.

Control Gate means a control gate identified in the "Sydney Metro Network Assurance Procedure" as described in the Works Brief.

D&C Contract means the design and construction contract, based on the Draft D&C Contract, which the Parties may enter into following the process set out in clause 10.3(c) of this Deed.

DCS has the meaning given in clause 23.1(e).

Deed means this document and includes its schedules, annexure and attachments.

Default is defined in clause 19.2.

Design Consultant means a subcontractor to the Contractor that is a party to a Design Consultancy Subcontract.

Design Consultancy Subcontract means a subcontract entered into by the Contractor for any design, engineering or other professional services in connection with the ECI Activities.

Design Documentation means all design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, drawings, digital records, computer software and all other relevant data) in computer readable and written forms, or stored by any other means required by this Deed or necessary to be produced by the Contractor for the ECI Activities and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this Deed.



Draft D&C Contract means the draft design and construction contract contained in Annexure A.

Early Works means any early works for the Project directed by the Principal's Representative in accordance with clause 7.

Early Works Contract has the meaning given in clause 7.3(a).

Early Works Offer has the meaning given in clause 7.2(a).

ECI Activities means the services to be performed by the Contractor in accordance with this Deed, including the services identified in Schedule 3, preparation of the Contract Documentation and preparation of the Final Proposal.

ECI Fee means the amount set out in Item 7 of Schedule 2, as adjusted in accordance with this Deed.

ECI Milestone means a milestone in the ECI Services described in Schedule 2.

ECI Milestone Date means, in respect of any ECI Milestone, the relevant date for achievement of that ECI Milestone set out in Schedule 2.

ECI Phase means the phase which commences on the Commencement Date and ends on the completion of the ECI Activities.

ECI Program means the program prepared and provided by the Contractor in accordance with clause 6.1(a), as developed and updated from time to time.

ECI Records has the meaning given in clause 1.2(a).

Final Proposal means a proposal for the Works developed by the Contractor and submitted to the Principal in accordance with clause 4 (including any stage thereof as developed and submitted under clause 4.1(b)).

Financial Assessment has the meaning given to that term in clause 21.2.

Financial Capacity Event means any fact, matter or thing which, in the opinion of the Principal (acting reasonably), has or may have a material adverse effect upon the financial standing of the Contractor (or any entity that comprises the Contractor).

Financial Mitigation Plan means a plan which satisfies the requirements of clause 21.5 for the mitigation of a Financial Capacity Event.

Financial Reporting Event means any of the following events, as applicable to the Contractor (or any entity that comprises the Contractor):

- (a) a downgrade in credit rating;
- (b) a significant loss suffered or incurred on a project or under a contract;
- (c) a significant fine or financial penalty;
- (d) a profit warning to a stock exchange or the making of any public announcement regarding a material deterioration in financial position or prospects;
- (e) a public investigation into improper financial accounting and reporting or suspected fraud;
- (f) a material refinancing;



- (g) a failure to pay a subcontractor or consultant (other than for reason of a bona fide dispute);
- (h) any financial indebtedness becoming due as a result of an event of default;
- its external auditor expressing a qualified or adverse opinion, a disclaimer of opinion or that a material uncertainty exists in relation to a going concern;
- (j) a net share price decrease of more than 25% in the 6 months since the last Financial Assessment; or
- (k) a material breach of a covenant to a lender or lenders,

provided that, in the case of a Listed Entity, the relevant event has been Publicly Notified or is Reportable Information.

Financial Year means a financial year commencing on 1 July, except that:

- (a) the first Financial Year will commence on the Commencement Date; and
- (b) the last Financial Year will end on the last day of the ECI Phase.

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

Information Document and Materials means any document or information (whatever its form including electronic or oral) given to or made available to the Contractor before the submission of its Final Proposal or during the proposal evaluation and negotiation period (including at any Project Site meeting or visit) in connection with this Deed, the ECI Activities, the Project, the Works or the Early Works.

Insolvency Event means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;
- in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual is made bankrupt;
- execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;



- (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
- (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
- (vi) a sequestration order or winding up order is made in respect of the corporation;
- (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
- (viii) a mortgagee of any property of the corporation takes possession of that property; or
- (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

Institution means any:

- (a) authorised deposit taking institution holding an authority to carry on banking business in Australia under the terms of the Banking Act 1959 (Cth); or
- (b) insurance company which is regulated by the Australian Prudential Regulatory Authority and has the Required Rating.

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

Issue means any issue, disagreement, difference of opinion or failure to agree arising out of or in connection with this Deed.

KPI means the key performance indicators set out in Schedule 8.

KPI Performance Report has the meaning in clause 12.1(b).

Item means an item in Schedule 2.

Liability includes any debt, obligation, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation, charge or liability of any kind, actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at law.

Listed Entity means a company or other body which is included in the official list of ASX Limited ACN 008 624 691.

Modern Slavery has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

Modern Slavery Laws means, as applicable, the Modern Slavery Act 2018 (NSW) and the Modern Slavery Act 2018 (Cth).



Modern Slavery Offence has the same meaning as in the Modern Slavery Act 2018 (NSW), and includes an offence listed from time to time in Schedule 2 to the Modern Slavery Act 2018 (NSW).

Modern Slavery Practice includes any one or more of the following:

- (a) using any form of forced or child labour or deceptive recruitment practices;
- (b) requiring personnel to work excessive hours in the performance of, or in connection with, this Deed;
- (c) save for short periods where legally required to do so for the purposes of administering employment, retaining the passports and/or identity documents of personnel or any potential personnel;
- (d) denying personnel the right to terminate their employment or join or form, or discouraging personnel from joining or forming, a trade union if they so desire;
- (e) save where required by law, paying wages to any individual other than personnel;and
- (f) if any personnel are migrant workers, providing migrant workers with any lesser entitlements than given to local employees.

MS Information means any information as to any risks of, and controls in place to mitigate, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the Privacy and Personal Information Protection Act 1998 (NSW) or information which tends to identify individuals (as applicable).

Notice is defined in clause 23.1.

Novation Deed means a deed in the form of Schedule 7.

Other Contractor means any contractor, consultant or other party engaged by the Principal or others in connection with the Project or to do work on or about the Project Site (other than the Contractor or its subcontractors).

Parties is a reference to the Principal and the Contractor collectively and Party means either one of them, as the context requires.

Performance Adjustment means an adjustment of the ECI Fee as set out in Schedule 8.

Permitted Purpose means the performance of the ECI Activities and the preparation of the Final Proposal.

Preliminary Design means the drawings set out in the Works Brief.

Principal's Probity Adviser is the company or person named in Item 10 of Schedule 2 or any other person from time to time appointed by the Principal as the probity adviser for the Project.

Principal's Representative is the person named in Item 11 of Schedule 2 or any other person from time to time appointed as the Principal's Representative in accordance with clause 3.

Project is defined in Item 1 of Schedule 2.

Project Site means the land and other places that the Principal will make available for the work to be performed under the D&C Contract.



Publicly Notified means information which is publicly available or accessible due to the notification or lodgement of such information by the Contractor (or any entity that comprises the Contractor) to a Government Agency or to the public by the following means:

- (a) pursuant to the listing rules of a recognised stock exchange;
- (b) pursuant to any applicable laws, including laws relating to corporations, security of payment or industrial relations; or
- (c) via the public website of a Listed Entity.

Rectification Action Plan has the meaning in 12.1(c)(iii).

Reliance Letter means the deed poll to be provided by the Contractor in accordance with clause 17(b), the form of which is set out in Schedule 11.



Reports means any reports to be provided by the Contractor as part of the ECI Activities under this Deed.

Reportable Information means information or documents which are not Publicly Notified but the provision of which by the Contractor to the Principal pursuant to this deed does not trigger any reportable event pursuant to any applicable laws or the listing rules of any recognised stock exchange.

Representatives means the Principal's Representative and the Contractor's Representative.

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

Stakeholder means other local councils, utilities, residents, the general public or any other third party.

Statutory Requirements means:

- (a) acts, ordinances, regulations, by laws, orders, awards and proclamations of the jurisdiction where the ECI Activities are being carried out; and
- (b) certificates, licences, consents, permits, approvals, and requirements of organisations having jurisdiction in connection with the carrying out of the ECI Activities; and
- (c) fees and charges payable in connection with the matters referred to in paragraphs (a) and (b).

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

Submission Date and Time is the date and time set out in Item 13 of Schedule 2 as that date and time may be extended under clause 10.5(b)(iii).

Sydney Metro Principal Contractor Appointment and Transfer Process means the process document of that name (document number SM-18-00090912) prepared by the



Principal, the process of which is referred to in the Sydney Metro Principal Contractor Health and Safety Standard.

Sydney Metro Principal Contractor Health and Safety Standard means the document referred to as the "Sydney Metro Principal Contractor Health and Safety Standard version 6 (SM-20-00100838)".

Sydney Trains means the corporation by that name constituted by Part 3B of the *Transport Administration Act 1988* (NSW).

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

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

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

Third Party Agreement means an agreement described in item 18 of Schedule 2.

Variation means any change to the ECI Activities including any addition, increase, decrease, omission, deletion, demolition or removal to or from the ECI Activities.

Works means the works that must be completed and handed over under the D&C Contract.

Works Brief means the documents contained in Exhibit A to the Draft D&C Contract (or any amended version prepared by the Principal's Representative from time to time during the ECI Phase).

2. Interpreting this Deed

Headings are for convenience only, and do not affect interpretation.

The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply:

- (a) a reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) the Contractor includes a permitted substitute or a permitted assign of the Contractor;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it;
- (b) any reference to currency is a reference to Australian dollars, unless stated otherwise;



- (c) no rule of construction applies to the interpretation of this Deed to the disadvantage of one Party on the basis that the Party prepared it; and
- (d) the words "including" and "includes", and any variants of those words or similar expressions (for example, "for example") will be read as if followed by the words "without limitation".

3. Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

4. Ambiguities and inconsistencies

- (a) If the Contractor discovers any ambiguity, discrepancy or inconsistency between any of the provisions of this Deed or any other document expressly incorporated into this Deed:
 - (i) it must notify the Principal of this in writing; and
 - (ii) the Principal will direct the Contractor as to the interpretation to be followed by the Contractor in performing its obligations under this Deed.
- (b) If the Principal discovers any ambiguity, discrepancy or inconsistency between any of the provisions of this Deed or any other document expressly incorporated into this Deed, the Principal will direct the Contractor as to the interpretation to be followed by the Contractor in performing its obligations under this Deed.
- (c) The Contractor is not entitled to any additional costs by reason of a direction from the Principal under clause 4(b) of this Schedule 1.

5. Exclusion of proportionate liability scheme

- (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 these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of the Parties under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

6. Future tendering and contracting opportunities

The Contractor acknowledges and agrees that the Contractor's performance under this Deed may be taken into account by the Principal and any other Government Agency when considering the Contractor for future tendering and contracting opportunities.



Schedule 2 - Deed Particulars

Item	Reference	Description	Particular
1.	Schedule 1	The Project	The Southwest Metro CIRA, HVM & EWPCL works, including:
			errant vehicle (CIRA) treatments consisting of:
			 Eight (8) station overbridge barriers;
			 Seven (7) non-station road-over-rail overbridge barriers; and
			• 76 Non-bridge barriers;
			hostile vehicle mitigation (HVM) treatments to the eight (8) station precincts;
			road upgrades (kerbside ramps) at Wiley Park;
			fencing, finishing works and other streetscaping elements across various locations as further described in the Works Brief.
2.	Clause 3.2(a)(i)	Contractor's personnel	
3.	Clause 7A.5	Number of copies of Design Documentation and survey information	4 (3 bound and 1 unbound) plus one copy in electronic format
4.	Clause 12.1(b)	Frequency for Performance Reports	Monthly
5.	Clause 12.1(c)(ii)	Meeting times for KPI review	Monthly
6.	Clause 12.2	Performance Adjustments	Applies
7.	Clause 13.1	ECI Fee	
8.	Clause 14.2	Public liability insurance	
9.	Clause 14.3	Professional indemnity insurance	



Item	Reference	Description	Particular
10.	Schedule 1	Principal's Probity Adviser	
11.	Schedule 1 (clause 3.1(d))	Principal's Representative	
12.	Schedule 1	Contractor's Representative	
13.	Schedule 1	Submission Date and Time	As set out in Item 16.
14.	Clause 23.1(b)	Parties' contact details	Principal Contractor



Item	Reference	Description	Particular	GOVERNMENT
15.	Clause 5.2(b)(ii)D	Principal Contractor	The Contractor is Principal Contractor: Yes unless the Principal gives the Contractor written notice that an Other Contractor is appointed as principal contractor (Appointed Principal Contractor), in accordance with the Sydney Metro Principal Contractor Appointment and Transfer Process. If the Principal appoints an Other Contractor as principal contractor, the Contractor must comply with the requirements of the Principal and the Appointed Principal Contractor in respect of work health and safety matters and must comply with the Sydney Metro Principal Contractor Appointment and Transfer Process.	
16.	Schedule 1	ECI Milestones	ECI Milestone	ECI Milestone Date
17.				
18.	Schedule 1	Third Party Agreements	The Third Party Agreeme Contractor during the ten Deed being:	



Item	Reference	Description	Particular
item	Reference	Description	rainculai
			Umbrella Works Authorisation Deed - Sydney Metro City & Southwest Project Doc No: SM-21-00421615 dated 20 December 2021 (including the draft WAD Scope Schedule)
			Revised Interface Agreement Managing Risks to Safety Due to Rail - Road Crossings - Sydney Trains and Inner West Council 2017
			 Revised Interface Agreement Managing Risks to Safety Due to Rail - Road Crossings - Sydney Trains and Canterbury-Bankstown Council 2018
			Sydney Metro City & Southwest (Southwest Metro) - Global Safety Interface Agreement - Document No: 11823 between Sydney Metro and Sydney Trains as amended by Amendment to the Sydney Metro City & Southwest Global Safety Interface Agreement dated 21 December 2021 ("ST Global SIA")
			Global Safety Interface Agreement - Transport for NSW and Sydney Metro- Document No: SM-21-00117768 ("TfNSW Global SIA")
			Sydney Metro City & Southwest - Southwest Metro - Construction Safety Interface Agreement - Sydney Metro and Australian Rail Track Corporation Limited - Document No: 11923 (ARTC Construction SIA)
			Main Body of the Third Amendment Deed to the Sydney Metro City & Southwest - Transition Agreement Foundation Infrastructure Works Contracts (000-TPA- ST_RC-02) ('Transition Agreement')
			Sydney Metro City & Southwest - Transition Agreement 000-TPA-ST_RC- 02: Scope of Works and Access Schedule for Errant and Hostile Vehicle Mitigation Treatments (CIRA)
			Licence for Permitted Use of the Shared Corridor
			These Third Party Agreements will be uploaded by the Principal to a folder in Teambinder on the date of this Deed entitled 'Third Party Agreements'.



Schedule 3 - ECI Activities

The ECI Activities are the activities to be performed during the ECI Phase as described in the Works Brief.



Schedule 4 - Form of Confidentiality Undertaking

TO:	Sydney Metro ABN 12 354 063 515 (Principal)
TO:	[Contractor] ABN [insert] (Contractor)
	dertaking any word, expression, reference or term used which is defined in the Early Contractor and Deed dated (ECI Deed) and is not specifically defined in this ng will, unless the context requires otherwise, have in this Undertaking, the same meaning as in seed.
I acknowle	edge that I am a [director/partner/principal/employee] of [company/firm].
available to all of when	If of [Company/firm] acknowledge that the Principal will make to the Contractor and others certain information pursuant to the provisions of the ECI Deed, part nich may be disclosed to [Company/firm] (Relevant tial Information).
as may be	[Company/firm] undertakes to comply with the confidentiality is contained in clause 23.12 of the ECI Deed (and such of the other provisions of the ECI Deed encessary for the operation the confidentiality obligations contained in clause 23.12 of the ECI of as they apply to the Relevant Confidential Information and, in particular, that:
1.	we will take all action necessary to maintain the confidential nature of all Relevant Confidential Information;
2.	we will not, without your prior written consent, disclose the Relevant Confidential Information to any person other than an employee;
3.	we will ensure that any person to whom we disclose Relevant Confidential Information will maintain the confidential nature of Relevant Confidential Information;
4.	we will not use or reproduce any of the Relevant Confidential Information for any purpose other than the Permitted Purpose;
5.	except to the extent we are required by law to retain any documents which contain or form part of the Relevant Confidential Information, we will deliver to you or destroy, on demand, all documents and other materials in our possession which contain the Relevant Confidential Information;
6.	we acknowledge that the destruction or the return of any documents by us will not release us from any of the obligations under this undertaking;
7.	we will take all steps available to us to ensure that each employee complies with the confidentiality obligations under the ECI Deed; and
8.	we will immediately notify the Principal if we become aware that any employee has not complied with the confidentiality obligations imposed on them under the ECI Deed or Undertaking (as the case may be).
liability to,	e the Principal from and against any Claim, liability or loss (including any Claim made by, or a third party) the Principal may incur arising out of or in respect of or in connection with any us of the provisions of this undertaking.
This unde	rtaking is governed by and construed in accordance with the law of New South Wales. I and [Company/firm] submit to the non-exclusive jurisdiction
of the cou	rts of New South Wales.



Executed and delivered as a deed in [City]

Signed, sealed and delivered by [insert name] in the presence of:		
Signature of witness	Signature	
Full name of witness		



Schedule 5 - Contents of Final Proposal

The Final Proposal must include, at a minimum, the following:

- a) all final versions of the Contract Documentation described in the Works Brief that are to be prepared in the ECI Phase;
- b) a program of works that meets the Draft D&C Contract "Date for Completion" (as defined in the D&C Deed);
- c) a proposed Contract Price under D&C Contract; and
- d) any other information reasonably required by the Principal's Representative.



Schedule 6 - Pricing for Final Proposal

D&C Contract Clause 6.4(b)(ii)A	
D&C Contract Clause 6.4(b)(ii)B	_
D&C Contract Clause 6.7	
D&C Contract Clause 7.3(b)(ii)B(2)	



Schedule 7 - Novation Deed

Deed of Novation made at on 20

Parties [##] (New Subcontract Principal)

[#ECI Contractor name, address and ABN] (ECI Contractor)

[#Subcontractor name, address and ABN] (Subcontractor)

Background

- A. The ECI Principal and the ECI Contractor have entered into the ECI Deed pursuant to which the ECI Contractor has agreed to perform various services for the ECI Principal.
- B. The ECI Contractor and the Subcontractor have entered into the Subcontract pursuant to which the Subcontractor has agreed to perform the Services.
- C. The ECI Deed and the Subcontract require the Subcontractor to enter into this Deed to enable the ECI Principal to effect a novation of the Subcontract from the ECI Contractor to the ECI Principal or its nominee upon the termination or expiry of the ECI Deed.

1. Interpretation

1.1 Definitions

In this Deed:

Claim means any claimed entitlement for payment of money (including for costs, debt, damages or indemnity) under or arising out of or in connection with this Deed, in contract, in tort including negligence, in equity, under any statute, or otherwise.

ECI Deed means the agreement identified as such in the Schedule.

ECI Principal means the person identified as such in the Schedule.

Execution Date means the date that this Deed is executed by the New Subcontract Principal.

Fee means the fee payable by the ECI Contractor to the Subcontractor pursuant to the Subcontract in consideration for the performance of the Services by the Subcontractor.

New Subcontract Principal is the party executing this Deed as the New Subcontract Principal who will be, at the election of the ECI Principal, the ECI Principal or its nominee third party contractor.

Project means the procurement of the Works including the design, construction, commissioning and completion of the Works.

Schedule means the schedule to this Deed.

Services means the services described in general terms in the Schedule.

Subcontract means the agreement identified as such in the Schedule.

Works means the works generally identified as such in the Schedule.



1.2 General

In this Deed, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- references to a person include an individual, firm, corporation or unincorporated body;
- (c) headings are for convenience only and do not affect the interpretation of this Deed;
- (d) references to any legislation or to any section or provision of any legislation include any:
 - (i) statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- references to any document (including this Deed) include any amendment to or substitute for such document; and
- (g) references to any party to or in this Deed or any other document include its successors or permitted assigns.

1.3 This Deed prevails

To the extent of any inconsistency between this Deed, the ECI Deed or the Subcontract, this Deed prevails unless the parties expressly agree otherwise.

2. Operation

This Deed does not come into full force and effect until the Execution Date.

3. Novation

From the Execution Date, subject to clause 4, the novated Subcontract will take effect:

- (a) as an agreement between the New Subcontract Principal and the Subcontractor;
- (b) as if the New Subcontract Principal had been named as the ECI Contractor in the Subcontract; and
- (c) so that each reference in the Subcontract to the ECI Contractor is a reference to the New Subcontract Principal; and
- (d) so that the rights, obligations and liabilities of the ECI Contractor under the Subcontract will be the rights, obligations and liabilities of the New Subcontract Principal;
- (e) so that the Subcontractor must comply with all of its obligations under the Subcontract for the benefit of the New Subcontract Principal; and



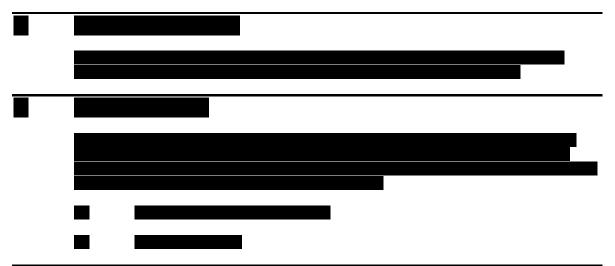
(f) so that the ECI Contractor is released from those obligations and liabilities under the Subcontract assumed by the New Subcontract Principal.

4. Obligations prior to Execution Date

- (a) Notwithstanding clause 3, the Subcontractor shall have no entitlement to make any Claim against the New Subcontract Principal for any costs, losses, expenses of damages incurred by the Subcontractor arising out of or in connection with the performance of the Services or the Subcontract prior to the Execution Date.
- (b) The Subcontractor is not entitled to exercise any set-off, deduction, abatement or counterclaim against the New Subcontract Principal if and to the extent that such right arose prior to the Execution Date.

5. Acknowledgments

The Subcontractor acknowledges and agrees that as at, and from, the Execution Date, it will continue to diligently perform its obligations under the novated Subcontract notwithstanding any costs, losses, expenses or damages (including any consequential loss) incurred by the Subcontractor in connection with the performance of the Services or the Subcontract prior to the Execution Date.



8. Assignment

Except as expressly contemplated by this Deed or agreed to by the New Subcontract Principal, the ECI Contractor and the Subcontractor must not assign or transfer any of their respective rights or obligations under this Deed or the Subcontract.

9. Further assurances

The ECI Contractor and the Subcontractor undertake, upon request by the New Subcontract Principal, to execute all documents and do all things necessary to vest in the New Subcontract Principal the Subcontract or otherwise to give effect to the terms of this Deed.

10. Governing law and jurisdiction

This Deed will be governed by and construed in accordance with the law identified in the Schedule.



11. Notices

11.1 Address for Service

Any notice to be given or served under or arising out of a provision of this Deed must be in writing and delivered by hand or sent by prepaid post, as the case may be, to the relevant address:

- (a) stated in the Schedule; or
- (b) last notified in writing to the party giving the notice,

for the party to whom or upon which the notice is to be given or served.

11.2 Deemed Receipt

A notice delivered or sent in accordance with clause 11.1 will be deemed to have been given and received:

- (a) if delivered, upon receipt; or
- (b) if posted, 3 days after posting.

12. Counterparts

This Deed may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

13. Waivers, remedies cumulative

13.1 No waiver

No failure to exercise and no delay in exercising, on the part of the New Subcontract Principal, any right or remedy under this Deed will operate as a waiver, nor will any single or partial exercise of any right or remedy preclude any other or further exercise, of that or any other right or remedy.

13.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other such right or remedy.

14. Attorneys

Each of the attorneys (if any) executing this Deed states that they have no notice of revocation of their power of attorney.

Schedule

Item	Particulars
ECI Principal	[#Note: To be inserted including address for notices.]
ECI Contractor	[#Note: To be inserted including address for notices.]
Subcontractor	[#Note: To be inserted including address for notices.]



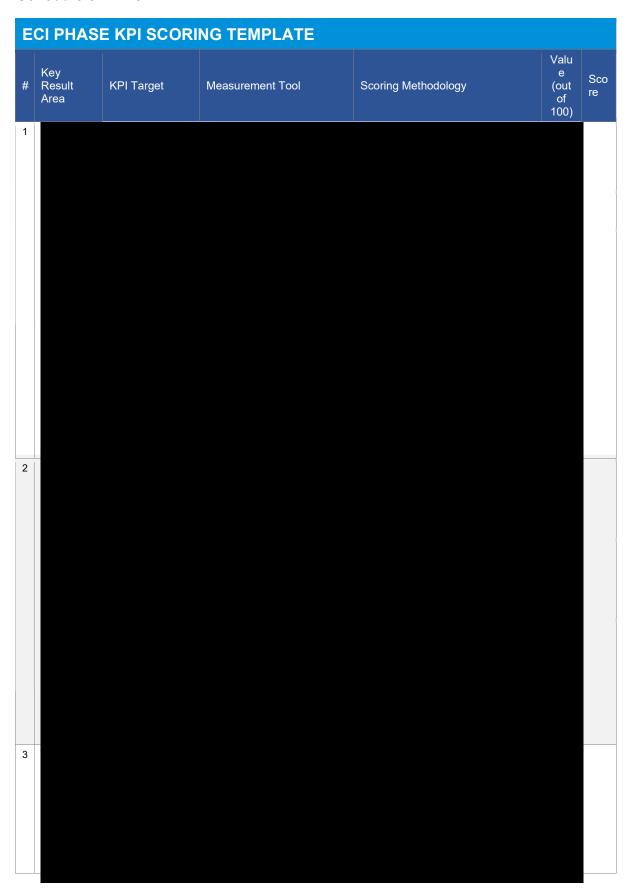
ECI Deed	[#Note: To be inserted.]
Subcontract	[#Note: To be inserted.]
Services	[#Note: To be inserted.]
Works	[#Note: Insert general description of Works that are the subject of the ECI Deed.]
Governing law	NSW

Executed as a deed.

[#Insert execution clauses.]

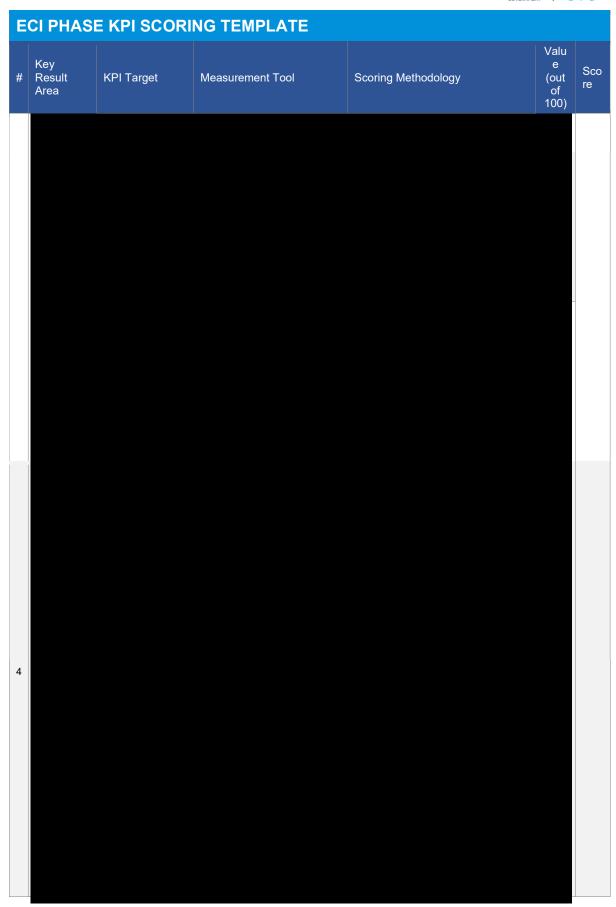


Schedule 8 - KPIs



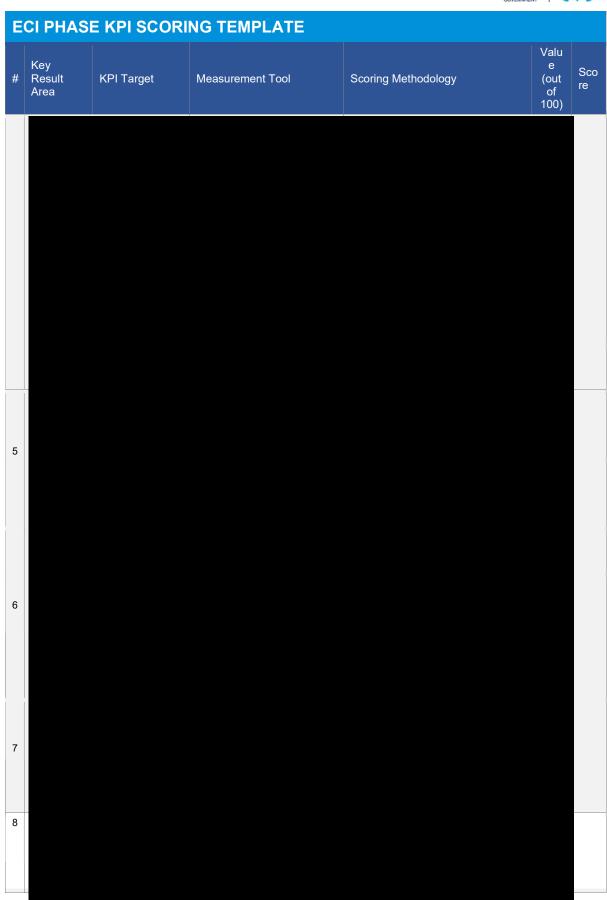




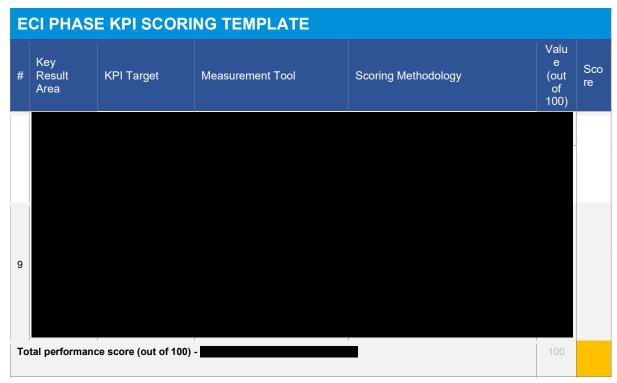












Performance Adjustment

The Principal may elect to apply the Performance Adjustment to the ECI Fee for a month in accordance with the formula below where:



Performance Adjustment for all KPIs in Schedule 8

Category	Performance score shortage for all KPIs in Schedule 8	Performance Adjustment
Acceptable		

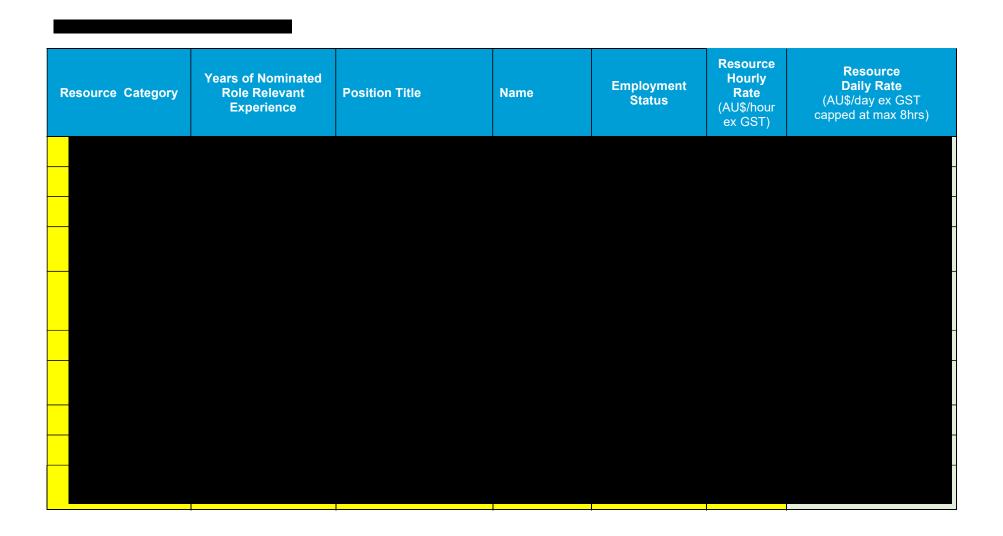


Unacceptable	

Note: Below example calculation is based upon Contractor achieving Total Performance
Total Performance Score for the period (out of 100)
(A) Performance Adjustment for the month
(B) Adjusted ECI Fee (based on original ECI Fee of \$100 for the month)



Schedule 9 Resource Rates





Schedule 10 Financial Reporting Information

This Schedule contains the form that is required to be completed and provided by the Contractor on the last Business Day of March and September in accordance with clause 21.1(e) of this Deed (**Financial Reporting Form**).

When completing the Financial Reporting Form, the Contractor is required to confirm if the information provided for each item in the previous half year is still current and accurate in the current half year. If such information is still current and accurate, the Contractor must indicate so in the table below (as applicable) and is not required to resubmit the same information in the current half year.

Ite	m	inancial Reporting – Financial monitoring information requirements All information to be provided in a template excel format (to be provided by the Principal) for each entity comprising the Contractor on a six-monthly basis	to be pro	
1.	Financial Reporting Event notice	 a) Certified notice setting out whether any Financial Reporting Events hat occurred in the 6 months prior to the reporting date 		nave
2.	Liquidity	a) Operating cash flow for the 6 months prior to the reporting date	ting cas	
		b) Net cash flow for the 6 months prior to the reporting date	sh flow	
		c) Current assets as at the reporting date	nt assets	
		d) Current liabilities as at the reporting date	nt liabiliti	
		e) Total receivables as at the reporting date	eceivab	
		f) Receivables aged over 90 days as at the reporting date	/ables a	
		g) Work in progress as at the reporting date	n progre	
		h) Total trade payables as at the reporting date	rade pa	
		i) Payables aged over 90 days as at the reporting date	les age	
3.	Profitability	a) Revenue for the 6 months prior to the reporting date	ue for th	
		b) Total cost of sales for the 6 months prior to the reporting date	cost of s	
		c) EBITDA for the 6 months prior to the reporting date	A for th	
		d) Net profit after tax for the 6 months prior to the reporting date	ofit after	
		e) Gross margin for the 6 months prior to the reporting date	margin	
		f) Total number of projects on hand as at the reporting date	number	
		 g) Revenue for the prior corresponding period (i.e. the 6 month period in the previous financial year) 		n
		 Revenue from the top 5 customers in the last 6 months prior to the reporting date 		
		 Revenue derived from state or federal government contracts in the 6 months prior to the reporting date 		;
		j) Spend on top 5 subcontractors in the last 6 months prior to the reporti date	on top	rting
		k) Total subcontractor spend in the 6 months prior to the reporting date	subcontr	;



Item Financial Reporting – Financial monitoring information requirements All information to be provided in a template excel format (to be provided by the Principal) for each entity comprising the Contractor on a six-monthly basis

4. Solvency

- Total borrowings as at the reporting date, including related party borrowings
- b) Total related party borrowings as at the reporting date
- c) Total available headroom on existing facilities as at the reporting date
- d) Total facility limit as at the reporting date
- e) Total facilities expiring within 12 months of the reporting date
- f) Total cash and cash equivalents as at the reporting date
- g) Interest expense in the 6 months prior to the reporting date
- h) Net assets as at the reporting date
- i) Intangible assets as at the reporting date
- j) Bonds called on projects in last six months (number and quantum)
- k) Reportable covenant breaches in the last 2 years (number of breaches, and details on each breach (e.g. what covenant was breached))`
- Quantum of sales subject to debtor finance in the 6 months period prior to the reporting date
- m) Information on the security given and any cross guarantees with group entities at the balance date

5. Qualitative

- a) Number of board changes in the 2 years preceding the reporting date
- b) Number of senior executive changes in the 2 years preceding the reporting date
- License suspensions or investigations in the last 2 years (in any state)
 (y/n)
- d) Details of any allegations of unethical conduct
- e) Details of any late or qualified audits conducted in the 2 years preceding the reporting date
- f) Confirmation that all corporate insurance and licenses required by law are in place (y/n)
- g) Number of late ATO lodgements in the 2 years preceding the reporting date



Schedule 11 - Reliance Letter

[Insert date]

To: [Insert name of successful tenderer including details of the ACN/ABN and principal place of business]

SYDNEY METRO PROGRAM OF WORK (in this letter the "PROJECT")

RELIANCE LETTER

- 1 We, [*Insert name of Contractor*], have been engaged by Sydney Metro to provide, lead and coordinate the [INSERT ECI ACTIVITY] for the Project (**Services**).
- We have prepared the following reports in accordance with the described in the Early Contractor Involvement Deed between us and Sydney Metro (**ECI Deed**) dated [*insert date*] (**Reports**), a copy of which is attached at Appendix 1:
 - a) [Reports to be inserted].
- As requested by Sydney Metro, you and your related bodies corporate (**You**) as at the date of this letter may use and rely on the Reports as if the Reports were expressly addressed to be in favour of You.
- We assume no responsibility to You to update the Reports in respect of anything that occurs or of which we become aware after the date of issue of the Reports. In providing this letter, we are not restating the Reports.
- We have acted solely in accordance with the instructions of Sydney Metro in preparing the Reports and have considered only the interests of Sydney Metro in doing so. The Reports may not necessarily address all or any of the specific concerns, purposes, requirements or interests of You or any other third party.
- The Reports have been prepared in accordance with the ECI Deed and on the basis of the assumptions and qualifications set out in the Reports. The Reports are strictly limited to the ECI Deed and do not extend by implication or otherwise to any other matter or interpretation. We disclaim any duty of care to You, other than in relation to the Reports prepared in accordance with the ECI Deed. We have not been instructed to advise You or to provide any services to You and we have no fiduciary relationship with You in relation to any matter addressed in the Reports or otherwise, other than the express reliance relationship arising under this letter.
- The contents of the Reports are limited to the time of drafting (such time being after the final inspection of the relevant Sites and no earlier than [two calendar months] before the date of the Reports). We take no responsibility for any inaccuracies in the Reports which have arisen due to changes or works at the Sites since the Reports were drafted (such time being after the final inspection of the relevant Sites and no earlier than [two calendar months] before the date of the Reports).



- 8 The right for You to rely on the Reports pursuant to this letter is provided subject to You keeping the reports strictly confidential and not disclosing the Reports to any other person or organisation without our prior written consent, except to people or organisations with a specific need to have access to the Reports and such disclosure is:
 - in the ordinary course of business (including disclosure to auditors and to financial, accounting, technical, environmental, survey and legal advisers) on the basis that any person to whom or organisation to which the Reports are disclosed maintains the Reports in the strictest confidence and do not disclose the Reports to any other person;
 - c) if required by law, regulation, the rules of any stock exchange, the requirements of a regulatory or self-regulatory body, authority or committee or if required in accordance with an official directive or request (whether or not having the force of law) and with which responsible financiers and companies generally comply with in carrying on their business or it is good practice for responsible financial services firms and companies to comply with; and
 - d) in connection with any actual or threatened claim, investigation or litigation or any agreement or debt between You and Sydney Metro or in connection with this letter.
- This letter is addressed to You solely for the benefit of You as at the date of this letter. It takes effect immediately on the date the letter is signed by us. You have the benefit of and may enforce this deed poll even though You are not a party to it. This letter and the Reports may not be relied on by any other person without our prior consent in writing.



- If anything in the Reports is inconsistent with the terms of this letter, the terms of this letter will prevail.
- This letter, and our relationship, is governed by and is to be interpreted in accordance with the laws of New South Wales.

Executed and delivered as a Deed Poll

Executed as a deed poll by [*insert name*] in accordance with section 127 of the *Corporations Act 2001*

Director Signature	Director/Secretary Signature



	<u> </u>
Print Name	Print Name



Appendix 1 to Reliance Letter

[<mark>insert</mark>]



Schedule 12 - Contractor's Certificate of Design Compliance

(Clause 7A.3)

	CTOR'S CERTIFICATE OF SIGN COMPLIANCE
CONTRACTOR:	
DESIGN PACKAGE	DESCRIPTION
(Attach schedule	e of work packages if insufficient space)
I certify that the design for the packages or pa indicated above in accordance with the require	rt thereof described above has been completed to the extent ements of the ECI Deed between the Principal and , and complies with the requirements of the ECI Deed, subject
to the register of outstanding minor design nor	n-conformances and unresolved issues attached.
I further certify that the attached compliance redesign packages.	ecords as required by the ECI Deed reflect the true status of the
SIGNATURE:(Contractor's Representative)	SIGNATURE:(Contractor's Subcontractor/Designer)
DATE:	DATE:



Annexure A - Draft D&C Contract



MEDIUM WORKS CONTRACT – DESIGN AND CONSTRUCTION Contract Number:

DESIGN AND CONSTRUCT OF ERRANT AND HOSTILE VEHICLE MITIGATION TREATMENTS FOR THE SOUTHWEST METRO PROJECT

Between

Sydney Metro [PRINCIPAL]

ABN 12 354 063 515

and

[Insert CONTRACTOR Name]

[CONTRACTOR]

ABN [insert]

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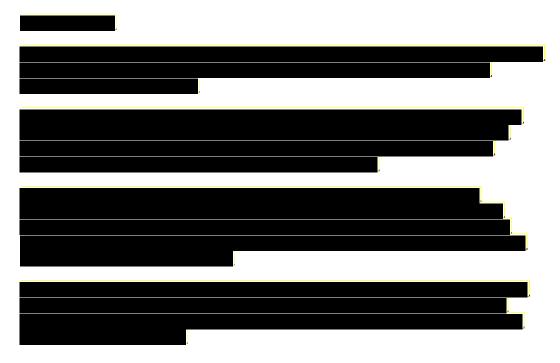
Parties

- 1. Sydney Metro (ABN 12 354 063 515), a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW), of Level 43, 680 George Street, Sydney NSW 2000 (*Principal*).
- 2. [insert] (ABN [insert]) of [insert address] (the *Contractor*).

Recitals

- A The Principal is a NSW Government agency constituted by section 38 of the Transport Administration Act 1988 (NSW), and is responsible for developing the Sydney Metro network.
- B The Principal is responsible for the construction of the Errant and Hostile Vehicle Mitigation Treatments for the Southwest Metro Project.
- C The Principal engaged the Contractor under the ECI Deed to perform the "ECI Activities" (as defined in the ECI Deed).
- D The Principal has accepted an offer from the Contractor under the ECI Deed to design and construct the Works.
- E The Works include:
 - errant vehicle (CIRA) treatments consisting of:
 - Eight (8) station overbridge barriers;
 - Seven (7) non-station road-over-rail overbridge barriers;
 and
 - 76 Non-bridge barriers;
 - hostile vehicle mitigation (HVM) treatments to the eight (8) station precincts;
 - road upgrades (kerbside ramps) at Wiley Park;
 - fencing, finishing works and other streetscaping elements across various locations.
- F The Contractor has agreed to undertake the Contractor's Activities for the Principal in accordance with this Contract.

It is agreed as follows



1. Definitions and Interpretation

1.1 Definitions

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In this Contract, unless the context otherwise indicates:

Aboriginal Participation Plan means the plan described in the NSW Government Aboriginal Procurement Policy (January 2021), developed in relation to the Works and which forms part of the Contract Management Plan.

Aboriginal Participation Report means the report described in the NSW Government Aboriginal Procurement Policy (January 2021), which demonstrates the Contractor's compliance with the Aboriginal Participation Plan.

Accreditation means accreditation (including provisional accreditation, conditions or restrictions in respect of accreditation or any variation to the accreditation) under Part 3 of the Rail Safety National Law (or an exemption from same).

Additional Contamination has the meaning in clause 3.9(g) where the alternative 1 or alternative 2 applies.

Additional Hazardous Material means any asbestos the Contractor discovers on the Site which was not described in, or could not have reasonably been inferred from, the Hazardous Material Report.

Additional Track Possession or power isolation has the meaning given in clause 7.12(d).

OFFICIAL

Apprentice means an employee of the Contractor or its Subcontractors undertaking a recognised Australian Apprenticeship program and related qualification and holding a formal training contract who has been employed by the Contractor or its Subcontractors to undertake the Contractor's Activities on the Site.

ASA Charter means the document titled "Charter of the Asset Standards Authority" (the Asset Standards Authority being a precursor to the AMB) which identifies the ASA/AMB's objectives, functions, powers and governance and the duties of Public Transport Agencies and TAOs in relation to the ASA/AMB (as amended from time to time), a copy of which can be found at

https://www.transport.nsw.gov.au/system/files/media/documents/2017/ASA%20Charter%20-%20August%202015 Final.pdf

ASA Requirements has the meaning assigned to it in the ASA Charter.

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

Asset Lifecycle Services means the aspects of the Contractor's Activities which relate to the Asset Lifecycle of Transport Assets.

Asset Management Branch or AMB means the independent unit of the name Asset Management Branch within Transport for NSW (formerly the Asset Standards Authority), the functions of which include developing engineering governance and frameworks to support industry delivery in assurance of design, safety, integrity, construction and commissioning of transport assets for the whole asset life cycle. Information about the AMB and the network and asset standards can be found on https://www.transport.nsw.gov.au/industry/asset-management-branch

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 the Works or the Contractor's Activities.

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

- (a) carry out the Contractor's Activities including for the avoidance of doubt all things required for conducting work within the Rail Corridor or affecting rail operations and all things required for dealing with, transporting and disposing of Contamination, Hazardous Material or waste; or
- (b) occupy and use for its intended purpose the completed Works or a completed Portion,
- (c) and for the avoidance of doubt includes the Planning Approval; and
- (d) the EPL (if an EPL is required for the Works).

Business Day means any day other than a Saturday, Sunday, public holiday in New South Wales or 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.

Change in Authority Approval means:

- (a) a change:
 - (i) in an Authority Approval which is in existence as at the date of this Contract; and
 - (ii) which occurs after the date of this Contract.

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

- (a) was published or of which public notice had been given (even as a possible change in the Codes and Standards); or
- (b) a party experienced and competent in the delivery of works and services similar to the Works or the Contractor's Activities (as applicable) would have reasonably foreseen or anticipated,

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

Change in Control means, in respect of an entity, any event occurs such that a change occurs in the Control of that entity.

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

- (a) a change in an existing Law (other than a change in an Authority Approval);or
- (b) a new Law (other than a new Authority Approval),

compliance with which:

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

but excludes:

- (e) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes;
- (f) a change in an existing Law or a new Law which, as at the date of this Contract was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law) in substantially

the same form as the change in an existing Law or new Law eventuating after the date of this Contract: and

(g) a Pandemic Change in Law.

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

- under, arising out of, or in any way in connection with, this Contract, including any direction of the Principal's Representative;
- (b) arising out of, or in any way in connection with, the Contractor's Activities or the Works or either party's conduct prior to the date of this Contract; or
- (c) otherwise at Law or in equity including:
 - (i) under or for breach of statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Codes and Standards means:

- (a) the relevant building codes (including the National Construction Code), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract (including the Disability (Access to Premises Buildings) Standards 2010), including any specified or required by this Contract;
- (b) the NSW Government Aboriginal Procurement Policy (January 2021), NSW Code, NSW Guidelines, Environmental Management Systems Guidelines (4th edition) (January 2020), Work Health and Safety Management Systems and Auditing Guidelines (6th edition) (2019), Training Management Guidelines (October 2021), Quality Management System Guidelines for Construction (January 2021), GREP and any other NSW Government guidelines and requirements specified or required by this Contract; and
- (c) if (and to the extent) the codes and standards referred to in paragraphs (a) or (b) are irrelevant, then relevant international codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract.

Commonwealth means the Commonwealth of Australia.

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

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

- (i) that do not prevent the Works or the Portion from being reasonably capable of being used for the intended purpose of the Works or the Portion:
- (ii) that can be rectified without prejudicing the convenient intended use of the Works or the Portion; and
- (iii) in respect of which the Contractor has reasonable grounds for not promptly rectifying;
- (b) the Contractor has:
 - (i) carried out and passed all tests that:
 - A. are required under this Contract to be carried out and passed before the Works or a Portion reaches Completion; or
 - B. must necessarily be carried out and passed to verify that the Works or a Portion is in the condition this Contract requires the Works or Portion (as the case may be) to be in at Completion;
 - (ii) without limiting clause 2.3(c)(iv), obtained all Authority Approvals that it is required under this Contract to obtain before Completion of the Works or a Portion and provided such Authority Approvals to the Principal's Representative;
 - (iii) given to the Principal's Representative all other documents and information:
 - A. required (including in accordance with the Works Brief) for the use, operation, maintenance and repair of the Works or a Portion; and
 - B. that are to be handed over to the Principal's Representative before Completion of the Works or a Portion:
 - (iv) complied with all performance requirements that this Contract requires to be verified before Completion of the Works or a Portion;
 - (v) provided the Principal's Representative with the Contractor's Certificate of Completion in the form of Schedule 21 for the Works or a Portion;
- (c) the Contractor has provided the Principal's Representative with any certificates required from the Independent Certifier under any Third Party Agreement in respect of completion of any aspect of the Works or a Portion;
- (d) the Independent Certifier has issued a certificate in the form of Schedule 37 in respect of the Design Documentation which has been provided to the Independent Certifier by the Principal under clause 5.3(c); and

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

Consequential Loss means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

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

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

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

Contamination Report has the meaning given in clause 3.9(g)(ii) where alternative 1 applies.

Contemporaneous Work means work carried out:

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

Contract means the contract between the Principal and the Contractor in respect of the Works constituted by the documents referred to in Schedule 1.

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

- (a) the Works Brief (including any Preliminary Design) and all Design Documentation; and
- (b) all plans, manuals, programs and other documents.

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

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

Contractor means the person named as the Contractor in Schedule 1.

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

- (a) the design, construction, commissioning and hand-over of the Works;
- (b) the provision of Temporary Works and Construction Plant; and
- (c) anything incidental or ancillary to the obligations in paragraphs (a) to (c).

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

Contractor's Representative means the person notified to the Principal's Representative in accordance with clause 9.4(a) as being the Contractor's Representative.

Control has the meaning in the Corporations Act 2001 (Cth).

Control Gate means a control gate identified in the Sydney Metro Network Assurance Procedure as described in the Works Brief.

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).

Critical Domestic Materials means [insert]. [Drafting Note: Contractor to nominate its proposed list of Critical Domestic Materials, which should specify both the materials and the associated suppliers. The focus of the Critical Domestic Materials list should be on those materials and suppliers with respect to which the risk cannot be avoided or mitigated by the Contractor.]

Crown Building Work has the meaning given to that term in section 6.1 of the *Environmental Planning and Assessment Act 1979* (NSW).

Date for Completion means in respect of the Works or a Portion the date, or the last day of the period of time, specified in Schedule 1 for the Works or that Portion, as adjusted under this Contract by an extension of time determined by the Principal's Representative or pursuant to any determination by an expert or any litigation.

Date of Completion means:

- (a) the date of Completion of the Works or a Portion, set out in a Notice of Completion; or
- (b) where another date is determined in any determination by an expert or any court pursuant to clause 16 as the date upon which Completion was achieved, that date.

Date of Final Completion means;

- (a) the date determined in accordance with clause 13.8(e)(i) as the date Final Completion was achieved; or
- (b) where another date is determined in any determination by an expert or any court pursuant to clause 16 as the date upon which Final Completion was achieved, that date.

date of this Contract means the date on which the Contract was formed by the execution of this deed or other formal instrument.

Defect means any:

- (a) defect, deficiency, fault, error or omission in the Works or Temporary Works, including subsidence, shrinkage and movement outside the required tolerances: or
- (b) other aspect of the Works, Temporary Works or Contractor's Activities that is not in accordance with the requirements of this Contract, including non-compliances, non-conformances and non-conformities.

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

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

Design Stage 3 has the meaning given in the Works Brief.

Difference in Conditions has the meaning given to that term in clause 2.12(b)(iv).

Dispute has the meaning given to that term in clause 16.1.

Document means any document which is required to be submitted for the review of the Principal's Representative under this Contract.

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

ECI Deed means the deed entitled "Sydney Metro City & Southwest Metro – Errant and Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Early Contractor Involvement Deed" between the Principal and the Contractor dated [##].

Electronic Portal means the electronic portal or document management system (if any) referred to in a notice by the Principal's Representative under clause 17.1(a).

Environment means components of the earth, including:

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

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

EPL means an environment protection licence issued under the *Protection of the Environment Operations Act 1997* (NSW).

Excepted Risk means any one of:

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

Excluded Claim means any claim:

- (a) with respect to a Change in Law under clause 2.3(d);
- (b) for a Variation directed in accordance with clause 6.2 or a direction by the Principal's Representative to which clause 18.1 applies;
- (c) for an extension of time to any Date for Completion under clause 10.7(a); or
- (d) for payment under clause 11, including claims under clauses 11.9 and 11.11.

Executive Negotiators means the persons described in Schedule 1.

Extra Land means the land referred to in clause 3.4(a).

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

(a) all Defects Rectification Periods (including any extension under clause 8.6) have expired and the Contractor has rectified all Defects in accordance with the Contract;

- (b) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this Contract to be carried out and passed before the Works reach Final Completion; or
 - B. must necessarily be carried out and passed to verify that the Works are in the condition this Contract requires them to be in at Final Completion;
 - (ii) obtained all Authority Approvals that it is required under this Contract to obtain which:
 - A. were not obtained before Completion of the Works or the last Portion to reach Completion; or
 - B. are to be obtained prior to Final Completion,

and provided such Authority Approvals to the Principal's Representative;

- (iii) given to the Principal's Representative all other documents or information referred to in this Contract:
 - A. which are required for the use, operation, maintenance and repair of the Works but which were not obtained before Completion of the Works or the last Portion to reach Completion; or
 - B. which are required to be handed over to the Principal's Representative before Final Completion; and
- (iv) complied with all performance requirements under this Contract that must be verified before Final Completion; and
- (c) the Contractor has done everything else which it is required to do under this Contract before Final Completion.

Financial Assessment has the meaning given to that term in clause 9.11(a).

Financial Capacity Event means any fact, matter or thing which, in the opinion of the Principal (acting reasonably), has or may have a material adverse effect upon the financial standing of the Contractor (or any entity that comprises the Contractor) or any Contractor Guarantor.

Financial Mitigation Plan means a plan which satisfies the requirements of clause 9.11E(d) for the mitigation of a Financial Capacity Event.

Financial Reporting Event means any of the following events, as applicable to the Contractor (or any entity that comprises the Contractor) or any Guarantor:

- (a) a downgrade in credit rating;
- (b) a significant loss suffered or incurred on a project or under a contract;

- (c) a significant fine or financial penalty;
- (d) a profit warning to a stock exchange or the making of any public announcement regarding a material deterioration in financial position or prospects;
- (e) a public investigation into improper financial accounting and reporting or suspected fraud;
- (f) a material refinancing;
- (g) a failure to pay a Subcontractor (other than for reason of a bona fide dispute);
- (h) any financial indebtedness becoming due as a result of an event of default;
- (i) its external auditor expressing a qualified or adverse opinion, a disclaimer of opinion or that a material uncertainty exists in relation to a going concern;
- (j) a net share price decrease of more than 25% in the 6 months since the last Financial Assessment; or
- (k) a material breach of a covenant to a lender or lenders.

provided that, in the case of a Listed Entity, the relevant event has been Publicly Notified or is Reportable Information.

Financial Year means a financial year commencing on 1 July, except that:

- (a) the first Financial Year will commence on the date of this Contract; and
- (b) the last Financial Year will end on:
 - (i) the day of Final Completion; or
 - (ii) when the Contract has been terminated.

First Statement of Outstanding Claims has the meaning in clause 11.9.

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

General Conditions means clauses 1 to 23 of this Contract.

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

- (a) greenhouse gas emissions, energy production or energy consumption; and
- (b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project,

relating to any aspect of any of the Contractor's Activities or the activities of any of the Contractor's personnel in connection with the Contractor's Activities.

GREP means the NSW Government Resource Efficiency Policy (2019).

Guarantor means the person who is required to execute the Parent Company Guarantee under clause 2.7(f).

Hazardous Material means any natural or artificial substance whether solid, liquid or gas (alone or in combination with any other substance) which is toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorinated biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals.

Hazardous Material Report means the report stated in Schedule 1.

Impact Date has the meaning in clause 23.5(a)(i).

Incident means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Contractor's Activities including:
 - 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 or Extra Land;
 - (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) a "notifiable incident" under the WHS Legislation and a "notifiable occurrence" under the Rail Safety National Law.

Inclement Weather Allowance means a period of delay specified in Schedule 1 caused by inclement weather for which the Contractor might otherwise have been entitled to make a claim for an extension of time for delays, but for this Contract.

Independent Certifier means the person or persons specified in Schedule 1 appointed to be the independent certifier in respect of the Works pursuant to the Independent Certifier Deed.

Independent Certifier Deed means the deed titled "Sydney Metro City & Southwest Independent Certification of the CIRA Works Independent Certifier Deed" to be entered into between the Principal, the Contractor and the Independent Certifier and **[insert any others]** in the form set out in Exhibit H.

Information Documents and Materials means:

- (a) the items specified in Schedule 9;
- (b) the Reports; and
- (c) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor unless expressly identified as forming part of this Contract,

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

Initial Pandemic Management Plan means the initial Pandemic Management Plan required to be provided by the Contractor pursuant to the Works Brief.

Insolvency Event means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Contract for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
 - notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;

- (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
- (vi) a sequestration order or winding up order is made in respect of the corporation;
- (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
- (viii) a mortgagee of any property of the corporation takes possession of that property;
- (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets; or
- (x) a Restructure Event occurs without the prior written consent of the Principal.

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

Institution means any:

- (a) authorised deposit taking institution holding an authority to carry on banking business in Australia under the terms of the *Banking Act 1959* (Cth); or
- (b) insurance company which is regulated by the Australian Prudential Regulatory Authority and has the Required Rating.

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

Interface Agreement means the Third Party Agreement of that name set out in Exhibit G.

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

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

Key Plant and Equipment means the key plant and equipment (including all associated equipment, spare parts and accessories) set out in Schedule 35.

KPI means the key performance indicators set out in Schedule 1.

KPI Performance Report has the meaning in clause 12.1(b).

Latent Conditions has the meaning given in clause 3.5(a).

Law means:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the National Construction Code, any other building codes or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Authority Approvals (including any condition or requirement under them).

Listed Entity means a company or other body which is included in the official list of ASX Limited ACN 008 624 691.

Minimum Performance Scores has the meaning in the KPI.

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

Modern Slavery has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

Modern Slavery Laws means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).

Modern Slavery Offence has the same meaning as in the *Modern Slavery Act 2018* (NSW), and includes an offence listed from time to time in Schedule 2 to the *Modern Slavery Act 2018* (NSW).

Modern Slavery Practice includes any one or more of the following:

- (a) using any form of forced or child labour or deceptive recruitment practices;
- (b) requiring personnel to work excessive hours in the performance of, or in connection with, this Contract;
- (c) save for short periods where legally required to do so for the purposes of administering employment, retaining the passports and/or identity documents of personnel or any potential personnel;
- (d) denying personnel the right to terminate their employment or join or form, or discouraging personnel from joining or forming, a trade union if they so desire;
- (e) save where required by Law, paying wages to any individual other than personnel; and

(f) if any personnel are migrant workers, providing migrant workers with any lesser entitlements than given to local employees.

Monument has the meaning given to that term in the *Surveying and Spatial Information Regulation 2017* (NSW).

Network Assurance Committee has the meaning given in clause 5.4(b).

Network Assurance Submission has the meaning given in clause 5.4(d).

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

Notice of Completion means a notice issued under clause 13.3(d)(i) by the Principal's Representative stating that Completion of the Works or a Portion has been achieved.

NSW Code has the meaning given in clause 21.2.

NSW Guidelines has the meaning given in clause 21.1.

NSW Procurement Board means the board established under section 164 of the *Public Works and Procurement Act 1912* (NSW).

NSW Trains means the corporation by that name constituted by Part 3C of the *Transport Administration Act* 1988 (NSW).

Opal Card means the contactless smart card ticketing system used or to be used for public transport services in the greater Sydney area, and includes any successor in name or technology.

Option means an option referred to in Schedule 15.

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

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

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

Overhead Costs means the costs referrable to the items described in Part B of Schedule 10.

Pandemic means:

- (a) COVID-19; and
- (b) any other infectious disease that is declared as a pandemic by the World Health Organisation after the date of this Contract.

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

- (a) a change in (including any extension, repeal, revocation or expiry of) an existing Pandemic Law (other than a Change in an Authority Approval or a decision of a court); or
- (b) a new Pandemic Law (other than a new Authority Approval or decision of a court),

but excludes an amendment, repeal or change of an existing Pandemic Law or a new Pandemic Law:

- (c) in respect of Taxes;
- (d) which was caused or contributed to by an act or omission of the Contractor or its Subcontractors; or
- (e) which, as at the date of this Contract was published or of which public notice had been given (even as a possible amendment, repeal or change of an existing Pandemic Law or a possible new Pandemic Law or judgment) in substantially the same form as the change in an existing Pandemic Law or new Pandemic Law eventuating after the date of this Contract,

but in each case which delays the Contractor in achieving Completion of a Portion by at least one full day and subject to the Contractor demonstrating to the Principal that it has complied and is complying with the Pandemic Management Plan.

Pandemic Costs has the meaning given in clause 23.5(c).

Pandemic Direction means a direction, order, requirement, declaration or exercise of a power by a relevant Authority in New South Wales or in any other Australian jurisdiction in response to COVID-19 or another Pandemic which the Contractor is required to implement in order to comply with its obligations at Law, including:

- (a) a public health order or direction issued by a relevant Authority under the *Public Health Act 2010* (NSW) or the equivalent public health legislation in another Australian jurisdiction;
- (b) the exercise of powers or issuing of directions or requirements by a relevant Authority under the *Biosecurity Act 2015* (Cth);
- (c) the exercise of powers or issuing of directions pursuant to a declaration of an emergency as a 'state of disaster' or a declaration of a 'state of emergency'; or
- (d) the exercise of powers or issuing of directions analogous or with a similar effect to those contemplated in paragraphs (a)-(c).

Pandemic Law means any Law or direction by an Authority in Australia under a Law (including any Pandemic Direction):

- (a) arising out of or directly related to COVID-19; or
- (b) which is otherwise connected with or applicable to any Pandemic.

Pandemic Management Plan means the Contract Management Plan referred to as the Pandemic Management Plan in the Works Brief, as updated from time to time.

Pandemic Mitigation Measures means the measures set out in Schedule 34.

Pandemic Relief Event means any of the following occurring after the date of this Contract:

- (a) a Pandemic Subcontractor's Plant Closure;
- (b) a full day delay in the supply of any Key Plant and Equipment as a result of:
 - (i) Australian quarantine restrictions; or
 - (ii) a closure of the Australian international border or any other international border,

where such quarantine restrictions or border closures are introduced after the date of this Contract as a result of a Pandemic and have a material adverse impact on the Contractor's Activities; or

(c) a Pandemic Site Closure,

but in each case:

- (d) which delays the Contractor in achieving Completion of a Portion by at least one full day per event and subject to the Contractor demonstrating to the Principal that it has complied and is complying with the Pandemic Management Plan; and
- (e) excluding a Pandemic Relief Event that arises from a Pandemic Change in Law (which shall be treated as a Pandemic Change in Law).

Pandemic Relief Event Site Allowance has the meaning given in clause 23.5(a)(ii).

Pandemic Site Closure means a full day closure of the Site which:

- (a) occurs after the date of this Contract;
- (b) occurs as a result of an outbreak of COVID 19 or another Pandemic;
- (c) has been closed in compliance with the Contractor's Pandemic Management Plan; and
- (d) has a material impact on the Contractor's Activities.

Pandemic Subcontractor's Plant Closure means the full day closure of a Subcontractor's plant or factory:

- (a) located within Australia where that plant or factory supplies Critical Domestic Materials to the Contractor; or
- (b) located outside of Australia where that plant or factory supplies Key Plant and Equipment to the Contractor,

as a result of a Pandemic which:

- (c) occurs after the date which is the later of the date of execution of the relevant Subcontract and the date of this Contract:
- (d) has been closed in compliance with a "pandemic management plan" prepared by the relevant Subcontractor; and
- (e) has a material impact on the Contractor's Activities.

Parent Company Guarantee means the Deed which appears in Schedule 17.

Payment Breakdown Schedule means Schedule 2.

Payment Claim Date means the later of:

- the date when the Contractor has complied with the requirements in clause 11.6; and
- (b) the following dates:
 - (i) prior to the time for submission of the Final Payment Claim, upon the last day of each month;
 - (ii) for the Completion Payment Claim, within the time required by clause 11.9; and
 - (iii) for the Final Payment Claim, within the time required by clause 11.11.

Performance Adjustment means an adjustment to the Contract Sum as described in clause 12.2.

Planning Approval means:

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

Pollution has the meaning given to "pollution" in the Dictionary to the *Protection of the Environment Operations Act 1997* (NSW).

Portion means a part of the Contractor's Activities or Works, as described in Schedule 1 or as directed under clause 13.6(a).

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

PPS Law means:

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

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

Preliminary Design means the preliminary design of the Works (if any) which appears in Exhibit F. [Note to tenderers: It is envisaged that this would be the design prepared by the Contractor in the ECI Phase.]

Principal means Sydney Metro.

Principal Supplied Items means the items listed in Schedule 27.

Principal's Representative means:

- (a) the person nominated in Schedule 1; or
- (b) any other person appointed from time to time by the Principal under clause 9.2.

and includes any appointee under clause 9.3.

Prohibited Subcontractor means:

- (a) any Subcontractor:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in,

corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or

(b) any Subcontractor employing an employee in respect of whom paragraph (a)(i) or (a)(ii) apply.

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 Contractor and which must:

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

Provisional Sum Work means the work detailed in Schedule 1.

Publicly Notified means information which is publicly available or accessible due to the notification or lodgement of such information by the Contractor (or any entity that comprises the Contractor) or any Guarantor to an Authority or to the public by the following means:

- (a) pursuant to the listing rules of a recognised stock exchange;
- (b) pursuant to any applicable Laws, including Laws relating to corporations, security of payment or industrial relations; or
- (c) via the public website of a Listed Entity.

Quarter means each 3 month period ending 31 March, 30 June, 30 September or 31 December.

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 Infrastructure Manager has the meaning given to that term in the Rail Safety National Law.

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 Transport Agency means Sydney Metro, Transport for NSW (and each of its divisions), TAHE, Sydney Trains and NSW Trains.

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

Referral Date has the meaning given to that term in clause 16.5(a).

Related Body Corporate has the meaning given to that term in the Corporations Act 2001 (Cth).

Relevant Matters has the meaning given to that term in clause 9.17(a).

Remediation Action Plan has the meaning given to that term in clause 3.9(c)(ii)C.

Remediation Steps has the meaning given to that term in clause 3.9(c)(ii)A.1).

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

Report means each report referred to in Schedule 1.

Reportable Information means information or documents which are not Publicly Notified but the provision of which by the Contractor to the Principal pursuant to this deed does not trigger any reportable event pursuant to any applicable Laws or the listing rules of any recognised stock exchange.

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

Restructure Event means where there is one or more asset transfers or corporate restructures that:

- result in any Guarantor or the Contractor (or any entity that comprises the Contractor) having a materially diminished financial capacity; or
- (b) adversely affect the ability of any Guarantor or the Contractor (or any entity that comprises the Contractor) to meet its obligations under the relevant Parent Company Guarantee or this Contract (as relevant).

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

Rolling Stock Operator has the meaning given to that term in the Rail Safety National Law.

Safety Management System has the meaning given to that term in the Rail Safety National Law.

Second Statement of Outstanding Claims has the meaning in clause 11.11.

Security Interest has the meaning given to that term in clause 17.26(a).

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

Site means:

- (a) the lands and other places described in Schedule 1; and
- (b) any other lands and places made available to the Contractor by the Principal for the purpose of this Contract.

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

Statement of Business Ethics means TfNSW's Statement of Business Ethics, which may be obtained from TfNSW and is located at: https://www.transport.nsw.gov.au/about-us/access-to-information/policy-documents.

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

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

Sub-Network Assurance Committee has the meaning given in clause 5.4(c).

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

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

Sydney Metro means Sydney Metro, a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW).

Sydney Trains means the corporation by that name constituted by Part 3B of the *Transport Administration Act 1988* (NSW).

TAHE means Transport Asset Holding Entity of New South Wales, the corporation by that name constituted by Part 2 of the *Transport Administration Act 1988* (NSW).

Technical Assured Organisation or TAO means an organisation providing a defined engineering service or product that has been assessed and granted TAO Authorisation (formerly AEO) for Sydney Metro by the AMB.

TAO 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 specified conditions of the authorisation.

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

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

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

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

Third Party Agreement means an agreement described in Schedule 1, a copy of which appears in Exhibit G.

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

Trainee means an employee registered as a trainee, holding a formal training contract with their employer, who is directly employed by the Contractor or its Subcontractors who has been employed to undertake the Contractor's Activities at the Site for a period of not less than 12 weeks.

Training Target has the meaning given in clause 9.16(f).

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

Trigger Event has the meaning given to that term in clause 2.12(b)(iv)G.

Variation means any change to the Works or the Temporary Works including:

(a) any addition or increase to, or decrease, omission or deletion from, the Works or the Temporary Works;

- (b) any change to the character or quality, or demolition or removal, of any material or work; or
- (c) any change to the levels, lines, positions or dimensions of any part of the Works or the Temporary Works,

but it excludes any changes to the Works or the Temporary Works that are required as a result of the exercise of an Option by the Principal's Representative under clause 6.3.

WHS means work health and safety.

WHS Guidelines means the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (6th edition), December 2019 or any document issued from time to time which amends or substitutes this document.

WHS Legislation means:

- (a) the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2017 (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works.

Workplace Relations Management Plan means the plan described in the NSW Guidelines developed in relation to the Works.

Works means the whole of the works, including:

- (a) any changes to the Works that are required solely as a result of the exercise of an Option by the Principal's Representative under clause 6.3; and
- (b) all Variations to the Works,

that the Contractor must design, construct, commission, integrate and hand-over to the Principal (or its nominee) under this Contract.

Works Brief means the Principal's written requirements for the Works described in:

- (a) Exhibit A, and
- (b) where the Contract includes a Preliminary Design, the Preliminary Design.

1.2 Interpretation

In this Contract 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 Contract 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 Contract or to any other deed, agreement, document or instrument is deemed to include a reference to this Contract 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 Contract;
- (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 Contract; 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) subject to clause 3.6, a reference to this Contract includes all Schedules and Exhibits;
- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (I) where under this Contract:

- (i) a direction is required to be given or must be complied with;
- (ii) payment of money must be made;
- (iii) an unconditional undertaking must be released; or
- (iv) a default must be remedied,

within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;

- (m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:
 - (i) any extension of time to any Date for Completion stated in days;
 or
 - (ii) any reference to "day",

will include only those days indicated in Schedule 1, or otherwise approved by the Principal's Representative, as working days;

- (n) for all purposes (other than as set out in clauses 1.2(l) and 1.2(m), or where otherwise designated as a Business Day), "day" means calendar day;
- (o) for the avoidance of doubt, a reference to an Other Contractor includes an Interface Contractor;
- (p) a reference to "\$" is to Australian currency;
- (q) a reference to "direction" in the definition of "Claim" in clause 1.1 or in any of clauses 7.1(a)(i)B, 9.1, 9.8(i), 16 and 18 will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document;
- (r) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Contract or any part;
- (s) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) the interpretations of the terms Date for Completion, Date of Completion and Completion, and clauses 8, 10, 12 and 14, will apply separately to each Portion and references therein to the Works and to the Contractor's Activities will mean so much of the Works and the Contractor's Activities as is comprised in the relevant Portion;
- (u) any reference to "Principal's Design" shall be read as if it is a reference to "Preliminary Design"; and
- (v) any reference to "intended purpose" in this Contract will be read as referring to the intended use or intended purpose having regard to any intended use or

intended purpose stated in, contemplated by or ascertainable from the terms of this Contract including the requirement that the Works, when completed will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation.

1.3 Ambiguous terms

- (a) If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in the Contract (including in any Exhibit), the Principal's Representative must, subject to clause 1.4, direct the interpretation of this Contract which the Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.3(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Contract.

1.4 Order of Precedence

- (a) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Contract then:
 - (i) where the inconsistency, ambiguity or discrepancy is between two
 or more documents that together comprise the Works Brief, then
 to the extent of any inconsistency, ambiguity or discrepancy, the
 higher, or more onerous, or more rigorous, requirement will apply;
 and
 - (ii) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in Schedule 1 applies.
- (b) The Works Brief, any Preliminary Design and the Planning Approval are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Works comply with this Contract and are fit for their intended purposes.

1.5 Deed Poll by Contractor

If required by Schedule 1 the Contractor must:

- (a) within 10 days of the date of this Contract and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 16 in favour of the persons named in Schedule 1;
- (b) where the Interface Agreement is identified in Schedule 1 as a "Draft" Third Party Agreement, promptly following execution of the Interface Agreement, and as a condition precedent to any obligation of the Principal to pay the Contractor any amount which becomes due under clause 11.4 following execution of the Interface Agreement, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 24 in favour of the persons named in Schedule 1; and

(c) where the Interface Agreement has been executed as at the date of this Contract, on or before the date of this Contract and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 24 in favour of the persons named in Schedule 1.

1.6 Authorities

- (a) This Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
 - (ii) the AMB to exercise any of its functions and powers pursuant to the AMB Charter.
- (b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or AMB do, or fail to do or purport to do, pursuant to their respective functions and powers either as an TAO or under any legislation or the AMB Charter, will be deemed not to be an act or omission by the Principal under this Contract.

1.7 Principal Novation

- (a) The Principal may at any time, at its sole discretion, novate the Contract to any Authority, any successor in title to the Principal or any other person that assumes the functions or obligations of the Principal.
- (b) If the Principal elects to novate the Contract in accordance with paragraph (a), the Principal will provide the Contractor with a duly completed deed of novation in the form which appears in Schedule 30 and the Contractor must execute the deed of novation and return it to the Principal within 5 Business Days of receipt.
- (c) If the Contractor fails to properly execute the deed of novation in the form which appears in Schedule 30 within the time period specified in paragraph (b), then for the purpose of executing the deed of novation, the Contractor irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars and execute, sign, send and deliver in the name of the Contractor the deed of novation and all notices, deeds and documents for that purpose.

2. Contractor's obligations

2.1 General

The Contractor:

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

- (b) warrants that the Temporary Works will at all reasonable times be fit for their intended purposes;
- (c) warrants that the Works and each Portion will upon Completion be, and remain, fit for their intended purposes;
- (d) must, unless otherwise agreed by the Principal's Representative in writing, employ the person or persons specified in Schedule 1, including the Contractor's Representative, in the performance of the Contractor's Activities;
- (e) must use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Contractor's Activities; and
- (f) must liaise, cooperate and confer with others as directed by the Principal.

2.2 Subcontracts

- (a) Subject to clause 2.2(b), the Contractor may enter into Subcontracts for the vicarious performance of its obligations under this Contract.
- (b) The Contractor must not enter into any Subcontract:
 - (i) with:
 - A. a Prohibited Subcontractor; or
 - B. an initial subcontract price equal to or over the amount specified in Schedule 1 without the prior written approval of the Principal's Representative (which may be conditional but which will not be unreasonably withheld); or
 - (ii) for the parts of the Works specified in Schedule 1 without the prior written approval of the Principal's Representative to the relevant subcontractor (which may be conditional but which will not be unreasonably withheld).

Any request by the Contractor for approval to subcontract under this clause 2.2(b) must be in writing and include such details as may be required by the Principal's Representative, including details of the proposed Subcontract conditions, and the proposed Subcontractor's capacity to undertake the relevant work, past performance in undertaking similar work, safety (including work health, safety and rehabilitation issues and providing evidence of compliance with clause 2.2(h)), environmental compliance (including any environmental management system) and other performance, management systems and proposed safe working procedures.

Within 14 days after a request by the Contractor for approval, the Principal's Representative will advise the Contractor whether the request is approved (and, if approved, any relevant Conditions) or not and, where it is not approved, the reasons why approval is not given.

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

- (i) effects and maintains professional indemnity insurance which:
 - covers the Subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Subcontractor or its Subcontractors in carrying out the work under the relevant Subcontract;
 - B. covers the Subcontractor for liability to the Principal or the Contractor for the relevant minimum amount listed in Schedule 1;
 - C. unless the Subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and
 - D. remains in place at least until the expiration of a 7 year period from completion of the relevant Subcontract works or professional services; and
- (ii) is obliged under the relevant Subcontract to comply with clause 14.7(c) of this Contract in relation to the insurance referred to in sub-paragraph (i).
- (d) The Contractor will be:
 - (i) fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and
 - vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities.
- (e) The Contractor must:
 - (i) without limiting clause 17.22(c), ensure that each of its Subcontracts that has an initial subcontract price of the amount specified in Schedule 1 or more includes provisions to the effect set out in Schedule 5 and a clause to the same effect as this clause 2.2(e)(i) that is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative;
 - (ii) where a Subcontractor is to carry out design work or other professional services, unless not required by the Principal's Representative, procure that Subcontractor to execute a deed in the form of Schedule 6 and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor:

- (iii) ensure that each Subcontractor (and their Subcontractors)
 executes a Confidentiality Undertaking in the form of Schedule 3
 and provides this to the Principal's Representative within 7 days of
 the engagement of that Subcontractor;
- (iv) procure that each of its Subcontractors:
 - A. engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule 1; or
 - B. in respect of the categories of work set out in Schedule 1 (regardless of subcontract price),

executes a deed in the form of Schedule 14 and provides this to the Principal's Representative within 7 days of being engaged by the Contractor; and

- in respect of all Subcontracts in which it holds retention money from the Subcontractor, comply with all requirements under the Building and Construction Industry Security of Payment Regulation 2020 (NSW).
- (f) The Contractor must, as a condition precedent to Completion of the Works or a Portion, procure and provide the Principal's Representative with those warranties described in Schedule 1 or elsewhere in this Contract from relevant Subcontractors undertaking or supplying the work or items the subject of the warranty.

These warranties:

- (i) must be in the form set out in Schedule 11 and must be in favour of the Principal and any other entity nominated by the Principal's Representative from time to time, including any Rail Transport Agency; and
- (ii) will not derogate from any rights that the Principal may have against the Contractor in respect of the subject matter of these warranties.
- (g) If directed by the Principal, the Contractor must, without being entitled to compensation, within 5 Business Days of the date of receipt by the Contractor of the direction, execute and deliver to the Principal a deed of novation in the form which appears in Schedule 18, such deed being between the Principal, the Contractor and the Subcontractor stated in Schedule 1.

The Contractor irrevocably and severally appoints the Principal and any authorised representative of the Principal to be the Contractor's attorney to execute, sign, seal and deliver in the name of the Contractor, the deed referred to in this clause 2.2(g) and all notices, deeds and documents for that purpose.

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

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- (i) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);
- (ii) limit or otherwise affect the Principal's rights against the Contractor (including those arising out of any warranties given under this Contract); or
- (iii) entitle the Contractor to make any Claim,

whether under this Contract or otherwise according to any Law.

(h) The Contractor must:

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

A. a person:

- be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
- 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
- B. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (ii) not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of subparagraph (i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (iii) if requested by 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's Representative before the Contractor or Subcontractor (as the case may be) commences such work.

2.3 Compliance with Law

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

- (i) comply with, and ensure that the Works and the Temporary Works comply with, all applicable Law;
- (ii) give all notices and pay all fees, bonds and other amounts which it is required to pay in respect of the performance of its obligations under this Contract and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;
- (iii) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it;
- (iv) at all times conform and comply with, and ensure that the Works and the Temporary Works conform and comply with, all Codes and Standards; and
- (v) not engage in any fraud, bribery or corruption.
- (b) Where there is a Change in Codes and Standards:
 - (i) the Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Change in Codes and Standards containing:
 - A. details of the Change in Codes and Standards; and
 - B. an estimate of the Contractor's increased or decreased costs of complying with the Change in Codes and Standards including sufficient information to support the estimate; and
 - (ii) if a notice is given by the Contractor which complies with clause 2.3(b)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:
 - A. direct the Contractor to disregard the Change in Codes and Standards; or
 - B. direct a Variation under clause 6.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 6.4.

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

- (c) The Contractor must:
 - (i) obtain all Authority Approvals required for the execution of the Contractor's Activities and occupation and use of the completed Works or Portions (and for that purpose prepare and submit all

applications and associated documents to relevant Authorities), except for those Authority Approvals specified in Schedule 7 that either:

- A. were obtained by the Principal prior to the date of this Contract; or
- B. will be obtained by the Principal after the date of this Contract where required;
- (ii) unless otherwise expressly specified in Schedule 4, comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, including the Planning Approval, to comply with, satisfy, carry out and fulfil;
- (iii) in respect of any:
 - A. Authority Approvals which are to be obtained by the Principal after the date of this Contract; or
 - B. conditions and requirements of Authority Approvals which pursuant to Schedule 4 are to be satisfied or fulfilled by the Principal,

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

- (iv) for the purpose of obtaining all Authority Approvals as required by clause 2.3(c)(i), prepare all associated studies and reports required because of the design of the Works or Temporary Works proposed by the Contractor; and
- (v) as a condition precedent to Completion of the Works or a Portion, ensure that it has:
 - A. obtained all Authority Approvals it is required to obtain under this Contract;
 - B. complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Contract;
 - C. without limiting clauses 2.3(c)(v)A and 2.3(c)(v)B, complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including obtaining the approval of any person for anything) under this Contract; and

D. unless it is included in Schedule 7 as an Authority
Approval which the Principal will obtain, obtained and
supplied to the Principal's Representative certification
that the Works or the Portion, as designed and built,
comply with the requirements of the National
Construction Code to the extent applicable,

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

- (d) Where there is a Change in Law:
 - (i) if either party wishes this clause 2.3(d)(i) to apply, then that party must, within 14 days of the Change in Law, give a written notice to the other and the Principal's Representative stating that clause 2.3(d)(i) applies and containing details of the Change in Law, including, where the notice is given by the Contractor, its impact on the Contractor's costs of carrying out the Contractor's Activities and any effect it will have on the Contractor's Program;
 - (ii) if such a notice is given the Principal's Representative will determine:
 - A. where the Change in Law decreases the Contractor's costs of carrying out the Contractor's Activities in compliance with the Change in Law, a reasonable amount as the amount of the decrease; or
 - B. where the Change in Law increases the Contractor's costs of carrying out the Contractor's Activities in compliance with the Change in Law, the amount of the additional costs reasonably and necessarily incurred by the Contractor on the basis that the Contractor took all reasonable steps to mitigate those increased costs,

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

- (iii) the Contractor must comply with the Change in Law.
- (e) If a Change in Authority Approval occurs which necessitates a Variation, the Contractor must:
 - (i) if the relevant Authority Approval was obtained by the Principal, within 14 days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or
 - (ii) otherwise within 14 days of the Change in Authority Approval taking effect,

notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Authority Approval necessitates a Variation. If the Contractor gives such a notice and the Change in Authority Approval does necessitate a Variation the Principal's Representative will direct a Variation under clause 6.2(a) after which relevant adjustments will be made under clause 6.4.

- (f) Other than as set out in clause 2.3(e), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
 - (i) any Change in Authority Approval;
 - (ii) an Authority Approval obtained or issued or which otherwise takes effect after the date of this Contract;
 - (iii) a change in an Authority Approval after the date of this Contract;or
 - (iv) any:
 - A. assumptions the Contractor makes; or
 - B. failure by the Contractor to adequately satisfy itself,

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

- (g) Without limiting the Contractor's obligations under any other clause of this Contract, insofar as the Contractor, in carrying out the Contractor's Activities, 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;
 - (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the Work Health and Safety Act 2011 (NSW) applies;
 - (iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the Work Health and Safety Act 2011 (NSW) applies; or
 - a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the Work Health and Safety Act 2011 (NSW) applies,

the Contractor shall comply with the applicable obligations under the WHS Legislation.

2.4 Legal Challenge to Approval

- (a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for an Authority Approval or a modification of an Authority Approval, performance of the Contractor's Activities or the Works, or compliance with any Authority Approval under:
 - (i) the Environmental Planning and Assessment Act 1979 (NSW);
 - (ii) the Protection of the Environment Operations Act 1997 (NSW);
 - (iii) the Environment Protection and Biodiversity Conservation Act 1999 (Cth); or
 - (iv) any other Law,

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

- (v) ordered or directed by an Authority;
- (vi) ordered by a court or tribunal; or
- (vii) directed by the Principal or the Principal's Representative.
- (b) Subject to clause 2.4(c), the Principal must pay the Contractor the additional costs reasonably and necessarily incurred by the Contractor as a direct result of:
 - (i) an Authority order referred to in clause 2.4(a)(v);
 - (ii) a court order referred to in clause 2.4(a)(vi); or
 - (iii) a direction by the Principal referred to in clause 2.4(a)(vii),

to the extent that such Authority order, court order, or direction prevents the Contractor from achieving Completion of the Works or a Portion by the relevant Date for Completion.

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

2.5 Services

The Contractor must:

- (a) obtain and pay for any Service it needs to perform its obligations under this Contract;
- (b) relocate, remove, modify, support, protect, reinstate and provide all Services necessary for the Contractor to comply with its obligations under this Contract;

- (c) subject to clause 3.5, assume the risk of the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities:
- (d) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under this Contract, including any such devices reasonably required by the Principal's Representative;
- (e) despite any other provision in the Contract to the contrary, ensure that no Services are:
 - (i) damaged or destroyed; or
 - (ii) disconnected, disrupted, interfered with or interrupted during normal operating hours,

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

- (f) cooperate and coordinate with the owners of all Services, and implement their requirements as part of the Contractor's Activities; and
- (g) indemnify the Principal against any claim, damages, expense, costs, loss, liability, fine or penalty the Principal suffers or incurs arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to any Service arising out of or in any way in connection with the Contractor's Activities, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.

Subject to clause 3.5, the Contractor agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities.

2.6 Crown Building Work

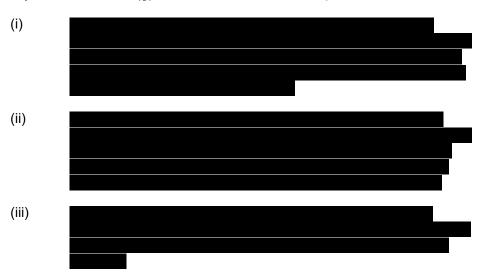
- (a) The Contractor must, in relation to any part of the Works that is a Crown Building Work, certify (on behalf of the Principal) as required by section 6.28 of the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) Any certification under clause 2.6(a) will not lessen or otherwise affect:
 - (i) the Contractor's other liabilities or responsibilities under this Contract or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this Contract or otherwise according to Law.

2.7 Unconditional Undertakings and Parent Company Guarantee

- (a) Without limiting clause 2.7(d), the unconditional undertakings to be provided under this clause 2.7 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Contract.
- (b) The Contractor must give the Principal within 10 days of the date of this Contract, three unconditional undertakings:



- (ii) each in the form of Schedule 8;
- (iii) each in favour of the Principal;
- (iv) each issued by an Institution approved by the Principal that maintains the Required Rating; and
- (v) where required by Law, duly stamped.
- (c) Subject to its rights to have recourse to the unconditional undertakings and subject to clauses 2.7(g), 15.10 and 15.12, the Principal must:



- (d) The Principal:
 - (i) may have recourse to any unconditional undertaking provided under this clause 2.7 or clause 11.7(b) at any time;
 - (ii) is not obliged to pay the Contractor interest on:
 - A. any unconditional undertaking; or
 - B. the proceeds of any unconditional undertaking if it is converted into cash; and

- (iii) does not hold the proceeds referred to in clause 2.7(d)(ii)B on trust for the Contractor.
- (e) The Contractor must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of any unconditional undertaking provided under this clause 2.7 or clause 11.7(b) from paying the Principal pursuant to the unconditional undertaking;
 - (ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 2.7 or clause 11.7(b) or receiving payment under any such unconditional undertaking; or
 - (iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.7 or clause 11.7(b).
- (f) If Schedule 1 states that a Parent Company Guarantee is required, the Contractor must within 10 days of the date of this Contract give the Principal a guarantee duly executed by the person referred to in Schedule 1 in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped.
- (g) Despite any other provision of this Contract to the contrary, where this Contract may otherwise require the Principal to release an unconditional undertaking or this Contract is terminated by the Principal either pursuant to clause 15 or by reason of the Contractor repudiating this Contract (or otherwise at Law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this Contract to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this Contract or the Contractor's Activities whether for damages (including liquidated damages) or otherwise.

2.8 Long Service Leave Levy

Where the Contractor is specified in Schedule 1 as being responsible for payment of the long service leave levy, then, before commencing any construction work under this Contract (including any construction of Temporary Works), the Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service leave levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 2.8(a).

2.9 Co-operation with Interface Contractors

(a) The Contractor:

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- (i) acknowledges that:
 - A. the Contractor's Activities may interface with the Interface Work:
 - B. Interface Contractors will be executing work on parts of the Site or Extra Land, or adjacent to the Site or Extra Land, at the same time as the Contractor is performing the Contractor's Activities;
 - C. the timing of the Interface Contractors' activities will be as discovered by the Contractor;
 - D. it may require certain design and work methodology input from Interface Contractors to coordinate the design of the Works and Temporary Works with the Interface Work;
 - E. Interface Contractors may require the Contractor to provide design and work methodology information to them to coordinate the design of the Interface Work with the Works and Temporary Works, and this must be provided in a timely manner by the Contractor; and
 - F. any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or co-operating and co-ordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, losses and damages; and
- (ii) must at all times:
 - A. permit Interface Contractors to execute the Interface Work on the applicable parts of the Site or Extra Land, or on any adjacent property to the Site or Extra Land:
 - 1) at the same time as the Contractor is performing the Contractor's Activities; and
 - 2) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

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

B. protect the Works, Temporary Works and other improvements on the Site or Extra Land from accidental damage by Interface Contractors and provide means of

- receiving, storing and protecting goods and equipment supplied by Interface Contractors;
- C. co-operate with Interface Contractors, and do everything reasonably necessary to facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative;
- D. carefully coordinate and interface the Contractor's Activities with the Interface Work and for this purpose:
 - make proper allowance in all programs for the Interface Work;
 - 2) review all programs provided by Interface Contractors and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Interface Work with the Contractor's Activities;
 - 3) monitor the progress of the Interface Work;
 - notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Completion of the Works or any Portion;
 - 5) provide the Interface Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate their Interface Work with the Contractor's Activities; and
 - 6) cooperate, meet with, liaise, and share information so that the Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- E. perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- F. be responsible for coordinating the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative copies of working method statements for those parts of the Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to

commencing the work described in the work method statement;

- G. provide for the purposes of clause 2.9(a)(ii)F (unless otherwise directed by the Principal's Representative), the number and form of copies of the work method statements specified in Schedule 1;
- H. work directly with Interface Contractors where required to complete the design of the Works and Temporary Works and provide all necessary information to Interface Contractors in respect of the Works and Temporary Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with this Contract, including the Works Brief and the Preliminary Design;
- I. work in accordance with:
 - 1) the Contract Management Plan that has been submitted for review under clause 9.8, and, in respect of which:
 - a) the Contractor has received the notice referred to in clause 9.8(c)(ii)C; or
 - b) the relevant period of time in clause 9.8(c)(ii) has expired and the Principal's Representative has not rejected the Contract Management Plan or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.8(d)); and
 - 2) the Works Brief;
- J. attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others each 14 days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- when information is required from an Interface
 Contractor, provide reasonable written notice which must be at least 10 days (except in special

circumstances) or any longer period of notice required under the Works Brief to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;

- L. ensure that any written notice given under clause 2.9(a)(ii)K provides the Interface Contractor with the longest possible time for the provision of the information;
- M. when any information is requested by Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Works or the Contractor's Activities:
 - provide the information to the Interface Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor provided that this time period is reasonable;
 - ensure that such information is provided to Interface Contractors by the requested dates; and
 - 3) ensure and warrant that the information provided is accurate; and
- N. use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
 - 1) the provision of information;
 - 2) the obtaining of information;
 - 3) the adequacy of information provided to, or received from, Interface Contractors;
 - 4) the compatibility of the Works and Temporary Works with the Interface Work;
 - 5) coordination in accordance with this clause 2.9(a); and
 - 6) technical issues with the information provided to, or received from, Interface Contractors;
- (iii) must, in the event that despite using its best endeavours, and working closely and iteratively with the Interface Contractors, the

Contractor and any Interface Contractor fail to resolve a problem between them:

- A. give written notice to the Principal's Representative with a copy to the Interface Contractor describing the problem; and
- B. attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem;
- (iv) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Contract or otherwise have an adverse effect upon the Contractor's Activities; and
- (v) acknowledges that conditions similar to those in this clause 2.9(a) applying to the Contractor will apply to all Interface Contractors engaged by the Principal, whether working on the Site or on any other site.
- (b) Where the Contractor has complied with all its obligations in clause 2.9(a), the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor.
- (c) Upon receipt of the Contractor's notice under clause 2.9(b), the Principal's Representative must:
 - (i) within 5 Business Days convene a meeting between the Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by Principal's Representative); and
 - (ii) work in good faith with the Contractor and the Interface Contractor to resolve the issues or dispute.
- (d) The Contractor:
 - (i) acknowledges and agrees:
 - A. no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative); or
 - B. that except where the Principal's Representative directs a Variation in circumstances where the Contractor has fully complied with clause 2.9(a), the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:

- the Interface Contractors carrying out their work: or
- any act or omission of an Interface Contractor;
 and
- (ii) warrants that the Original Contract Price and the Contractor's Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under clause 2.9(a) and this clause 2.9(d), including the cost of all the design iterations required to accommodate Interface Work.

2.10 Incident Management Reporting

- (a) The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the Works Brief.
- (b) Should an Incident occur which:
 - (i) is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the Works Brief; and
 - (ii) relates to rail safety, the Contractor must notify the Principal and any relevant Rail Transport Agency management centre or the nearest network control officer.
- (c) In relation to any environmental or safety Incident involving Hazardous Material, Contamination, Pollution or other waste that arises during the performance of the Contractor's Activities, the Contractor must:
 - (i) at its own cost promptly take all appropriate action to manage and dispose of all Hazardous Material, Contamination, Pollution or other waste arising from the Incident;
 - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
 - (iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Contract, immediately terminate the Contract by written notice to the Contractor.
- (e) Without prejudice to the Principal's other rights under this Contract, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact

or the risk of such an Incident arising in the future, the Principal may (but has no obligation) to take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to the Principal.

- (f) Without prejudice to the Principal's other rights under this Contract, the Principal's Representative may issue a direction under clause 10.14 requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor's Activities in the event:
 - (i) of any Incident involving:
 - A. a significant spill of Contamination;
 - any accident or release of Contamination which it believes may pose a danger to health, life or property; or
 - C. any actual damage or harm to the Environment or a significant risk of harm to the Environment; or
 - (ii) any safety incident occurs which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to SafeWork NSW) or damage to property.

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

- (iii) any suspension due to a direction to suspend issued, or for the failure to issue a notice to suspend, in the circumstances set out in this clause 2.10(f); and
- (iv) complying with a direction issued under clause 2.10(g), including complying with the steps which Principal's Representative directs that the Contractor must take before the Principal's Representative will issue a direction to recommence the Contractor's Activities.
- (g) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.10(f), the Contractor may not recommence the Contractor's Activities in respect of the part of the Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (h) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.10(f) the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to clause 10.14 permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend. In these circumstances the Contractor

must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has complied with the requirements of the direction issued under this clause 2.10(g) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.

(i) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 2.10(f), as a debt due and payable from the Contractor to the Principal.

2.11 Principal Contractor

- In this clause 2.11 the terms 'construction project', 'construction work',
 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.
- (b) For the purpose of the WHS Legislation and the Contract, the Works and any Other Contractor Work is taken to be part of the same construction project.
- (c) If the Contractor is specified in Schedule 1 as being the principal contractor:
 - the Principal engages the Contractor as the principal contractor in respect of the Contractor's Activities and all Other Contractor Work carried out on the Site unless otherwise notified in accordance with clause 2.11(g);
 - (ii) the Principal authorises the Contractor to have management and control over the Site and of each workplace at which the Contractor's Activities and the Other Contractor Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (iii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (d) To the extent not prohibited by Law, the 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 Contractor's failure to discharge the duties imposed on a principal contractor by the WHS Legislation that the Contractor is required to discharge in accordance with this clause 2.11.
- (e) Where the Contractor is not specified in Schedule 1 to be the principal contractor, the Contractor:
 - (i) acknowledges that the person who is specified in Schedule 1 is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that Site during the period which that person is specified as being the principal contractor in Schedule 1; and

- (ii) must comply with any exercise by the person referred to in subparagraph (i) of such authority as is necessary to enable that person to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.
- (f) Without limiting anything else in this clause 2.11, the Contractor must, in respect of any construction work carried out on all or part of the Extra Land, discharge the duties of a principal contractor under the WHS Legislation in respect of such construction work.
- (g) If the Contractor is specified in Schedule 1 as being the principal contractor, the Principal may issue a written direction to the Contractor stating that another person has been appointed as the principal contractor and the Contractor must do everything reasonably necessary to assist that person with the transition to their role as principal contractor and comply with paragraph (e) above as if that person was specified in Schedule 1 as principal contractor.

2.12 Third Party Agreements

- (a) The Contractor:
 - (i) acknowledges that the Principal has entered or will enter into the Third Party Agreements;
 - (ii) must:
 - A. unless otherwise expressly specified in Schedule 4, comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that the Principal is required, under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and
 - B. comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in Schedule 4 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2.12(a)(ii)A;
 - (iii) must assist the Principal in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in Schedule 4;
 - (iv) must comply with any reasonable directions of the Principal's Representative (who will have regard to any reasonable submissions made by the Contractor to the Principal's Representative) in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
 - (v) must, where a Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, provide such document, notice or information to the Principal (and

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

- (vi) must, in carrying out the Contractor's Activities:
 - A. ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement; and
 - B. otherwise act consistently with the terms of the Third Party Agreement;
- (vii) agrees that whenever, pursuant to the terms of a Third Party Agreement, the Principal makes an acknowledgment or gives a release or warranty, indemnity, or covenant to the Third Party under any clause of the Third Party Agreement then, subject to what is provided in Schedule 4 and the other terms of this Contract, the Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to the Principal on the same terms and conditions as the acknowledgement, release or warranty, indemnity or covenant made or given by the Principal under a Third Party Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this Contract; and
- (viii) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Contractor agrees that the Principal similarly makes no representation to the Contractor in respect of that state of affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this Contract.
- (b) The parties acknowledge that:
 - (i) as at the date of this Contract:
 - A. the terms and conditions of the Third Party Agreements identified in Schedule 1 as "Draft" have not been finalised between the Principal and the relevant Third Party (each a "Draft Third Party Agreement"); and
 - B. certain Third Party Agreements may need to be replaced with new agreements on different terms (each a "Replacement Third Party Agreement");
 - (ii) the Contractor has reviewed the Third Party Agreements executed at the date of this Contract and the Draft Third Party Agreements and has included in the Original Contract Price all of its costs (including the cost of all physical works and allowance for any

delay or disruption) in complying with its obligations under clause 2.12(a) and the Principal's obligations under the Third Party Agreements executed at the date of this Contract and the Draft Third Party Agreements other than those identified in Schedule 4 for the Principal to perform;

(iii) following:

- A. finalisation of any Draft Third Party Agreement; or
- B. the execution of any Replacement Third Party Agreement,

after the date of this Contract, the Principal must promptly give the Contractor a copy of the:

- C. executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable), together with (in the case of a Replacement Third Party Agreement) details of the Third Party Agreement that is replaced; and
- D. amendments (if any) to Schedule 4 arising out of the execution of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable) ("Revised Allocation");
- (iv) within 28 days of receipt of an executed copy of a Draft Third Party Agreement or a Replacement Third Party Agreement (as applicable), and the associated Revised Allocation, the Contractor must notify the Principal's Representative in writing if any terms and conditions of:
 - A. the executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); or
 - B. the associated Revised Allocation,

are substantially more onerous than those contained in:

- C. the relevant Draft Third Party Agreement; and
- D. Schedule 4,

("Difference in Conditions") and:

- E. where the Difference in Conditions or Revised Allocation will result in additional administration, details of such additional administration costs to be incurred by the Contractor:
- F. where the Difference in Conditions or Revised Allocation will result in additional physical works:

- not forming part of the Contractor's Activities;
 and
- which is otherwise in addition to any physical works contemplated by the Third Party Agreements executed at the date of this Contract and the Draft Third Party Agreements,

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

- G. where the Difference in Conditions or Revised Allocation alters the Contractor's risk profile under this Contract and creates a contingent liability which the Contractor did not previously bear and which may convert to an actual liability on the happening of another event ("Trigger Event"), details of the altered risk profile, contingent liability and Trigger Event and a notice of intention to claim;
- (v) if the Principal does not receive a notice from the Contractor under clause 2.12(b)(iv) within the 28 day period:
 - A. Schedule 4 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:
 - 1) executed copy of the Draft Third Party
 Agreement or the Replacement Third Party
 Agreement (as applicable); and
 - 2) Revised Allocation,

under clause 2.12(b)(iii); and

- B. the Contractor must carry out its obligations under this Contract on the basis of:
 - 1) the executed version of the Draft Third Party
 Agreement or Replacement Third Party
 Agreement (rather than the Third Party
 Agreement that is replaced) (as applicable);
 and
 - 2) the Revised Allocation,

without any adjustment to the Contract Sum or any entitlement to make any other Claim;

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

- A. Schedule 4 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:
 - executed copy of the Draft Third Party
 Agreement or the Replacement Third Party
 Agreement (as applicable); and
 - 2) Revised Allocation,

under clause 2.12(b)(iii);

- B. the Contractor must carry out its obligations under this Contract on the basis of:
 - 1) the executed version of the Draft Third Party
 Agreement or Replacement Third Party
 Agreement (rather than the Third Party
 Agreement that is replaced) (as applicable);
 and
 - 2) the Revised Allocation;
- C. the Principal's Representative must:
 - where the Contractor has provided the details referred to in clause 2.12(b)(iv)E, give the Contractor a notice setting out the Principal's Representative's determination of the additional administration costs reasonably and necessarily incurred or to be incurred by the Contractor in complying with the executed version of the Draft Third Party Agreement, the Replacement Third Party Agreement or Revised Allocation and the Contract Sum will be increased by that amount; and
 - 2) where the Contractor has provided the details referred to in clause 2.12(b)(iv)F, if the terms of any executed version of a Draft Third Party Agreement, the relevant Replacement Third Party Agreement or Revised Allocation require the Contractor to carry out any physical work which:
 - a) does not form part of the Contractor's Activities; and
 - b) is additional to any physical works contemplated by the Third Party Agreements executed at the date of this Contract and the Draft Third Party Agreements,

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

- D. where the Contractor has provided the details referred to in clause 2.12(b)(iv)G, the Principal's Representative's obligation to make a determination in relation to the altered risk profile or contingent liability referred to in clause 2.12(b)(iv)G is deferred until the Trigger Event occurs;
- (vii) if:
 - A. the Contractor issues a notice under clause 2.12(b)(iv) and provides the details referred to in clause 2.12(b)(iv)G; and
 - B. a Trigger Event occurs during the implementation of:
 - the executed Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - 2) the Revised Allocation,

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

- (viii) if the Principal's Representative receives a notice under clause 2.12(b)(vii), the Principal's Representative must give the Contractor a notice setting out the Principal's Representative's determination of the reasonable, additional costs incurred by the Contractor in satisfying the actual liability which has arisen and the Contract Sum will be increased by that amount; and
- (ix) notwithstanding the provisions of clause 2.12(b), the amount of any additional costs incurred by the Contractor as a result of the circumstances referred to in clause 2.12(b) will not be added to the Contract Sum unless the Contractor has taken all proper and reasonable measures to:
 - A. avoid the Trigger Event; and
 - B. avoid or minimise the extra costs resulting from such circumstances.
- (c) The Contractor:
 - (i) must indemnify the Principal from and against:
 - A. any claim by a Third Party against the Principal; or
 - B. any liability of the Principal, to a Third Party,

arising out of or in any way in connection with a Third Party Agreement (including a Draft Third Party Agreement or a Replacement Third Party Agreement executed after the date of this Contract) to the extent that the claim or liability arises out of or in any way in connection with the Contractor's Activities, provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, the Third Party, an Other Contractor or an agent of the Principal contributed to the claim or liability; and

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

2.13 Contemporaneous Work

The Contractor must:

- inspect all Contemporaneous Work within the periods set out in Schedule 1 after the Principal's Representative gives written notice to the Contractor to do so;
- (b) if it discovers any defects, omissions or other matters in or connected with any Contemporaneous Work that in its opinion will render or are likely to render the Contemporaneous Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Works or carrying out of the Contractor's Activities, within 10 Business Days of the Inspection notify the Principal's Representative in writing providing:
 - full particulars of the defects, omissions or other matters identified;
 and
 - (ii) the reasons for the opinion formed by it in respect to the defects, omissions or matters identified;
- (c) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Contemporaneous Work that is the subject of the notice referred to in clause 2.13(b), until the Principal's Representative issues a Variation Order under clause 2.13(e) or issues a direction under clause 2.13(f); and
- (d) commence or continue with all other parts of the Contractor's Activities and mitigate any additional costs and delays resulting from the matters notified.

On receipt of the Contractor's notice under clause 2.13(b), the Principal's Representative will investigate the Contemporaneous Work that is the subject of the Contractor's notice, and within 10 Business Days of the receipt of the notice:

- (e) if the Principal's Representative agrees that the defect, omission or other matter in relation to the Contemporaneous Work necessitates a Variation in order for the proper execution of the Works and carrying out of the Contractor's Activities, issue a Variation Order to the Contractor pursuant to clause 6.2 directing it to carry out a Variation; or
- (f) if the Principal's Representative disagrees with the Contractor, issue a direction to the Contractor to commence or continue with the Contractor's Activities, whereupon the Contractor must nevertheless take such steps as may be necessary to ensure that the part of the Works or Contractor's Activities dependent upon or appreciably affected by the Contemporaneous Work complies with the requirements of this Contract.

If the Contractor fails to:

- (g) inspect any Contemporaneous Work as required by this clause 2.13; or
- (h) notify the Principal's Representative of any defects, omissions or other matters that should have been detected at the time of such Inspection by a competent and experienced contractor and that may render the Contemporaneous Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Works or for carrying out the Contractor's Activities.

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

- (i) any work that is required to be executed in order to render the Contemporaneous Work suitable, satisfactory and non-detrimental for the proper execution of the Works or the carrying out of the Contractor's Activities must be performed by the Contractor at its own cost and expense; and
- (j) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any work carried out or to be carried out by the Contractor under clause 2.13(i).

3. The Site and location of the Works

3.1 Access

- (a) The Contractor acknowledges and agrees that access to the Site will be provided progressively to the Contractor as set out in Schedule 1.
- (b) Subject to clause 3.1(c) and any other provision of this Contract affecting access, the Principal must:
 - (i) give, or ensure the Contractor has, access to the Site by the dates set out in Schedule 1 (and if a period is specified in relation to

- access to a part of the Site, then by the last day of that period); and
- (ii) once access to a part of the Site is provided to the Contractor, thereafter continue to allow, or ensure that the Contractor is continued to be allowed, access to that part of the Site.
- (c) The Contractor acknowledges and agrees that:
 - (i) access to the Site or any part thereof will only confer on the Contractor a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this Contract and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor;
 - (ii) the Principal is not obliged to give the Contractor access to any part of the Site until the Contractor has:
 - A. complied with clause 2.7(b) of this Contract;
 - B. submitted the Project Work Health and Safety Management Plan, the Construction Environmental Management Plan and the Construction and Site Management Plan, as required by the Works Brief, to the Principal's Representative under clause 9.8 and the Principal's Representative has not rejected the proposed Construction Environmental Management Plan, Construction and Site Management Plan or Project Work Health and Safety Management Plan within 15 Business Days after such submission in accordance with clause 9.8(c);
 - C. effected the insurance policies required under clauses 14.4, 14.5 and 14.6;
 - D. complied with clauses 14.4, 14.5 and 14.6 with respect to each insurance policy; and
 - E. complied with the matters set out in Schedule 1;
 - (iii) the Principal is not obliged to provide, and the Contractor may not be given, exclusive access to the Site;
 - (iv) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain access to the Site or carry out the Contractor's Activities;
 - (v) the Principal and others will engage Other Contractors to work upon or in the vicinity of the Site and Extra Land at the same time as the Contractor; and

- (vi) without limiting or otherwise restricting any other provision under this Contract, the Contractor is responsible for all costs arising from or in connection with accessing any railway services or stations, including the costs of procuring Opal Cards for its personnel and Subcontractors, and any Opal Card charges.
- (d) The Principal's obligations under clause 3.1(a) and 3.1(b) in respect of each part of the Site will cease upon the issue of a Notice of Completion in respect of the last Portion occupying that part of the Site, except to the extent required to allow the Contractor to comply with its obligations during the Defects Rectification Periods.
- (e) Failure by the Principal to give access as required by clause 3.1(b) will not be a breach of this Contract but will entitle the Contractor to:
 - (i) an extension of time to any relevant Date for Completion under clause 10.10 if the requirements of that clause are satisfied; and
 - (ii) have the Contract Sum increased by the costs reasonably and necessarily incurred by the Contractor as a direct result of the failure of the Principal to give access as required by clause 3.1(b) as determined by the Principal's Representative up to but not exceeding the maximum daily amount set out in Schedule 1.
- (f) The Contractor's entitlement under clause 3.1(e)(ii) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to give access as required by clauses 3.1(a), 3.1(b)(i) or 3.1(b)(ii).

3.2 Temporary Works

The Contractor must carry out all Temporary Works required to execute the Contractor's Activities so that the Temporary Works will be fit for their intended purpose.

3.3 Management and Control of the Site

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

- (a) without limiting any right of the Principal or the Principal's Representative under this Contract, and subject to clause 2.11, 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) must ensure public safety on and adjacent to the Site or that part;
- (d) must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths access ways, cycleways and Rail Tracks affected by the Contractor's Activities in accordance with this Contract;

- (e) must, subject to clauses 3.1 and 3.10 and the Works Brief, and any relevant Law, limit access to the Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Site as part of the Contractor's Activities;
- (f) must not impede access or Services to private property without the consent of the Principal's Representative and the relevant owner or occupier; and
- (g) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from damage (including from theft and vandalism) until (where relevant) they are due for demolition by the Contractor if that forms part of the Contractor's Activities.

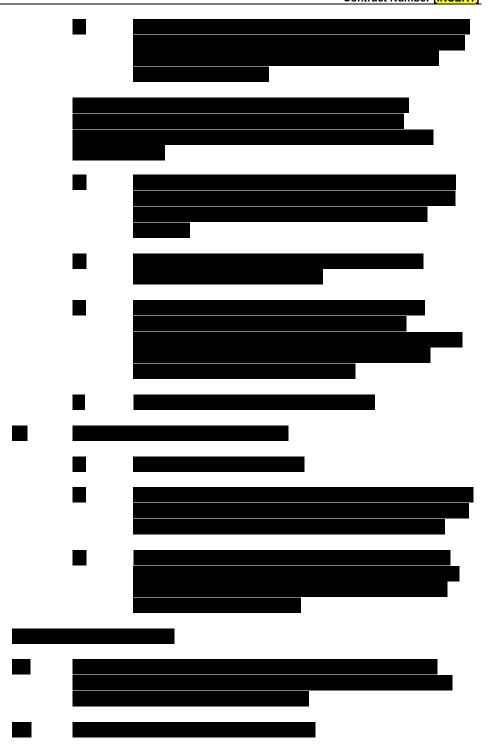
3.4 Land in Addition to the Site

The Contractor must:

- (a) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site, including any land owned by a Rail Transport Agency, which is necessary or which it may require for the purposes of carrying out the Contractor's Activities;
- (b) at its own cost carry out all activities and procure all Services necessary to make the Extra Land suitable for use by the Contractor;
- (c) as a condition precedent to Completion of the Works or any Portion:
 - (i) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - (ii) unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate in the form of Schedule 13 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Extra Land; and
- (d) indemnify the Principal against any damage, expense, loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with a claim by the owner or occupier of, or any other person having any interest in any Extra Land, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the damage, expense, loss, cost or liability.

3.5 Latent Conditions





- (b) If during the execution of the Contractor's Activities, the Contractor becomes aware of a Latent Condition the Contractor must:
 - (i) promptly; and
 - (ii) where possible before the physical conditions are disturbed, give written notice thereof to the Principal's Representative.

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

- (iii) the conditions encountered and in what respects the Contractor considers they constitute a Latent Condition;
- (iv) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
- (v) the time the 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;
- (vi) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (vii) other details reasonably required by the Principal's Representative.
- (c) If a Latent Condition:
 - (i) has a direct effect on the Contractor carrying out the Contractor's Activities; and
 - (ii) directly results in an increase in the Contractor's costs of carrying out the Contractor's Activities.

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

(d) In making a valuation pursuant to clause 3.5(c) or determining an extension of time under clause 10, regard will not be had to any Contractor's Activities, additional costs or delays suffered or incurred more than 14 days before the date on which the Contractor gives the written notice required by clause 3.5(b).

3.6 Information Documents and Materials

- (a) Whether or not any Information Documents and Materials or any part thereof form an Exhibit to this Contract, the Contractor acknowledges that:
 - (i) the Information Documents and Materials or part thereof do not form part of this Contract and that clause 3.6(c) applies to the Information Documents and Materials or part thereof; and
 - (ii) where Information Documents and Materials or any part thereof form an Exhibit to this Contract, they do so only for the purposes of identification of that document or part thereof.
- (b) Without limiting clause 3.6(c):

- (i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents and Materials, and the Information Documents and Materials do not form part of this Contract;
- (ii) subject to clause 3.6(e), the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - A. the provision of, or the purported reliance upon, or use of the Information Documents and Materials to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed; or
 - B. a failure by the Principal to provide any other information, data or documents to the Contractor.
- (c) The Contractor:
 - (i) warrants that it did not in any way rely upon:
 - A. any information, data, representation, statement or document made, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
 - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document.

for the purposes of entering into this Contract except to the extent that any such information, statement or document forms part of this Contract:

- (ii) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that the Principal has entered into this Contract relying upon the warranties, acknowledgements and agreements in clauses 3.6(c)(i) and 3.6(c)(ii).
- (d) Subject to clause 3.6(e), the 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 3.6(d)(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 3.6(b) and 3.6(c)(i), to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed or a failure by the Principal to provide any information, data or documents to the Contractor (other than any information, data or documents which the Principal is required to provide to the Contractor by the terms of this Contract);
- (iv) any breach by the Contractor of this clause 3.6; 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 State or Territory legislation.
- (e) The acknowledgements, warranties, releases and indemnities referred to in clauses 3.6(a) to 3.6(d) do not affect the Contractor's rights under clauses 3.5(c), 3.7 and 3.9.

3.7 Hazardous Material

- (a) The parties acknowledge and agree that:
 - (i) the Contractor has been provided with the Hazardous Material Report;
 - (ii) the Hazardous Material Report identifies Hazardous Material in structures which are located on, in or under the Site;
 - (iii) there may be Hazardous Material (other than that identified in the Hazardous Material Report) in structures which are located on, in or under the Site; and
 - (iv) the Contractor's Activities include taking the appropriate steps referred to in this clause 3.7:
 - A. in respect of any Hazardous Material identified in the Hazardous Material Report; and
 - B. in respect of any Hazardous Material the Contractor discovers on the Site,

regardless of whether the Contractor provides the report and notice referred to in clause 3.7(d) and 3.7(e) (respectively) and whether or not the Hazardous Material was referred to in (or was reasonably able to be inferred from) the Hazardous Material Report.

- (b) Without limiting clause 3.7(a), the Principal does not make any representation or warranty (express or implied) as to the nature or extent of any Hazardous Material that may be present in structures on, in or under the Site.
- (c) The Contractor must provide for the management of any Hazardous Material in any structures in the Construction Environmental Management Plan and Project Work Health and Safety Management Plan and take all measures required to protect workers and others from Hazardous Material in accordance with Law, the WHS Guidelines and the Works Brief.
- (d) Without limiting clause 2.3(a)(i) and 3.7(a), the Contractor must carry out a Hazardous Material audit prior to commencing any demolition work or construction work on structures which could potentially contain Hazardous Material and provide a copy of the audit report to the Principal's Representative.
- (e) Without limiting any obligation of the Contractor to comply with the Authority Approvals, the Contractor must submit a notice for the review of the Principal's Representative under clause 9.8 containing details of the works necessary to remove and dispose of any Hazardous Material identified in accordance with clause 3.7(d).
- (f) After the Principal's Representative has had the period referred to in clause 9.8(c)(ii) (or such shorter period as the Principal's Representative may advise to the Contractor in writing) and has not rejected the Contractor's notice under clause 3.7(e) the Contractor must comply with the notice and remove and dispose of any Hazardous Material in structures on, in or under the Site in accordance with relevant Laws, Authority Approvals and any direction of a relevant Authority where applicable.
- (g) The Contractor acknowledges and agrees that:
 - (i) subject to clause 3.7(h), the Contractor will not be entitled to any increase in the Contract Sum or to make any Claim for payment:
 - A. for the costs of complying with this clause 3.7, other than for the amount referred to in clause 3.7(h);
 - B. in respect of carrying out the Hazardous Material audit required by clause 3.7(d);
 - C. for any costs incurred arising out of or in connection with any delay or disruption to the Contractor's Activities resulting from the presence of any Hazardous Material regardless of whether the Hazardous Material was referred to in (or reasonably able to be inferred from) the Hazardous Material Report or otherwise; or
 - D. in respect of any investigation of structures on the Extra Land and any removal and disposal of Hazardous Material from such structures; and

- (ii) the Contractor will not be entitled to an extension of time in respect of any delay arising out of or in connection with the discovery of Hazardous Material or the discharge of the obligations under this clause 3.7 regardless of whether the Hazardous Material was referred to in (or reasonably able to be inferred from) the Hazardous Material Report or otherwise.
- (h) Where:
 - (i) there is Additional Hazardous Material; and
 - (ii) the Contractor has complied with its obligations under clause 3.7(f) in respect of all Hazardous Material encountered in performing the Contractor's Activities,

the Contract Sum will be increased by:

- (iii) an amount, as determined by the Principal's Representative, on the basis of rates set out in Schedule 10 for the removal and disposal of the Additional Hazardous Material in accordance with clause 3.7(f); or
- (iv) to the extent that paragraph (iii) does not apply, the additional costs reasonably and necessarily incurred by the Contractor as a result of such removal and disposal of the Additional Hazardous Material, as determined by the Principal's Representative,

in each case excluding the costs of delay or disruption or any other items set out in clause 3.7(g)(i) and without any margin for overhead or profit.

3.8 Things of Value Found

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 Contractor and the Principal be and remain, the property of the Principal.

The Contractor must:

- (a) immediately notify the Principal's Representative if it discovers a Valuable Find;
- (b) ensure the Valuable Find is protected and not lost, removed, disturbed or damaged; and
- (c) comply with any directions of the Principal's Representative in relation to the Valuable Find.

Despite the acknowledgements, warranties, releases and indemnities referred to in clauses 3.6(a) to 3.6(d):

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

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

but only to the extent that the Valuable Find could not have been reasonably anticipated by a competent and experienced contractor having done those things referred to in clause 3.5(a)(i)A, B and C, as determined by the Principal's Representative.

3.9 Contamination - Alternative 1

This alternative applies if so stated in Schedule 1.

- (a) The parties acknowledge and agree that:
 - (i) the Contractor has been provided with the Contamination Report;
 - (ii) the Contamination Report identifies Contamination on, in, under or migrating from the Site, including in areas under Tracks, surface soils generally and locations which have been filled;
 - (iii) there may be Contamination (other than that identified in the Contamination Report) on, in, under or migrating from the Site including in areas under Tracks, surface soils generally and locations which have been filled;
 - (iv) the Principal does not make any representation or warranty (express or implied) as to the nature or extent of any Contamination; and
 - (v) subject to clause 3.9(f), part of the Contractor's Activities include taking the appropriate steps referred to in this clause 3.9:
 - A. in respect of any Contamination identified in the Contamination Report;
 - B. in respect of any Contamination the Contractor discovers on the Site; and
 - C. regardless of whether the Contractor provides the notice and report referred to in clause 3.9(c) and whether or not the Contamination was referred to in (or was reasonably able to be inferred from) the Contamination Report.

The Contractor must provide for the management of any Contamination that may be present on, in, under or migrating from the Site in the Construction Environmental Management Plan and the Project Work Health and Safety Management Plan and take all measures required to protect workers and others in accordance with the Law, the WHS Guidelines and the Works Brief.

(b) Without limiting clauses 2.3(a)(i) and 3.9(a), the Contractor must:

- (i) undertake any other investigations it considers reasonable or necessary, undertake any investigation to delineate the nature and extent of any Contamination on, in, under or migrating from the Site prior to commencing any part of the Contractor's Activities on the Site in order to identify the steps necessary to deal with any Contamination as part of the Contractors Activities:
- (ii) carry out a Contamination audit prior to commencing any demolition work or construction work on structures which could potentially contain Contamination and provide a copy of the audit report to the Principal Representative.
- (c) Without limiting any obligation of the Contractor to comply with all Authority Approvals, the Contractor must in respect of all Contamination, whether described in or reasonably able to be inferred from the Contamination Report, Additional Contamination or otherwise:
 - (i) notify the Principal's Representative in writing within 5 Business Days of becoming aware of the existence of any Contamination on, in, under or migrating from the Site, and thereafter provide the Principal's Representative with such further written details as the Principal's Representative may request including a copy of any investigation report prepared pursuant to clause 3.9(b);
 - (ii) promptly after providing a notice under clause 3.9(c)(i), submit a notice for the review of the Principal's Representative under clause 9.8 containing:
 - A. details of the steps which the Contractor proposes to take to:
 - investigate, remediate, dispose of, manage, monitor, contain or otherwise deal with the Contamination so that the Site is remediated to a standard suitable for the proposed use of the Site ("Remediation Steps"). For the avoidance of doubt, the Contractor is permitted to incorporate Remediation Steps to address the Contamination which was present on, in under or migrating off the Site prior to the date of this Contract into the Works where such incorporation is specified in the Works Brief;
 - 2) unless the Principal's Representative directs otherwise, incorporate the Contamination into the Works in preference to its disposal off site where this is technically and economically feasible;
 - 3) dispose of Contamination off-site to a licensed waste disposal facility in accordance with clause 3.13 if:

- this more economically viable than remediating and or otherwise dealing with the Contamination in situ; or
- b) the Principal's Representative has directed the Contractor to do so; and
- 4) report to all relevant Authorities if required to do so.

in each case in accordance with any relevant Law, Authority Approvals and any written direction from a relevant Authority;

- B. the Contractor's estimate of any amount which will be payable in respect of any Additional Contamination under clause 3.9(f) to comply with the Remediation Steps and where the estimate is not a fixed lump sum the proposed administration and verification measures to evidence the cost of the Remediation Steps; and
- C. a plan documenting the Remediation Steps determined pursuant to the criteria in clause 3.9(c)(ii)A ("Remediation Action Plan");
- (iii) only after the Principal's Representative has had the period referred to in clause 9.8(c)(ii) (or such shorter period as the Principal's Representative may advise to the Contractor in writing) and has not rejected the Contractor's notice under clause 3.9(c)(ii), implement the Remediation Action Plan in accordance with relevant Laws, Authority Approvals and any direction of a relevant Authority where applicable; and
- (iv) in dealing with any Contamination:
 - A. take all measures necessary to protect workers and others in accordance with Law and the WHS Guidelines;
 - B. take all reasonable steps to ensure that the Contamination is quarantined from other in-situ or excavated materials so as to prevent crosscontamination; and
 - provide waste classification reports and documents demonstrating that cross-contamination has not occurred.
- (d) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause 3.9, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractors or an

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agent of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty.

- (e) The Contractor acknowledges and agrees that:
 - (i) subject to clause 3.9(f), the Contractor will not be entitled to any increase in the Contract Sum or to make any other Claim for payment:
 - A. for complying with this clause 3.9, other than for the amount referred to in clause 3.9(f);
 - B. in respect of carrying out investigations of the Site (including any structures) or Extra Land to determine the presence and extent of any Contamination present on, in, under or migrating from the Site or Extra Land;
 - C. in respect of any costs incurred in the management, handling and disposal of the following types of General Solid Waste (non-putrescible) as defined in clause 49 of Schedule 1 of the POEO Act:
 - 1) glass, plastic, rubber, plasterboard, ceramics, bricks, concrete or metal;
 - paper and cardboard;
 - 3) household waste from municipal clean ups that does not contain food waste;
 - grit, sediment, litter and gross pollutants from stormwater treatment devices that does not contain free liquids;
 - 5) building and demolition waste;
 - 6) green waste;
 - 7) virgin excavated natural material; and
 - 8) wood waste;
 - D. for any costs incurred arising out of or in connection with any delay or disruption to the Contractor's Activities resulting from the presence of any Contamination on, in, under or migrating from the Site or Extra Land including arising out of or in connection with complying with its obligations under this clause 3.9, regardless of whether the Contamination was referred to in (or reasonably able to be inferred from) the Contamination Report or otherwise; or
 - E. for managing the remediation works on the Site or Extra Land;

- (ii) subject to clause 3.9(e)(iii), the Contractor will not be entitled to an extension of time in respect of any delay arising out of or in connection with the discovery of Contamination or the discharge of its obligations under this clause 3.9, regardless of whether the Contamination was referred to in (or reasonably able to be inferred from) the Contamination Report or otherwise; and
- (iii) the Contractor may, if it is delayed as a consequences of Additional Contamination and the requirements of clauses 3.9(f)(ii) to 3.9(f)(iv) have been satisfied, claim an extension of time to the Date for Completion.
- (f) Where:
 - (i) there is Additional Contamination;
 - (ii) the Contractor has complied with its obligations under clause 3.9(c) in respect of all Contamination encountered in performing the Contractor's Activities;
 - (iii) it is not technically feasible or permitted by Law to incorporate that Additional Contamination into the Works as contemplated by clause 3.9(c)(ii)A; and
 - (iv) the Contractor has disposed of the Additional Contamination off-site to a licensed waste disposal facility in accordance with clause 3.13,

the Contract Sum will be increased by:

- (v) an amount, as determined by the Principal's Representative, on the basis of rates set out in Schedule 10 as a result of the disposal of the Additional Contamination; or
- (vi) to the extent that paragraph (v) does not apply, the additional costs reasonably and necessarily incurred by the Contractor as a result of the disposal of the Additional Contamination, as determined by the Principal Representative, together with the percentage referred to in Schedule 1 in respect of clause 6.4(b)(ii)A applied to those additional costs,

in each case excluding the costs of delay or disruption or any other items set out in clause 3.9(e)(i).

- (g) In this clause 3.9:
 - (i) "Additional Contamination" means any Contamination which the Contractor discovers on the Site which was not described in, or could not have been reasonably inferred from, the Contamination Report; and
 - (ii) "Contamination Report" has the meaning given to that term in Schedule 1.

3.9 Contamination - Alternative 2

This alternative applies if so stated in Schedule 1.

- (a) The parties acknowledge and agree that:
 - (i) not used;
 - (ii) not used;
 - (iii) there may be Contamination on, in, under or migrating from the Site including in areas under Tracks, surface soils generally and locations which have been filled;
 - (iv) the Principal does not make any representation or warranty (express or implied) as to the nature or extent of any Contamination; and
 - (v) subject to clause 3.9(f), part of the Contractor's Activities include taking the appropriate steps referred to in this clause 3.9:
 - A. not used;
 - B. in respect of any Contamination the Contractor discovers on the Site; and
 - C. regardless of whether the Contractor provides the notice and report referred to in clause 3.9(c).

The Contractor must provide for the management of any Contamination that may be present on, in, under or migrating from the Site in the Construction Environmental Management Plan and the Project Work Health and Safety Management Plan and take all measures required to protect workers and others in accordance with the Law, the WHS Guidelines and the Works Brief.

- (b) Without limiting clauses 2.3(a)(i) and 3.9(a), the Contractor must:
 - (i) undertake any other investigations it considers reasonable or necessary, undertake any investigation to delineate the nature and extent of any Contamination on, in, under or migrating from the Site prior to commencing any part of the Contractor's Activities on the Site in order to identify the steps necessary to deal with any Contamination as part of the Contractors Activities; and
 - (ii) carry out a Contamination audit prior to commencing any demolition work or construction work on structures which could potentially contain Contamination and provide a copy of the audit report to the Principal's Representative
- (c) Without limiting any obligation of the Contractor to comply with all Authority Approvals, the Contractor must in respect of all Contamination (whether Additional Contamination or otherwise):

- (i) notify the Principal's Representative in writing within 5 Business Days of becoming aware of the existence of any Contamination on, in, under or migrating from the Site, and thereafter provide the Principal's Representative with such further written details as the Principal's Representative may request including a copy of any investigation report prepared pursuant to clause 3.9(b);
- (ii) promptly after providing a notice under clause 3.9(c)(i), submit a notice for the review of the Principal's Representative under clause 9.8 containing:
 - A. details of the steps which the Contractor proposes to take to:
 - investigate, remediate, dispose of, manage, monitor, contain or otherwise deal with the Contamination so that the Site is remediated to a standard suitable for the proposed use of the Site ("Remediation Steps"). For the avoidance of doubt, the Contractor is permitted to incorporate Remediation Steps to address the Contamination which was present on, in under or migrating off the Site prior to the date of this Contract into the Works where such incorporation is specified in the Works Brief;
 - unless the Principal's Representative directs otherwise, incorporate the Contamination into the Works in preference to its disposal off site where this is technically and economically feasible;
 - 3) dispose of Contamination off-site to a licensed waste disposal facility in accordance with clause 3.13 if:
 - a) this more economically viable than remediating and or otherwise dealing with the Contamination in situ: or
 - b) the Principal's Representative has directed the Contractor to do so; and
 - 4) report to all relevant Authorities if required to do so,

in each case in accordance with any relevant Law, Authority Approvals and any written direction from a relevant Authority;

B. the Contractor's estimate of any amount which will be payable in respect of any Additional Contamination

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under clause 3.9(f) to comply with the Remediation Steps and where the estimate is not a fixed lump sum the proposed administration and verification measures to evidence the cost of the Remediation Steps; and

- C. a plan documenting the Remediation Steps determined pursuant to the criteria in clause 3.9(c)(ii)A ("Remediation Action Plan");
- (iii) only after the Principal's Representative has had the period referred to in clause 9.8(c)(ii) (or such shorter period as the Principal's Representative may advise to the Contractor in writing) and has not rejected the Contractor's notice under clause 3.9(c)(ii), implement the Remediation Action Plan in accordance with relevant Laws, Authority Approvals and any direction of a relevant Authority where applicable; and
- (iv) in dealing with any Contamination:
 - A. take all measures necessary to protect workers and others in accordance with Law and the WHS Guidelines;
 - B. take all reasonable steps to ensure that the Contamination is quarantined from other in-situ or excavated materials so as to prevent crosscontamination; and
 - C. provide waste classification reports and documents demonstrating that cross-contamination has not occurred.
- (d) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause 3.9, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractors or an agent of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty.
- (e) The Contractor acknowledges and agrees that:
 - (i) subject to clause 3.9(f), the Contractor will not be entitled to any increase in the Contract Sum or to make any other Claim for payment:
 - A. for complying with this clause 3.9, other than for the amount referred to in clause 3.9(f);
 - B. in respect of carrying out investigations of the Site (including any structures) or Extra Land to determine the presence and extent of any Contamination present on, in, under or migrating from the Site or Extra Land;

- C. in respect of any costs incurred in the management, handling and disposal of the following types of General Solid Waste (non-putrescible) as defined in clause 49 of Schedule 1 of the POEO Act:
 - 1) glass, plastic, rubber, plasterboard, ceramics, bricks, concrete or metal;
 - 2) paper and cardboard;
 - 3) household waste from municipal clean ups that does not contain food waste;
 - grit, sediment, litter and gross pollutants from stormwater treatment devices that does not contain free liquids;
 - 5) building and demolition waste;
 - 6) green waste;
 - 7) virgin excavated natural material; and
 - 8) wood waste;
- D. for any costs incurred arising out of or in connection with any delay or disruption to the Contractor's Activities resulting from the presence of any Contamination on, in, under or migrating from the Site or Extra Land including arising out of or in connection with complying with its obligations under this clause 3.9; or
- E. for managing the remediation works on the Site or Extra Land;
- (ii) subject to clause 3.9(e)(iii), the Contractor will not be entitled to an extension of time in respect of any delay arising out of or in connection with the discovery of Contamination or the discharge of its obligations under this clause 3.9; and
- (iii) the Contractor may, if it is delayed as a consequences of Additional Contamination and the requirements of clauses 3.9(f)(ii) to 3.9(f)(iv) have been satisfied, claim an extension of time to the Date for Completion.
- (f) Where:
 - (i) there is Additional Contamination;
 - (ii) the Contractor has complied with its obligations under clause 3.9(c) in respect of all Contamination encountered in performing the Contractor's Activities;

- (iii) it is not technically feasible or permitted by Law to incorporate that Additional Contamination into the Works as contemplated by clause 3.9(c)(ii)A; and
- (iv) the Contractor has disposed of the Additional Contamination off-site to a licensed waste disposal facility in accordance with clause 3.13,

the Contract Sum will be increased by:

- (v) an amount, as determined by the Principal's Representative, on the basis of rates set out in Schedule 10 as a result of the disposal of the Additional Contamination; or
- (vi) to the extent that paragraph (v) does not apply, the additional costs reasonably and necessarily incurred by the Contractor as a result of the disposal of the Additional Contamination, as determined by the Principal Representative, together with the percentage referred to in Schedule 1 in respect of clause 6.4(b)(ii)A applied to those additional costs,

in each case excluding the costs of delay or disruption or any other items set out in clause 3.9(e)(i).

(g) In this clause 3.9, "Additional Contamination" means any Contamination which the Contractor discovers on the Site which is not "General solid waste (putrescible)", "General solid waste (non putrescible)" or "Restricted solid waste" (each as defined in the Department of Environment, Climate Change and Water NSW Waste Classification Guidelines).

3.10 Principal's Right to Access and Inspect

Subject to clause 3.14, the Contractor must:

- (a) without limiting clauses 3.3 and 3.4, minimise disruption or inconvenience to:
 - (i) the Principal, occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Site and Extra Land, including any occupation or use of the Works, a Portion or a part thereof under clause 12.6; and
 - (ii) others having a right of access to the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land; and
- (b) at all times:
 - (i) give the Principal's Representative, the Principal, the Independent Certifier and any person authorised by either the Principal's Representative or the Principal access to:
 - A. the Works;

- B. the Site; or
- C. any other areas where the Contractor's Activities are being carried out,

including unobstructed vehicular access through the Site; and

(ii) provide the Principal, the Principal's Representative and the Independent Certifier with every reasonable facility necessary for the Inspection of the Contractor's Activities, including the Contractor's compliance with the Authority Approvals.

3.11 Works to be constructed within Site

The Contractor must ensure that the Works are constructed within the relevant boundaries of the Site stipulated in Schedule 1.

3.12 Condition Surveys

The Principal has undertaken a condition survey of the properties listed in Schedule 1. The Contractor may undertake further condition surveys of these properties.

The Contractor must:

- identify and prepare a condition survey of all property that could be affected or damaged by the Contractor's Activities and as required by the Planning Approval;
- (b) prepare this condition survey:
 - (i) a minimum of two weeks prior to commencing any work on the Site, or on any other land which is necessary for performing the Contractor's Activities or undertaking the Works, where that work could damage property on or off the Site; and
 - (ii) within two weeks after the Date of Completion; and
- (c) in preparing the condition surveys must use suitably skilled, qualified, and experienced personnel or Subcontractor.

3.13 Waste Disposal

- (a) The Contractor must remove from the Site and Extra Land and dispose of any Hazardous Material, Contamination or other waste pursuant to its obligations under this Contract to a licensed waste facility in accordance with all relevant Law and Authority Approvals.
- (b) The Contractor must:
 - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Hazardous Material, 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 Contractor must ensure that its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Hazardous Material, Contamination or other wastes and that they comply with all applicable Laws.
- (d) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractors or an agent of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty.

3.14 Principal not in Control

The Contractor and Principal acknowledge that nothing in this Contract including the right to inspect pursuant to clause 3.10 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

- (a) the Principal has any management or control over the Contractor's Activities or the Site or Extra Land; or
- (b) the Principal has any responsibility for any act or omission by the Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Authority Approvals or this Contract.

3.15 Utility Services

- (a) The Contractor must:
 - obtain and pay for any Services it needs to perform its obligations under this Contract;
 - (ii) assume the risk of the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities:
 - (iii) despite any other provision in the Contract to the contrary, ensure that no Services are:
 - A. damaged or destroyed; or
 - B. disconnected, disrupted, interfered with or interrupted during normal operating hours,

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

(iv) cooperate and coordinate with the owners of all Services, and implement their requirements as part of the Contractor's Activities and must consult with and keep the Principal fully informed as to

the Contractor's dealings with the Authorities providing the Services.

(b) The Contractor agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Completion or Final Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities.



4. Compliance

4.1 Quality of Work

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

4.2 Environmental Management

The Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of Works Brief for so long as any Contractor's Activities are carried out;
- (b) as part of the Contract Management Plan, document, implement and maintain a contract specific Construction Environmental Management Plan for the management of environmental matters in accordance with the Works Brief;
- (c) carry out the Contractor's Activities in accordance with the Construction Environmental Management Plan;
- (d) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and Works Brief in relation to environmental management on the Site and Extra Land; and
- (e) use, and be able to demonstrate the use of, ecologically sustainable development principles (including any Sydney Metro sustainability initiatives) in the design and construction of the Works, Temporary Works and all other Contractor's Activities.

4.3 WHS Management

The Contactor must:

- (a) hold and maintain an WHS management system for so long as any Contractor's Activities are carried out that complies with the WHS Guidelines and the Works Brief:
- (b) as part of the Contract Management Plan, develop, document and implement a contract specific Project Work Health and Safety Management Plan in accordance with the WHS Guidelines and Works Brief;
- (c) carry out the Contractor's Activities in accordance with the Project Work Health and Safety Management Plan;
- (d) create a safe working environment for ensuring the safety of all authorised personnel on the Site and Extra Land and that no unauthorised individual gains access to the Site; and
- (e) supervise any Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the Works Brief in relation to the WHS management on the Site and Extra Land.

4.4 No Relief from Obligations

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

- (a) the implementation of, and compliance with, any management system or plan by the Contractor;
- (b) compliance with the Contract Management Plan by the Contractor;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative, particularly those concerning or relating to the Contractor proceeding past any hold point or witness point identified in the Works Brief, the Works Brief or otherwise directed by the Principal's Representative;
- (d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, particularly whilst participating in any hold point or witness point procedure, including where such a failure is the result of a negligent act or omission; or
- (e) any inspections arranged by the Principal's Representative under the Contract or any related discussions between the Contractor's Representative and the Principal's Representative.

4.5 Engineering Authorisation

The Contractor represents and warrants that if it or any of its Subcontractors will carry out Asset Lifecycle Services that they are a TAO and have obtained TAO Authorisation to carry out the Asset Lifecycle Services.

4.6 AMB Compliance

- (a) The Contractor must:
 - (i) ensure that TAO Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the Contractor's Activities are carried out; and
 - (ii) comply (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible comply) with the conditions of the applicable TAO Authorisation.
- (b) The Contract must (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible):
 - (i) implement and comply with any AMB Requirements applicable to the Asset Lifecycle Services;
 - (ii) immediately notify the Principal's Representative in writing of any non-compliance with clauses 4.5 and 4.6;
 - (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 the AMB 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 Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the AMB will be liable upon) any Claim arising out of or in connection with the requirements to obtain, or any delays or failure by the AMB in granting the Contractor or its Subcontractors TAO Authorisation or the obligation to comply with AMB Requirements with respect to TAO Authorisation.

5. Design and Design Documentation

5.1 Contractor's Design

The Contractor:

- (a) must prepare and complete the design of the Works and the Temporary Works (including the Design Documentation), so that it is fit for its intended purpose and otherwise complies with the requirements of this Contract; and
- (b) warrants that:
 - (i) it has fully and carefully reviewed the Works Brief including any Preliminary Design;
 - (ii) the completed design of the Works and the Temporary Works as represented in the Design Documentation will:
 - A. satisfy the requirements of the Works Brief, (including any Preliminary Design) and the other requirements of this Contract; and
 - B. be fit for their intended purposes; and
 - (iii) construction in accordance with the completed design of the Works and the Temporary Works will satisfy the requirements of the Works Brief (including any Preliminary Design) and the other requirements of this Contract.

5.2 Prior Design Work

- (a) This clause 5.2 applies only when a Preliminary Design is included in the Contract.
- (b) If directed by the Principal, the Contractor, without being entitled to compensation, shall promptly execute a Deed of Novation in the form of Schedule 25, such deed being between the Principal, the Contractor and the consultant named in Schedule 1.
 - For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Principal's Representative to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly.
- (c) Without limiting clause 5.1, the Contractor:
 - (i) acknowledges and agrees that, prior to the date of this Contract, the Preliminary Design was created by the Principal and the Principal's agents and consultants, or by or on behalf of the Contractor under the ECI Deed, and that it is aware that the Preliminary Design is incomplete and may contain ambiguities, errors, inconsistencies, discrepancies or omissions;

- (ii) warrants that, prior to the date of this Contract, it checked and carefully reviewed and considered the Preliminary Design to ensure that it complied with the requirements of the Contract, including that it was fit for the intended purpose of the Works; and
- (iii) acknowledges and agrees that:
 - A. the Contractor's design obligations under this clause 5 and the Contractor's warranties (including under clause 5.1), obligations and liabilities under the Contract and at Law, remain unaffected; and
 - B. the Contractor's obligations to carry out the Contractor's Activities and complete the Works in accordance with this Contract remain unaffected by, and it will bear and continue to bear full liability and responsibility for the carrying out of the Contractor's Activities and the completion of the Works in accordance with this Contract at its cost,

notwithstanding any one or more of the following:

- C. that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Preliminary Design;
- D. that the Contractor has entered into a novation of any prior contract between the Principal and a consultant named in Schedule 1 under clause 5.2(b) and thereafter has retained that consultant in connection with the Contractor's Activities;
- E. that any ambiguities, errors, inconsistencies, discrepancies or omissions exist in the Preliminary Design; or
- F. that prior to the date of this Contract any part of the Preliminary Design is described or represented by the Principal as having been completed to any particular design stage (including "Approved for Construction", "Preliminary Design Review", "System Concept Review", "Critical Design Review" or otherwise) (the "Relevant Design Stage"), and despite any such description or representation:
 - an ambiguity, error, inconsistency, discrepancy or omission exists in the Preliminary Design which is inconsistent with the Preliminary Design having achieved the Relevant Design Stage; or
 - the Contractor is otherwise required to perform work which is required to be undertaken in order for the Preliminary Design

to satisfy the requirements of the Relevant Design Stage, whether or not that work has been undertaken prior to the date of this Contract.

5.3 Design Documentation

- (a) The Contractor must submit all Design Documentation:
 - (i) progressively to the Principal's Representative and, if required, the Independent Certifier in accordance with the Contract Management Plan and the requirements of clause 9.8; and
 - (ii) at the times set out in:
 - A. the Works Brief; and
 - B. the Contractor's Program.
- (b) The Contractor must upon each submission of the Design Documentation to the Principal's Representative and, if required, the Independent Certifier for review (including at the completion of the design of each design package) ensure that the Design Documentation is accompanied by the following documents:
 - the Contractor's Certificate of Design Compliance in the form of Schedule 19;
 - (ii) a register of records of design verification and reviews applicable to the design package and other compliance records required by this Contract (all records being satisfactorily completed and signed);
 - (iii) a register of any outstanding design non-conformities and unresolved issues;
 - (iv) a register of deficiency notices and evidence of their close out;and
 - (v) a register of concessions (if any) granted for non-conforming Design Documentation.
- (c) The Principal may, within 1 Business Day of receiving any Design Stage 3
 Design Documentation from the Contractor, provide such Design Stage 3
 Design Documentation (if any) that the Principal requires to be reviewed and certified by the Independent Certifier, including any Design Stage 3 Design Documentation to be reviewed by the Independent Certifier in accordance with a Third Party Agreement.

5.4 NAC or Sub NAC Review of Design Documentation

(a) Clause 9.8 applies to all Design Documentation. [Note to Tenderers: This clause could be deleted if this process has been fully completed during the ECI phase.]

- (b) The Principal's governance structure for the management of network assurance is detailed in the Sydney Metro Network Assurance Procedure (set out in the Works Brief) (**Network Assurance Committee or "NAC"**).
- (c) The Principal's governance structure for the management of network assurance to works on the existing Sydney Trains network is detailed in the Sydney Metro Network Assurance Sub Procedure (set out in the Works Brief) (Sub Network Assurance Committee or "Sub NAC").
- (d) Where the Contractor has submitted Design Documentation relating to a Control Gate for the review of the Principal's Representative under clause 9.8 the Contractor must in relation to any Design Documentation relating to a Control Gate which is designated as Control Gate 3, Control Gate 4 or Control Gate 5 submit all documentation necessary and to a sufficient standard to enable acceptance for any Design Documentation in the form required by the Principal to the Principal and, if required, the Independent Certifier for review (Network Assurance Submission or "NAS"). The Principal will determine:
 - (i) whether the correct Control Gate has been completed in the NAS;
 - (ii) if the NAS has been completed correctly with all relevant information provided;
 - (iii) the Contractor's processes are appropriately applied and the output of the Contractor's Activities have been validated; and
 - (iv) if the NAS complies with the Contract Management Plans,

which will be deemed to be suitable for submission to the NAC or Sub NAC.

- (e) If the Principal has made a determination under subclause 9.8(d), the Principal will submit the NAS to the NAC or Sub NAC (as the case may be) on behalf of the Contractor at least 6 Business Days prior to such meeting with the NAC or Sub NAC following which:
 - (i) the Contractor must:
 - A. provide any materials which it intends to present at that meeting in relation to the NAS to the Principal for review (at least 2 Business Days prior to a meeting); and
 - B. amend the Contractor's presentation if reasonably requested by the Principal;
 - (ii) the Contractor must attend all meetings requested by the Principal NAC or Sub NAC and may at its own cost invite up to two subject matter experts to present the NAS to the NAC or Sub NAC; and
 - (iii) the Principal will advise the Contractor whether the NAS has been approved by the NAC or Sub NAC and if the NAS has been rejected the Principal shall inform the Contractor and the process under clause (d)and (e) shall reapply.

- (f) The Contractor agrees that in complying with this clause 5.4:
 - (i) it will review and abide by any conditions imposed by the NAC or Sub NAC in relation to the NAS which are deemed necessary and to a sufficient standard to enable acceptance by the NAC or Sub NAC as the case may be; and
 - (ii) the Contractor must do all reasonable things to keep itself informed of any timetables in relation to this clause 5.4 during the Contractor's Activities.
- (g) Where any Design Documentation relates to a Control Gate which the Contract requires the Principal to submit to the NAC or Sub NAC, after this Design Documentation has been submitted for the review of the Principal's Representative under clause 9.8, and:
 - (i) the Principal's Representative gives the Contractor the notice referred to in clause 9.8(c)(ii)C in respect of that Design Documentation; or
 - (ii) the relevant period of time in clause 9.8(c)(ii) has expired and the Principal's Representative has not rejected the Design Documentation or made any comments on the Design Documentation (except, in the case of comments, where the Contractor has responded to the comments within the required time period required by clause 9.8(d)(ii) in a manner satisfactory to the Principal's Representative),

the Principal will use reasonable endeavours to carry out its obligations under this clause 5.4.

- (h) Where:
 - (i) the Design Documentation for the relevant Contractor's design package to which clause 5.4(b) applies, complies with the requirements of this Contract;
 - (ii) the decision for the NAS (where relevant) for that design package is not issued within 10 Business Days after the commencement of the Principal's obligation under clause 5.4(b) to use reasonable endeavours to obtain the NAS; and
 - (iii) as a result, the Contractor is actually or will be delayed in achieving Completion,

the Contractor will be entitled to make a claim for an extension of time under clause 10.7.

- (i) The Principal's obligations under clause 5.4 do not:
 - (i) create any liability for the Principal or the Independent Certifier in respect of the content of the Design Documentation; or
 - (ii) relieve the Contractor of its obligations in this Contract in respect of the Design Documentation.

(j) The Contractor must cooperate with the Principal's Representative and where applicable, the Independent Certifier to facilitate the review of the Design Documentation.

5.5 Copies of Design Documentation

- (a) The Contractor must, in accordance with clause 5.3, progressively submit to the Principal's Representative and, if required, the Independent Certifier the number of copies specified in Schedule 1 of all Design Documentation, whether complete or work in progress, which it intends to use for design or construction purposes.
- (b) The Contractor must give the Principal's Representative and, if required, the Independent Certifier the number of copies specified in Schedule 1 of:
 - (i) all survey information used in the design of the Works and the Temporary Works; and
 - (ii) all final Design Documentation.

5.6 Availability of Design Documentation

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

- (a) on the Site, at least one complete set of all Design Documentation that the Contractor is entitled to use for construction purposes pursuant to clauses 5.4 and 9.8, and any construction related documents provided by the Principal; and
- (b) at any area on or off the Site where the Contractor's Activities are being carried out, one copy of each of those items specified in paragraph (a) insofar as they are relevant to the Contractor's Activities being carried out in that area.

5.7 Ownership of Contract Documentation and Methods of Working

- (a) Subject to clause 5.7(c)(vii):
 - (i) title to and Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor will vest upon its creation for the purposes of this Contract in the Principal;
 - (ii) to the fullest extent permitted by Law, the Contractor hereby assigns to the Principal all of its rights, titles, and interests in, and to, all Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor, whenever created; and
 - (iii) upon request by the Principal, the Contractor must do all things necessary to vest that title or that Intellectual Property in the Principal.

- (b) The Principal grants to the Contractor a licence to use and reproduce the Contract Documentation for the Contractor's Activities.
- (c) The Contractor:
 - (i) warrants and must ensure that the Contract Documentation and any methods of working do not and will not infringe any Intellectual Property;
 - (ii) must indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property in connection with the Works, the Temporary Works, the Contractor's Activities or the Contract Documentation, except to the extent that such actual or alleged infringement arises as a direct result of:
 - A. the Principal having provided the Contractor with material which this Contract permits the Contractor to use for the purpose of the Works, the Contractor's Activities or the Contract Documentation; and
 - B. the provision of that material to the Contractor being an infringement of a third party's Intellectual Property rights;
 - (iii) must ensure that all Subcontracts between the Contractor and all Subcontractors for design and documentation contain provisions to the same effect as clause 5.7(a):
 - (iv) must obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such Subcontractors for design and documentation;
 - (v) must, where requested by the Principal's Representative, obtain such an acknowledgement from other Subcontractors;
 - (vi) must obtain an assignment to the Principal from any third party who owns any Intellectual Property right in the Contract Documentation;
 - (vii) must if it is unable to obtain the assignment referred to in clause 5.7(c)(vi), grant or have granted to the Principal an irrevocable licence:
 - A. to use the Contract Documentation for the completion of the Works:
 - B. which arises immediately upon the creation of the Contract Documentation;
 - C. which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the Works; and

- D. which will survive the termination of this Contract on any basis; and
- (viii) must ensure that the Intellectual Property created for the purposes of this Contract is not used, adapted or reproduced other than for the purposes of this Contract without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).

5.8 Delivery Up of Contract Documentation

If this Contract is frustrated or terminated the Contractor must:

- (a) immediately deliver the original and all sets and copies of all Contract Documentation (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to the Principal; and
- (b) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation.

5.9 Moral Rights

- (a) The Contractor:
 - (i) warrants that the Principal's use of the Contract Documentation, or any other work provided by the Contractor under this Contract, will not infringe any author's moral rights under the *Copyright Act* 1968 (Cth) or similar legislation in any jurisdiction; and
 - (ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with the Works, the Contractor's Activities or the Contract Documentation.
- (b) For the purposes of clause 5.9(a), the Principal's use of the Contract Documentation includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or part of the Works to which the Contract Documentation or any other work provided by the Contractor under this Contract relates:
 - (i) with or without attribution of authorship;
 - (ii) in any medium; and
 - (iii) in any context and in any way it sees fit.

6. Variations

6.1 Proposed Variations

At any time prior to the Date of Completion of the Works or the last Portion to reach Completion (but without limiting clauses 8 and 14.3) the Principal's Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering.

Within 10 Business Days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out such details as may be reasonably required by the Principal's Representative.

The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

6.2 Variation Orders

- (a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time prior to the Date of Completion of the Works or the last Portion to reach Completion (but without limiting clauses 8 and 14.3) direct the Contractor to carry out a Variation by issuing a written document titled "Variation Order", in which the Principal's Representative will state one of the following:
 - (i) the proposed adjustments to the Contract Sum and the Payment Breakdown Schedule set out in the Contractor's notice under clause 6.1 are agreed and the Contract Sum and Payment Breakdown Schedule will be adjusted accordingly;
 - (ii) any adjustment to the Contract Sum will be determined under clause 6.4(b); or
 - (iii) the Variation is to be carried out as daywork and any adjustment to the Contract Sum will be determined under clause 6.7.
- (b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Contract.
- (c) The Contractor must comply with a "Variation Order" irrespective of:
 - (i) the nature, extent or value of the work the subject of the Variation;
 - (ii) the location or timing (including the impact on any Date for Completion) of the work involved in the Variation; or
 - (iii) any Dispute related to the Variation.
- (d) The Contractor's entitlement (if any) to an extension of time and any time related or delay costs arising out of or in connection with a Variation will be

dealt with under clause 10 and not this clause 6. The valuation of Variations under clause 6.4 and clause 6.7 will exclude any amount for costs incurred by the Contractor as a result of any delay or disruption caused by the Variation.

6.3 Options

The Principal's Representative may, by written notice given to the Contractor at any time on or before the date stated in Schedule 15, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Contract on the basis that the Contract Sum, the Works Brief and the provisions of this Contract will be adjusted as set out in Schedule 15 for the relevant Option.

For the avoidance of doubt:

- (a) the Principal is not under any obligation whatsoever to exercise; and
- (b) the Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising,

any Option.

Where the Principal does not exercise its discretion to exercise an Option, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

The exercise of an Option by the Principal's Representative under this clause 6.3 will not:

- (c) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);
- (d) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Contract); or
- (e) entitle the Contractor to an extension of time,

whether under this Contract or otherwise according to any Law.

6.4 Valuation

Subject to clauses 16 and 18, the Contract Sum and the Payment Breakdown Schedule will be adjusted for all Variations that have been directed by the Principal's Representative by:

- (a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order;
- (b) to the extent that clause 6.2(a)(ii) applies:
 - (i) an amount in respect of the Variation to be determined by the Principal's Representative on the basis of (where applicable or where it is reasonable to use them for valuing the Variation):

- A. the prices and rates set out in the Schedule 10; and
- B. any other applicable data in this Contract; or
- (ii) to the extent sub-paragraph (i) does not apply, an amount determined by the Principal's Representative on the basis of reasonable prices and rates (which are to be exclusive of any amount for preliminaries, Overhead Costs or profit) to be agreed between the parties, or failing agreement, determined by the Principal's Representative, which will be increased by the following percentage of that amount:
 - A. where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in Schedule 1 which will be in total satisfaction of all the Contractor's preliminaries, Overhead Costs and profit; or
 - B. where the adjustment to the Contract Sum is to be a decrease, the relevant percentage set out in Schedule 1 of the total amount for off-site Overhead Costs described in section 2 of Part B of Schedule 10 and profit,

provided however that where the Principal's Representative has issued a Variation Proposal Request, the Contractor's entitlement under this clause 6.4(b) will not be greater than any amount set out in the Contractor's notice under clause 6.1; or

(c) to the extent that clause 6.2(a)(iii) applies, the amount determined by the Principal's Representative under clause 6.7.

6.5 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any part of the Works:

- the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any work being omitted or deleted from the Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work; and
- (c) the adjustment to the Contract Sum arising from the work that has been omitted or deleted will be valued in accordance with clause 6.4.

6.6 Daywork

If the Contractor is given a direction under clause 6.2(a)(iii) to carry out work as daywork, the Contractor must:

(a) carry out the daywork in an efficient manner; and

- (b) after the direction, each day provide the Principal's Representative with a written report in respect of that day signed by the Contractor that:
 - (i) records particulars of all resources used by the Contractor for the execution of the daywork; and
 - (ii) includes those particulars reasonably required by the Principal's Representative that evidence the cost of the daywork.

The Principal's Representative may direct the manner in which the matters referred to in clause 6.6(b) are to be recorded.

6.7 Valuation of Daywork

In valuing the adjustment to the Contract Sum arising from any work that the Principal's Representative directs to be carried out as daywork, the Principal's Representative will have regard to:

- (a) the amount of wages and allowances paid or payable by the Contractor for the hours reasonably worked in respect of the daywork at the rates:
 - (i) set out in Schedule 10 (which rates will apply to all labour whether employed by the Contractor, a Subcontractor or otherwise);
 - (ii) where the rates in Schedule 10 do not apply, as established by the Contractor to the satisfaction of the Principal's Representative; or
 - (iii) determined by the Principal's Representative;
- (b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the amount determined under clause 6.7(a):
- (c) the reasonable amount of hire charges and associated fuel and other operating costs in respect of Construction Plant approved by the Principal's Representative for use on the work in accordance with such hiring rates and conditions as may be:
 - (i) agreed between the Principal's Representative and the Contractor; or
 - (ii) failing agreement, determined by the Principal's Representative;
- (d) the reasonable amounts paid by the Contractor for Subcontract work, including professional fees; and
- (e) the reasonable actual cost to the Contractor at the Site of all materials supplied and required for the daywork,

to which will be added to the extent that the rates set out in Schedule 10 are not already expressed to be inclusive of the Contractor's non-time related preliminaries, Overhead Costs and profit, the relevant percentage specified in Schedule 1 of the amounts determined under paragraphs (a) to (e), which will be in total satisfaction of all the Contractor's non-time related preliminaries, Overhead Costs and profit.

6.8 Contractor's Entitlements

This clause 6 is an exhaustive code of the Contractor's rights in any way in connection with any Variation. The Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 6 otherwise than in accordance with the terms of this Contract.

6.9 Priority Works

[Drafting Note: To be developed during ECI Phase, with more specificity if possible as to what the new Portions may be or whether they could be treated as Options.]

The parties agree that:

- (a) as at the date of this Contract, the Contractor is required to carry out certain "priority works" (as described in the Portions in Schedule 1);
- (b) the Principal may, by directing a Variation, require the Contractor to perform additional works as new Portions that may have a significantly higher value than the "priority works" described in Schedule 1; and
- (c) if the Principal directs a new Portion as a Variation in accordance with this clause 6, it must set out:
 - (i) the scope of works for the new Portion;
 - (ii) the Date for Completion of that Portion;
 - (iii) any additional unconditional undertakings required to reflect the increase in the Contract Price;
 - (iv) the Site at which the Portion is to be constructed;
 - (v) any liquidated damages applying to the Portion; and
 - (vi) any other relevant information in respect of the Portion.

7. Construction

7.1 Construction

- (a) The Contractor must construct and handover to the Principal the Works and construct the Temporary Works:
 - (i) in accordance with:
 - A. subject to clause 7.1(b), the Works Brief (including any Preliminary Design) and any Design Documentation that has been prepared by the Contractor in accordance with the requirements of the Contract and not rejected by the Principal's Representative under clause 9.8;

- B. any direction of the Principal's Representative given or purported to be given under a provision of this Contract; and
- C. the other requirements of this Contract; and
- (ii) so that they are fit for their intended purposes.
- (b) If there is any ambiguity, discrepancy or inconsistency between this Contract (including the Works Brief and any Preliminary Design) and any Design Documentation which has been prepared by the Contractor and not rejected by the Principal's Representative under clause 9.8, then, unless otherwise directed by the Principal's Representative, the requirements of this Contract will prevail.
- (c) At monthly intervals during the construction work and at the Completion of the Works or each Portion, the Contractor must submit to the Principal's Representative a Certificate of Construction Compliance in the form of Schedule 20.

7.2 All Work Included

The Contractor:

- (a) warrants it has allowed for the provision of;
- (b) must undertake and provide; and
- (c) will not be entitled to make, and the Principal will not be liable upon, any Claim except as otherwise provided for in this Contract, relating to the provision of,

all Construction Plant, Temporary Works, labour, materials and other work necessary to execute the Contractor's Activities, whether or not expressly mentioned in this Contract or anticipated by the Contractor, and agrees that all such Construction Plant, Temporary Works, labour, materials and work forms part of the Contractor's Activities.

7.3 Provisional Sum Work

For each item of Provisional Sum Work, the Principal's Representative will give the Contractor a direction either requiring the Contractor to proceed with the item of Provisional Sum Work or deleting the item of Provisional Sum Work.

Where the Principal's Representative gives the Contractor a notice requiring the Contractor to proceed with an item of Provisional Sum Work, the Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:

- (a) the amount allowed for the item of Provisional Sum Work in Schedule 1; and
- (b) either:
 - (i) an amount agreed between the Contractor and the Principal's Representative; or
 - (ii) if they fail to agree:

- A. an amount determined by the Principal's Representative on the basis set out in clause 6.4(b) as if the item of Provisional Sum Work were a Variation, excluding:
 - 1) the percentage referred to in clause 6.4(b)(ii)A or 6.4(b)(ii)B; or
 - any other amount for the Contractor's Overhead Costs or profit; or
- B. if the amount determined under clause 7.3(b)(ii)A (7.3(b)(ii)A Amount) is less than the amount allowed for that item of Provisional Sum Work in Schedule 1, then:
 - 1) the 7.3(b)(ii)A Amount; plus
 - 2) a reasonable amount for the Contractor's
 Overhead Costs and profit applicable to the
 7.3(b)(ii)A Amount (but only to the extent not
 included within the 7.3(b)(ii)(A) amount), as
 determined by the Principal's Representative,
 which amount must not exceed an amount
 calculated using the percentage set out in
 Schedule 1.

Where the Principal's Representative gives the Contractor a direction deleting an item of Provisional Sum Work:

- (c) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Schedule 1:
- (d) the Principal may thereafter either carry out the Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and
- (e) the Principal will not be liable upon any Claim by the Contractor arising out of the deletion of the item of Provisional Sum Work.

7.4 Co-operation with Other Contractors

Without limiting or being limited by clause 2.9, the Contractor must:

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

The Principal shall procure that each of its Other Contractors that undertakes work on part of the Site during any period in which the Contractor has been engaged as

principal contractor in respect of that part of the Site executes a deed poll in favour of the Contractor, as principal contractor, and the Principal in the form set out in Schedule 23 and provide the Contractor with an executed copy of each such deed poll.

7.5 Setting Out

The Contractor must:

- (a) set out the Works in accordance with the requirements of this Contract, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the Contractor that are suitable for their purposes;
- (b) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
- (c) for this purpose keep all survey marks in their true positions.

If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Works, the Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor must at its cost rectify the error.

7.6 Survey

The Contractor must, as a condition precedent to Completion of the Works or any Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:

- (a) for its review under clause 9.8 a Survey Plan for the Works or the relevant Portion that:
 - (i) has regard to the setback requirements in the National Construction Code;
 - (ii) has regard to any stratum lots whether above or below ground;
 - (iii) has regard to the survey control requirements of any relevant Rail Transport Agency;
 - (iv) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
 - (v) shows all internal title boundaries;
 - (vi) shows all easements; and
 - (vii) shows the location of the Works and all Services; and
- (b) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:

- (i) the whole of the Works or the Portion has been constructed within the relevant boundaries of the Site stipulated in Schedule 1;
- (ii) the elements of the Works or the Portion are in the positions and within the tolerances required by Law and this Contract;
- (iii) the survey information included in the configuration materials provided pursuant to the Works Brief complies with the requirements of this Contract; and
- (iv) any other matter identified by the Principal's Representative, complies with the requirements of this Contract.

7.7 Cleaning Up

In carrying out the Contractor's Activities, the Contractor must:

- (a) keep the Site, Extra Land and the Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Site and Extra Land; and
- (c) as a condition precedent to Completion of the Works or a Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site and Extra Land or the part of the Site or Extra Land relevant to the Works or the Portion.

7.8 Safety

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- (a) The Contractor must carry out the Contractor's Activities:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.

If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities, the Principal's Representative may direct the Contractor to change its manner of working or to cease working.

- (b) The Contractor must:
 - (i) ensure that in carrying out the Contractor's Activities:
 - A. it complies with all Law, including the WHS Law, and other requirements of this Contract for work health, safety and rehabilitation management;
 - B. all Subcontractors comply with the requirements referred to in this clause 7.8 and their respective obligations under the WHS Legislation; and
 - C. it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate

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activities with all other persons who have a work health and safety duty in relation to the same matter;

- (ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities, unless otherwise directed by the Principal;
- (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
- (iv) provide the Principal's Representative with the written assurances obtained pursuant to sub-paragraph (iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
- (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 9.5, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.8), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
- (vi) consult, cooperate and coordinate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
- (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
- (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
- (ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 7.8.
- (c) Without limiting clause 17.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Works, the Environment, other property or the health or safety of people.

If the action taken by the Principal is action which the Contractor was required to take under this Contract but did not take, the amount of any penalty, fine, damage, expense, cost (including any reasonable legal fees), loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:

(i) taking the action contemplated in this clause 7.8(c); or

(ii) the Contractor's failure to take that action,

will, except to the extent prohibited by Law, be a debt due from the Contractor to the Principal.

7.9 Construction Plant and Materials Removal

Except for the purpose of achieving Completion as contemplated by clause 7.7(c), the Contractor must not remove from the Site or the Contractor's Activities any:

- (a) significant materials or major items of Construction Plant; or
- (b) materials or Construction Plant specified in any written notice issued by the Principal's Representative,

without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

7.10 Principal Supplied Items

- (a) The Principal must:
 - (i) make available the Principal Supplied Items to the Contractor:
 - A. at its own cost;
 - B. at the respective places referred to in Schedule 27; and
 - C. by the respective date referred to in Schedule 27; and
 - (ii) use its best endeavours to procure that the Contractor has the benefit of any warranty obtained by the Principal in respect of any Principal Supplied Item.
- (b) The Contractor:
 - (i) agrees that, in respect of Principal Supplied Items, the:
 - A. Contractor:
 - warrants that it has reviewed the Works Brief and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Contract;
 - will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item except under clause 10 if a Principal Supplied Item is not made available by the relevant date set out in Schedule 27; and

- is not relieved from and remains liable for complying with, all of its obligations under this Contract, despite the Principal making available the Principal Supplied Items; and
- B. Sale of Goods Act 1923 (NSW) does not apply to the Principal's obligations under clause 7.10(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items; and
- (ii) must:
 - A. at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 27 to the Site or Extra Land (as applicable); and
 - B. as part of the Contractor's Activities, incorporate each Principal Supplied Item into the Works.

7.11 Rail Safety

- (a) In carrying out any part of the Contractor's Activities which require Accreditation as a Rail Infrastructure Manager, the Contractor:
 - (i) must comply with all conditions of the Principal's Accreditation as a Rail Infrastructure Manager and the Principal's Safety Management System;
 - (ii) must not do anything that may cause the Principal to breach its obligations under the Rail Safety National Law; and
 - (iii) must ensure that the Contractor's Subcontractors engaged in or in connection with the Contractor's Activities, comply with clauses 7.11(a)(i) and 7.11(a)(ii).
- (b) In carrying out any part of the Contractor's Activities which require Accreditation as a Rolling Stock Operator, the Contractor must:
 - ensure that the Contractor, or one of the Contractor's Subcontractors, holds the necessary Accreditation for that part of the Contractor's Activities; and
 - (ii) comply with the conditions of that Accreditation.
- (c) Without limiting or otherwise affecting any other provision under this Contract, the Contractor must, and must ensure that the Contractor's Subcontractors, comply with all obligations under the Rail Safety National Law including entering into interface agreements required by Part 3 of the Rail Safety National Law in respect of any part of the Contractor's Activities which require Accreditation as a Rolling Stock Operator.

(d) To the extent not prohibited by Law, the Contractor must indemnify the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in any way in connection with the Contractor's failure to comply with this clause 7.11.

7.12 Track Possessions and power isolations

- (a) The table in Schedule 29 identifies the Track Possessions at the date of this Contract that the relevant Rail Transport Agency may make available to the Contractor at no cost.
- (b) The Contractor must liaise with the relevant Rail Transport Agency to procure for the benefit of the Contractor the Track Possessions set out in Schedule 29.
- (c) The Contractor acknowledges that it will not have exclusive access to any track the subject of a Track Possession and must:
 - (i) without limiting clauses 7.12(b) or 7.4, coordinate its activities with whoever else is sharing the relevant Track Possession; and
 - (ii) allow any relevant Rail Transport Agency and Other Contractors to pass through any track the subject of the relevant Track Possession.
- (d) If the Contractor requires a Track Possession or power isolation in addition to the Track Possessions identified in subparagraph (a) for the performance of the Contractor's Activities (*Additional Track Possession or power isolation*) the Contractor must liaise with the relevant Rail Transport Agency and provide it with no less than:
 - (i) 26 weeks prior written notice in respect of each Additional Track Possession or power isolation that falls on a weekend; or
 - (ii) 20 weeks prior written notice in respect of each Additional Track Possession or power isolation that falls on a weeknight or which requires a power isolation only,

and identify whether a power isolation is required during the requested Additional Track Possession or power isolation.

- (e) The Principal may assist the Contractor to obtain a requested Additional Track Possession or power isolation, but is under no obligation to do so and in no way guarantees that the requested Additional Track Possession or power isolation will be granted by any relevant Rail Transport Agency.
- (f) If an Additional Track Possession or power isolation is granted by a Rail Transport Agency, the Contractor must:
 - (i) make the necessary arrangements for the Additional Track Possession or power isolation; and

- (ii) pay the Principal within 20 Business Days after the relevant Additional Track Possession or power isolation the relevant amount (in respect of each Additional Track Possession or power isolation) set out in the table in Schedule 29.
- (g) The Contractor must effectively and efficiently utilise each Track Possession.
- (h) The Contractor acknowledges and agrees that:
 - (i) the Principal or any relevant Rail Transport Agency may alter or cancel any Track Possession, power isolation or Additional Track Possession or power isolation at any time; and
 - (ii) its only remedy for:
 - A. any failure by any relevant Rail Transport Agency to provide a Track Possession or power isolation referred to in clause 7.12(a); or
 - B. cancellation of Additional Track Possession or power isolation once it has been obtained.

is set out in clauses 10.7 and 10.13.

8. Defects

8.1 Defects Liability

Subject to clause 8.2, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.

Without limiting the previous paragraph, the Contractor must rectify any Defects in the Works or any Portion which existed at Completion of the Works or that Portion as soon as possible after Completion of the Works or that Portion.

When rectifying Defects which existed at Completion, the Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Works or Other Contractors as is reasonably possible.

8.2 Defect Notification

If at any time prior to the expiration of any Defects Rectification Period (including for the avoidance of doubt prior to Completion of the Works or any Portion), the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor a direction which identifies the Defect and does one or more of the following:

- requires the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;
- (b) advises the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or

(c) in respect of any Defect to which clause 8.3(b) applies, advises the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a Variation to overcome the Defect, or any part of it.

8.3 Rectification of Defect

If a direction is given under clause 8.2(a):

- (a) the Contractor must rectify the Defect (or the part of it notified):
 - (i) within the times specified in the Principal's Representative's direction, which will generally be limited to the periods during which the rectification work will cause minimal or no inconvenience to the operators, including any Rail Transport Agency (where relevant), and occupants of the Works; and
 - (ii) if after Completion of the Works or relevant Portion:
 - A. at other times otherwise agreed with the Principal's Representative;
 - B. in accordance with the requirements of the operators of the Works, including any Rail Transport Agency (where relevant), and any other relevant Authority;
 - C. so as to minimise the impact on the use of the Works or the Portion; and
 - D. in a manner which causes as little inconvenience as possible to users of the Works or the Portion or the public, any Service or any access to the Works or the Portion; and
- (b) if the Contractor does not comply with clause 8.3(a)(i), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Contract or otherwise at Law, give the Contractor a direction under clause 8.2(c) and have the rectification work carried out at the Contractor's expense, and the cost of the rectification work incurred by the Principal will be a debt due from the Contractor to the Principal.

The Contractor must pay the Principal all costs incurred by the Principal in providing access to the Works, or arranging the availability of any resources (including the resources of any other Rail Transport Agency), as may be necessary for the Contractor to rectify any Defect during the Defects Rectification Period.

8.4 No Claim for Correction of Defect

Where a direction is given under clause 8.2(a), the Contractor will not be entitled to make a Claim against the Principal for rectifying the Defect (or the part notified) and must bear all costs, losses and expenses suffered or incurred in rectifying the Defect.

8.5 Acceptance of Work

If a direction is given under clause 8.2(b):

- (a) where the value to the Principal of the Works is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified), the Contract Sum will be reduced by the amount determined by the Principal's Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Works; or
- (b) where the value to the Principal of the Works increases because of the acceptance of the Defect (or the part notified):
 - (i) the Principal's Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Works; and
 - (ii) the Contract Sum will:
 - A. be reduced by the amount determined by the Principal's Representative, where that amount is negative; and
 - B. not be changed where the amount determined by the Principal's Representative is positive.

8.6 Extension of Defects Rectification Period

If:

- (a) the Principal's Representative gives the Contractor a notice under clause 8.2(a) during any Defects Rectification Period; and
- (b) the Contractor rectifies the Defect (or the part notified),

the relevant Defects Rectification Period for the work required by the notice will be extended by the period set out in Schedule 1, commencing upon completion of the rectification of the Defect (or the part notified).

8.7 Defect Rectification by Other Contractor

Where a direction is given under clause 8.2(c):

- (a) without limiting or otherwise affecting clauses 2.9 or 7.4, the Contractor must not impede the Other Contractor from having sufficient access to the Site or Extra Land to rectify the Defect or carrying out the Variation; and
- (b) any costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with, the Other Contractor rectifying the Defect or carrying out the Variation, will be a debt due from the Contractor to the Principal.

8.8 Rights Not Affected

Neither the Principal's rights, nor the Contractor's liability, whether under this Contract or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Rectification Period, will be in any way affected or limited by:

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 8 or any other provision of this Contract;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any notice or direction of the Principal's Representative under clause 8.2.

9. Administration

9.1 Principal's Representative

(a) The Principal must ensure that at all times until Final Completion there is a Principal's Representative. The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

A discretion (including an absolute or sole discretion), power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Contract if exercised or made (or if it is not exercised or made) by the Principal's Representative:

- (i) independently;
- (ii) after consultation with the Principal and its advisers; or
- (iii) as directed by the Principal.

Any control or influence exercised by the Principal over the Principal's Representative does not:

- (iv) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
- (v) entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.

The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Contract.

Except where this Contract otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.

(b) The parties acknowledge that any direction by the Principal's Representative under one of the clauses referred to in Schedule 1 is an interim position only and that, without limiting the rights of the Principal's Representative under clause 11.3, either party may seek to have any such direction opened up, reviewed, decided and substituted pursuant to clause 16 by giving a notice of dispute to the other party and the Principal's Representative in accordance with clause 16.1.

The Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any such direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to clause 16 or is unreasonable (other than in accordance with the corrected determination). The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a notice of dispute in accordance with clause 16.1.

9.2 Replacement of the Principal's Representative

The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the Contractor of that appointment.

Any substitute Principal's Representative appointed under this clause 9.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

9.3 Delegation of Functions

- (a) The Principal's Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this Contract;
 - (ii) not appoint more than one person to exercise the same function under this Contract; and
 - (iii) revoke any appointment under clause 9.3(a)(i) by notice in writing to the Contractor.
- (b) The Principal's Representative may continue to exercise a function under this Contract despite appointing another person to exercise the function under clause 9.3(a)(i).
- (c) All references in this Contract to the Principal's Representative include a reference to an appointee appointed under clause 9.3(a)(i).

9.4 Contractor's Personnel

- (a) The Contractor must notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Contract is the relevant person listed in Schedule 1) and of any subsequent changes.
- (b) The Contractor must:
 - (i) employ the individuals nominated by the Contractor and listed in Schedule 1 in the positions specified in Schedule 1 or equivalent positions;
 - (ii) subject to clause 9.4(b)(iii), not replace the individuals referred to in clause 9.4(b)(i) without the Principal's Representative's prior written approval which will not be unreasonably withheld; and
 - (iii) if any of the individuals referred to in clause 9.4(b)(i):
 - A. dies;
 - B. becomes unable to continue in their positions due to illness;
 - C. resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)); or
 - D. becomes the subject of a direction under clause 9.4(c),

replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative.

- (c) The Principal's Representative may, at its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.4(a) or clause 9.4(b)) from the Site and the Contractor's Activities. The Contractor must then cease to engage that person in the Contractor's Activities and must appoint a replacement.
- (d) The Contractor must ensure that any person the subject of a direction under clause 9.4(c) is not again employed in the Contractor's Activities or on the Site.
- (e) Any direction under clause 9.1(a) will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.

9.5 Site Meetings

The Contractor must convene meetings on the Site or such other place (or places) as the Principal's Representative may direct at:

- (a) prior to the Date of Completion of the Works or the last Portion to reach Completion, weekly or such longer intervals as may be directed in writing by the Principal's Representative; and
- (b) monthly intervals after the Date of Completion of the Works or the last Portion to reach Completion until all Defects Rectification Periods (including any extension under clause 8.6), have expired or at such other intervals as may otherwise be agreed.

9.6 Environmental Representative

The Contractor acknowledges and agrees that:

- (a) the Principal has appointed the Environmental Representative as required by an Authority Approval;
- (b) the Environmental Representative:
 - (i) is independent of the parties;
 - (ii) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) shall advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
 - (iv) shall have the authority and independence to:
 - A. direct the Contractor as to; or
 - B. advise the Principal's Representative to direct the Contractor as to,

reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts;

- (c) it must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(c) and none of the Principal, the Principal's Representative or the Environmental Representative will be liable upon any Claim arising out or in any way in connection with such directions.

9.7 Industrial Relations

The Contractor must in carrying out the Contractor's Activities:

(a) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities:

- (b) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
- (c) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Contractor's Activities, are always observed in full;
- (d) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities and Other Contractors' activities;
- (e) without limiting clauses 2.3 and 21, comply with all the requirements of the NSW Code and the NSW Guidelines:
- (f) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Contractor as part of the Contract Management Plan, in accordance with the Works Brief and clause 9.8;
- (g) prepare, document and implement a project Workplace Relations
 Management Plan which must be based on the draft outline Industrial
 Relations Management Plan (if any) submitted under the ECI Deed;
- (h) not commence any work on the Site or Extra Land until the Workplace Relations Management Plan has been submitted to the Principal's Representative and the Principal's Representative has not rejected it under clause 9.8;
- (i) submit to the Principal's Representative, before beginning work on the Site or Extra Land, a statement detailing:
 - the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (ii) the names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and
 - (iii) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
- (j) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;
- (k) before beginning work on the Site or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
 - (i) payment of remuneration to employees;

- (ii) annual leave provisions;
- (iii) Long Service Leave Payment Scheme registration;
- (iv) obligations to register workers under the *Building and*Construction Industry Long Service Payments Act 1986 (NSW);
- (v) workers' compensation insurance, including self-insurance arrangements;
- (vi) superannuation fund membership and contributions; and
- (vii) over-award payments such as redundancy fund contributions; and
- (I) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.

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

The industrial relations requirements contained in this Contract, the NSW Code and the NSW Guidelines:

- (m) are in addition to, but are not in substitution for, any requirements of Law; and
- (n) do not limit the powers of the Principal or the liabilities and responsibilities of the Contractor.

The Contractor warrants and acknowledges that it has allowed in the Original Contract Price for all the costs and expenses involved with complying with all the requirements of this Contract relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

9.8 Submission for Review by the Principal's Representative

- (a) The Contractor must submit each Document:
 - (i) in accordance with the times stated in this Contract or otherwise progressively and in timely manner to ensure that the Contractor's Activities are commenced, progressed and completed by the times required under this Contract, and by the times or within the periods:
 - A. identified in the Contractor's Program which is not rejected by the Principal's Representative; or
 - B. in the absence of a time or period in the Contractor's Program, required by the Principal's Representative; and

- (ii) under cover of a written notice entitled "Submit for Review", which identifies:
 - A. the Document; and
 - B. the provision of this Contract under which the Document is submitted.
- (b) A Document will be deemed not to have been submitted to the Principal's Representative and, if required, the Independent Certifier unless and until:
 - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
 - (ii) the Contractor has otherwise complied with this clause 9.8, in addition to any other requirement of this Contract relating to the submission of that Document.
- (c) The Principal's Representative may, after the submission of a Document which satisfies the requirements of clause 9.8(b):
 - (i) review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and
 - (ii) where submitted or resubmitted in accordance with a program which has not been rejected by the Principal's Representative within 15 Business Days of submission by the Contractor of such Document or resubmitted Document:
 - A. reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this Contract, stating the nature of the non-compliance;
 - B. make comments on the Document; or
 - C. notify the Contractor that it has no (or has no further) comments to make.
- (d) If any Document:
 - is rejected or deemed to be rejected, the Contractor must submit an amended Document to the Principal's Representative and, if required, the Independent Certifier within 10 Business Days of the date of such rejection or deemed rejection and this clause 9.8 will re-apply; or
 - (ii) is not rejected and the Principal's Representative and, if required, the Independent Certifier responds to the submission with comments, the Contractor must respond to the comments within 10 Business Days or such other period as may be directed by the Principal's Representative and, if required, the Independent Certifier.

If the Contractor fails to respond to the Principal's Representative's comments and, if required, the Independent Certifier within this period in a manner satisfactory to the Principal's Representative and, if required, the Independent Certifier the Document will be deemed to be rejected.

- (e) The Contractor must not commence construction of any part of the Works to which any Document (other than the Contractor's Program) submitted to the Principal's Representative applies, unless:
 - (i) the Principal's Representative has had the period referred to in clause 9.8(c)(ii) to review the Document and has not rejected the Document or made any comments on the Document (except in the case where the Contractor has responded to the Principal's Representative's comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.8(d)); and
 - (ii) in respect of Design Stage 3 Design Documentation that was provided to the Independent Certifier under clause 5.3(c), the Independent Certifier has issued a certificate in the form of Schedule 37.
- (f) The Contractor must not amend for construction purposes any Document that has:
 - (i) been submitted to the Principal's Representative and, if required, the Independent Certifier; and
 - (ii) not been rejected or not had comments made about it under clause 9.8(c)(ii),

unless the Contractor submits the proposed amendments to the Principal's Representative and, if required, the Independent Certifier, in which case this clause 9.8 will re-apply.

- (g) The Principal's Representative and the Independent Certifier do not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, a Document submitted by the Contractor, including for errors, omissions or non-compliance with this Contract.
- (h) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative or the Independent Certifier not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this Contract in any Document submitted.
- (i) No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Document prepared by the Contractor, or any other direction by the Principal's Representative or Independent Certifier in connection with the Document, will:
 - (i) constitute a direction to carry out a Variation pursuant to clause 6.2, unless it is in a written document titled "Variation Order" and

- describes the nature of the Variation in accordance with clause 6.2(a);
- (ii) relieve the Contractor from or alter its liabilities or obligations, whether under this Contract or otherwise according to any Law; or
- (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Contract or otherwise according to any Law.
- (j) In considering any Document, the Principal's Representative and, if required, the Independent Certifier may consult with and take into account any views or requirements of any relevant Authority.
- (k) Unless otherwise advised by the Principal's Representative and, if required, the Independent Certifier, the Contractor must submit the number of copies of a Document stated in this Contract, 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) 3 printed copies (2 bound and 1 unbound).

9.9 Work Method

Whether or not this Contract prescribes a particular work method or a work method is otherwise a part of this Contract or reviewed or approved (expressly or impliedly) by the Principal's Representative and, if required, the Independent Certifier, the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or without the approval of the Principal's Representative and, if required, the Independent Certifier, uses another work method will:

- (a) not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause the Contract to be frustrated.

9.10 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor (including any information provided under clause 9.11) available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Contract.

The Contractor acknowledges that any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work.

The Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Contractor's performance under this Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

9.11 Financial Reporting and Notifications

9.11A Financial reporting

- (a) The Contractor is not obligated to comply with any requirements of this clause 9.11 that would otherwise put the Contractor (or any entity comprising the Contractor), or any Guarantor, in breach of any applicable Laws or the listing rules of any recognised stock exchange.
- (b) The Contractor is not obligated to comply with any requirements of this clause 9.11 to the extent that the Contractor (or any entity comprising the Contractor), or any Guarantor, has provided the relevant documents or information to the Principal on a separate project or pursuant to a separate contract.
- (c) The Contractor must give the Principal its most recent audited financial statements (as applicable) for the Contractor (or any entity comprising the Contractor) and any Guarantor:
 - (i) if the Contractor (or any entity comprising the Contractor) or any Guarantor is not a Listed Entity, annually (not later than 3 months from the end of the Financial Year) and half-yearly (not later than 9 months from the end of the Financial Year) once prepared; and
 - (ii) if the Contractor (or any entity comprising the Contractor) or any Guarantor is a Listed Entity, when Publicly Notified on an annual and half-yearly basis,

but where audited financial statements are not available for the relevant period, then management accounts including profit and loss, balance sheets and cash flow statements.

- (d) The Contractor must prepare (or procure the preparation of) the accounts and financial statements required under clause 9.11A(c) in compliance with all applicable Laws and, without limitation, in accordance with the accounting principles generally accepted in Australia or the place of incorporation of the relevant entity and consistently applied.
- (e) Without limiting its obligations under clause 9.11A(c), the Contractor must also provide a document in the form set out in Schedule 31 setting out the information required by that Schedule at the times the information is required by that Schedule.
- (f) The Contractor must provide the documents and information required under clauses 9.11A(c) and 9.11A(e):
 - (i) from the date of this Contract to the achievement of Completion of the last Portion at the required frequencies; and

- (ii) thereafter until Final Completion, at any time following the Principal's request, provided that the Principal may not request the relevant information at greater frequencies than those required by clauses 9.11A(c) or 9.11A(e), as relevant.
- (g) The Contractor is not required to provide any documents or information under this clause 9.11A once Final Completion has been reached.
- (h) If the Principal becomes aware of a Financial Capacity Event, Financial Reporting Event or Restructure Event in relation to the Contractor (or any entity that comprises the Contractor) or any Guarantor, the Principal may request the Contractor to provide information which is required by the Principal, provided that, in the case of a Listed Entity, the relevant information is Publicly Notified or is Reportable Information.
- (i) The Contractor warrants that each of the documents and information required to be provided to the Principal in accordance with this clause 9.11A will be accurate, complete and correct in all respects.

9.11B Financial Assessment

Without limiting or otherwise restricting clause 9.10, the Contractor acknowledges and agrees that:

- (a) the Principal may, at any time prior to Final Completion, either itself, or through the engagement of private sector service providers, undertake ongoing financial assessments ("Financial Assessment") of the Contractor and any Subcontractors;
- (b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the date of commencement of the Works; and

it must, if requested by the Principal's Representative, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment.

9.11C Financial Reporting Events

Notwithstanding any other clause of this deed, but subject to clause 9.11A(a) and 9.11C(b), the Contractor must notify the Principal as soon as any Financial Reporting Event occurs or has occurred.

9.11D Confidentiality

Subject to clause 17.11(d), the Principal must keep confidential any information provided or communicated by the Contractor pursuant to this clause 9.11, except for any information:

- (a) which is in the public domain through no default of the Principal;
- (b) which is disclosed to NSW Treasury or the Principal's advisors or consultants who are subject to a duty of confidentiality to the Principal; or
- (c) the disclosure of which is:

- (i) required by Law or to obtain legal advice in relation to this deed;
- (ii) made following the written consent of the Contractor;
- (iii) given to a court in the course of proceedings to which the Principal is a party; or
- (iv) for the purposes of performing the Principal's obligations under this deed.

9.11E Financial Mitigation Plan

- (a) Subject to the requirements of all applicable Laws, the Principal may notify the Contractor if a Financial Capacity Event has occurred. In determining if a Financial Capacity Event has occurred, the Principal may have regard to the documents, information, evidence and notifications provided by the Contractor under this clause 9.11 and any other information it considers relevant in its absolute discretion.
- (b) Following the occurrence of a Financial Capacity Event, the Contractor must meet with the Principal within 5 Business Days of the date of the notice provided pursuant to clause 9.11E(a) (or such longer period as the Principal's Representative may agree) to discuss the nature of the Financial Capacity Event and its implications in respect of the obligations and liabilities of the Contractor under the Contract Documents. Subject to clause 9.11E(o), the Contractor must also procure the attendance at such meeting of any Guarantor specified by the Principal.
- (c) The meeting is also for the purpose of:
 - (i) discussing any effect of the Financial Capacity Event on the ability of:
 - A. the Contractor to continue to perform its obligations and meet its liabilities under this deed, including the timely performance of the Contractor's Activities and how any adverse effect will be mitigated; or
 - B. any Guarantor to meet its liabilities under the relevant Parent Company Guarantee;
 - (ii) identifying the information relating to the Contractor (or any entity that comprises the Contractor) and any Guarantor that the Principal reasonably requires in order to better understand the matters described in clause 9.11E(c)(i) and the timing for the provision of that information to the extent such information:
 - A. may be disclosed to the Principal without breaching any confidentiality obligations; and
 - B. in the case of any Listed Entity, has been Publicly Notified or is Reportable Information; and

- (iii) subject to clause 9.11E(d), specifying the form, duration and content of the Financial Mitigation Plan required to be prepared by the Contractor (if the Principal, acting reasonably, requires a Financial Mitigation Plan to be prepared in response to the Financial Capacity Event) which must include details of the measures the Contractor proposes to take to avoid, mitigate or minimise any adverse effect of the Financial Capacity Event on the matters described in clause 9.11E(c)(i).
- (d) The parties agree that the measures set out in the Financial Mitigation Plan for the purposes of clause 9.11E(c)(iii) must be consistent with those reasonable measures that the governing body of the Contractor and the Guarantor (as applicable) determines are in the best interest of the Contractor or the Guarantor (as applicable) in accordance with their duties and obligations under applicable Laws.
- (e) If a Financial Mitigation Plan is required by the Principal, the Contractor must prepare and submit the Financial Mitigation Plan to the Principal's Representative within 15 Business Days of the meeting held pursuant to clause 9.11E(b).
- (f) The Principal's Representative may:
 - (i) review any Financial Mitigation Plan submitted under clause 9.11E(e); and
 - (ii) if the Financial Mitigation Plan submitted does not, in the opinion of the Principal (acting reasonably), satisfy the requirements of clause 9.11E for the avoidance, mitigation or minimisation of any adverse effect of a Financial Capacity Event, notify the Contractor of its opinion within 10 Business Days of the date of submission of the Financial Mitigation Plan, providing written reasons.
- (g) Subject to clause 9.11E(h), if the Contractor receives a notice under clause 9.11E(f)(ii), the Contractor will, within 10 Business Days (or such longer period as the Principal's Representative may agree) submit an amended Financial Mitigation Plan, or relevant part of it, to the Principal's Representative to the extent required to satisfy the requirements of clause 9.11E. If requested by either party, the Principal and the Contractor must meet within 5 Business Days to discuss the Financial Mitigation Plan. Subject to clause 9.11E(o), the Contractor must also procure the attendance at such meeting of any Guarantor specified by the Principal.
- (h) The Contractor is not required to agree to any amendments to a Financial Mitigation Plan required by the Principal's Representative to the extent it can demonstrate, to the satisfaction of the Principal (acting reasonably), that to do so would result in a breach of directors' duties pursuant to any applicable Laws, as notified by the Contractor to the Principal, including detailed reasons.
- (i) The Contractor must diligently implement a Financial Mitigation Plan submitted under clause 9.11E(e) incorporating any amendments required by clause 9.11E(g).

- (j) The Contractor:
 - (i) must promptly update the Financial Mitigation Plan to take into account any events or circumstances, including any additional Financial Capacity Event or Financial Reporting Event, which occurs or comes into existence and which has any effect on the matters described in clause 9.11E(c)(i); and
 - (ii) must promptly submit each update of the Financial Mitigation Plan to the Principal's Representative, in which case clauses 9.11E(f) and 9.11E(g) shall again apply and the Contractor must comply with the then current Financial Mitigation Plan until the 10 Business Days period under clause 9.11E(f) has elapsed.
- (k) The Contractor may notify the Principal's Representative at any time if the Contractor reasonably believes that a Financial Capacity Event that is the subject of the Financial Mitigation Plan has been adequately mitigated in accordance with the Financial Mitigation Plan and/or no longer subsists.
- (I) If the Contractor gives a notice under clause 9.11E(k) and the Principal's Representative agrees (acting reasonably) that the Financial Capacity Event has been adequately mitigated and/or no longer subsists:
 - (i) the Principal's Representative must promptly provide written notice to the Contractor confirming this; and
 - (ii) the Contractor will be relieved of its obligation to comply with the relevant Financial Mitigation Plan under this deed from the date of such notice.
- (m) This clause 9.11 is without prejudice to and will not lessen or otherwise affect:
 - (i) the Contractor's obligations or liabilities under this deed or otherwise according to Law; or
 - (ii) any of the Principal's rights against the Contractor, whether under this Contract or otherwise according to Law, which arise as a result of or in connection with any of the matters dealt with in this clause 9.11, including any rights arising under clause 15.
- (n) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the performance of any of its obligations under this clause 9.11.

9.12 Restructure Event

- (a) The Contractor is not obligated to comply with any requirements of this clause 9.12 that would otherwise put the Contractor (or any entity comprising the Contractor) or any Guarantor, in breach of any applicable Laws or the listing rules of any recognised stock exchange.
- (b) Subject to the terms of this clause 9.12, in respect of a Restructure Event, the Contractor must use its best endeavours to:

- (i) provide prior written notice to the Principal in accordance with this clause 9.12; and
- (ii) consult with the Principal in respect of the Restructure Event before the Restructure Event occurs.
- (c) The Contractor must use its best endeavours to notify the Principal in writing of any Restructure Event as soon as reasonably practicable (and in any event, 10 Business Days) prior to the Restructure Event occurring, and use its best endeavours to provide:
 - (i) full details of the Restructure Event in the Contractor's notice under clause 9.12(b), including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Restructure Event; and
 - (ii) all other information reasonably necessary for the Principal to determine whether to exercise its rights under clause 9.12(d), in relation to the Restructure Event.
- (d) If a Restructure Event occurs, the Contractor acknowledges that the Principal may terminate this deed in accordance with clause.
- (e) The Contractor's notification of a Restructure Event will not relieve the Contractor of any of its obligations under this deed.

9.13 Change in Control

- (a) Subject to the terms of this clause 9.13, the Contractor must ensure that there is no Change in Control of any entity that comprises the Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the Contractor, and provide:
 - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clauses 9.13(d) and 9.13(e), in relation to the Change in Control of the relevant entity that comprises the Contractor.
- (c) The Principal's approval is not required for a Change in Control arising from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior written notice of the transfer.

- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the Contractor where the Principal is of the reasonable opinion that:
 - (iii) the person or entity which will exercise Control of the Contractor or the relevant entity that comprises the Contractor:
 - A. is not solvent and reputable;
 - B. has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - C. is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro; or
 - (iv) as a result of the Change in Control, the Contractor will no longer:
 - A. have sufficient expertise and ability; or
 - B. be of sufficiently high financial and commercial standing,

to properly carry out the obligations of the Contractor under this deed.

- (e) If a Change in Control of any entity that comprises the Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 9.13(c)), the Contractor acknowledges that the Principal may terminate this deed by notice in writing to the Contractor.
- (f) The Principal's approval of a Change in Control of any entity that comprises the Contractor will not relieve the Contractor of any of its obligations under this Contract.

9.14 Employment of Aboriginal and Torres Strait Islander People

The Contractor must:

- (a) comply with the requirements of the NSW Government Aboriginal Procurement Policy (January 2021) ("APP Policy");
- (b) submit its Aboriginal Participation Plan to the Principal's Representative for review in accordance with clause 9.8, within 20 Business Days of the date of this Contract;
- (c) base its Aboriginal Participation Plan on the draft Aboriginal Participation Plan submitted under the ECI Deed (if any);
- (d) comply with the reporting requirements of the APP Policy;
- (e) as part of the human resources input to and the documentation and implementation of the Contract Management Plan, address the employment of Aboriginal and Torres Strait Islander people and compliance with the APP Policy; and

(f) provide a final Aboriginal Participation Report to the Principal's Representative at the completion of the Works, identifying if Aboriginal participation requirements were met and following approval by the Principal, submit the report through the APIC reporting portal.

9.15 Waste Reduction and Purchasing Policy

The Contractor must:

- (a) use its best endeavours to reduce wastage and increase the use of recycled materials in accordance with the GREP;
- (b) address as part of the Construction Environment Management Plan the measures to be taken to reduce wastage and increase the use of recycled materials in the areas of paper products, office consumables, vegetation and landscaping materials, and construction and demolition materials; and
- (c) provide reports to the Principal's Representative in such format and within such times as may be required by the Principal's Representative for the use by the Principal in complying with its GREP obligations to report performance.

9.16 Training of apprentices and trainees

- (a) Subject to the express provisions of the Contract, the Contractor must comply with the NSW Procurement Board direction PBD-2016-02 Construction Apprenticeships (PBD-2016-02).
- (b) Training management requirements specified in the Works Brief and compliance with PBD-2016-02 may be in addition to, but are not in substitution for, any training obligations of the Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW Law.
- (c) Where applicable, as indicated in Schedule 1, at least 14 days before starting work on the Site the Contractor must document and submit a Project Training Management Plan which complies with PBD-2016-02.
- (d) The Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- (e) The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 9.16.
- (f) The Contractor:
 - (i) acknowledges that the target for the engagement of apprentices and trainees engaged by the Contractor to perform the Contractor's Activities is as specified in Schedule 1 (Training Target);
 - (ii) must make reasonable endeavours to achieve the Training Target;

- (iii) provide written reports to the Principal each Quarter, and at such other times as may be requested by the Principal, in a format set out in Schedule 28, detailing the number of apprentices and trainees engaged by the Contractor in the Contractor's Activities against the Training Target; and
- (iv) provide the Principal with all other assistance and information it requires in relation to the Contractor's performance against the Training Target in order for the Principal to comply with its reporting obligations at Law, including promptly making all relevant records available to the Principal after any written request by the Principal.

9.17 National Greenhouse and Energy Reporting Act 2007 (Cth)

The Contractor acknowledges and agrees that:

- (a) if any of the Contractor's Activities, or the activities of any of the Contractor's personnel, in connection with the Contractor's Activities (the "Relevant Matters") constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, despite the operation of clause 9.17(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the Contractor;
- (c) if the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time;
- (d) the Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;
- (e) the Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the

Contractor to discharge its obligations under this clause 9.17, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and

- (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 9.17 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) nothing in this clause 9.17 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

9.18 Independent Certifier

- (a) The Independent Certifier will be engaged on the terms of the Independent Certifier Deed.
- (b) The Independent Certifier is obliged to act independently of the Principal and the Contractor.
- (c) Both parties must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
 - (i) to attend meetings; and
 - (ii) access to all premises,

as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.

- (d) All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (e) The Principal's Representative may provide comments to the Independent Certifier in respect of the Contractor's Activities.

9.19 Effect of Independent Certifier decisions

- (a) No certification or determination by the Independent Certifier will:
 - (i) constitute an approval by the Principal of the Contractor's performance of its obligations under this Contract;

- (ii) be taken as an admission or evidence that the Works or Temporary Works or any other matters certified or determined by the Independent Certifier comply with this Contract; or
- (iii) prejudice any rights or powers of the Principal under this Contract or otherwise according to Law, including any rights which the Principal may have in respect of Defects in the Works.
- (b) No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier:
 - (i) is an act or omission by the Principal (including a breach of contract) under or in connection with the Contract Documents; or
 - (ii) without limiting clause 9.19(a), will give rise to any liability of the Principal to the Contractor.

10. Time and Progress

10.1 Rate of Progress

The Contractor must:

- (a) immediately commence, and thereafter regularly and diligently progress the Contractor's Activities;
- (b) proceed with the Contractor's Activities with due expedition and without delay; and
- (c) achieve Completion of the Works and each Portion by the relevant Date for Completion.

Without limiting the Contractor's rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of Contractor's Activities except where directed by the Principal's Representative under clause 10.14.

Without limiting the next paragraphs of this clause 10.1 or clause 10.4, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor's Activities in accordance with this Contract.

The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this Contract.

The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 10.1, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed. If the Contractor can reasonably comply with the direction, the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal's

Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1.

If compliance with a written direction expressly stated to be pursuant to this clause 10.1 causes the Contractor to necessarily incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued as if it were a Variation except where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the Contractor to comply with its obligations under this Contract.

Such costs shall be the Contractor's sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 10.1.

10.2 The Contractor's Programming Obligations

The Contractor must:

- (a) prepare and provide a Contractor's Program that complies with and includes the details required by this Contract and any requirements of the Principal's Representative:
- (b) submit the Contractor's Program to the Principal's Representative for its review in accordance with clause 9.8 within the earlier of:
 - (i) 10 Business Days of the date of this Contract; or
 - (ii) any time required by the Works Brief;
- (c) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within 5 Business Days of receipt of such a direction;
- (d) update, revise and submit to the Principal's Representative an updated Contractor's Program:
 - (i) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Completion, the actual progress made by the Contractor, Variations and any other changes to the Contractor's Activities but excluding claims for extensions of time to any Date for Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative; and
 - (ii) on a monthly basis or whenever directed to do so by the Principal's Representative;
- (e) prepare and provide for the Principal's Representative's information only versions of all Contractor's Programs prepared in accordance with clause 10.2(d) that also allow for those claims for an extension of time to any Date for Completion that have been made by the Contractor in accordance with clause 10.7(a) but to which the Principal's Representative has not yet responded in accordance with clause 10.10;

- (f) comply with the requirements of the Principal's Representative and its other obligations under this Contract in preparing and using programs, including the requirements in clause 9.8; and
- (g) not depart from the current version of the Contractor's Program that has been submitted to the Principal's Representative for review under clause 9.8 and not been rejected by the Principal's Representative within 15 Business Days.

10.3 Contractor not Relieved

Without limiting clause 9.8, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Contractor's Program) prepared by the Contractor, by the Principal's Representative in connection with the program, will:

- relieve the Contractor from or alter its liabilities or obligations under this Contract, including the obligation under clause 10.1;
- (b) evidence or constitute notification of a delay or the claiming of or the granting of an extension of time to any Date for Completion or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Contract.

10.4 Compression by Contractor

If the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Completion before any Date for Completion;
- (b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) the Contractor does so at its own cost and risk.

10.5 Importance of Completion on Time

The Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 10.1; and
- (b) that a Date for Completion will only be extended in accordance with clause 10.10 or clause 10.12, or when so determined under clause 16.

10.6 Risk and Notice of Delay

(a) Except as expressly provided for in clause 10.10, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities and performance of its obligations under this Contract both before and after any Date for Completion.

(b) The Contractor must within 5 days of the commencement of an occurrence causing any delay or which is likely to cause delay, give the Principal's Representative written notice of any delay or likely delay to the carrying out of the Contractor's Activities, details of the cause and how any Date of Completion is likely to be affected (if at all).

10.7 Entitlement to Claim Extension of Time

- (a) If the Contractor is, or will be, delayed on or prior to the Date for Completion of the Works or a Portion, by reason of:
 - (i) an act or omission of the Principal or the Principal's
 Representative (including any breach of this Contract or Variation
 directed by the Principal's Representative); or
 - (ii) a cause set out in Schedule 1,

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

(b) If the Contractor is, or will be, delayed after the Date for Completion of the Works or a Portion, by reason of an act or omission of the Principal or the Principal's Representative (including any breach of this Contract or Variation directed by the Principal's Representative), the Contractor may claim an extension of time to the relevant Date for Completion.

10.8 Claim for Extension of Time

To claim an extension of time the Contractor must:

- (a) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Completion, which:
 - (i) gives detailed particulars of the:
 - A. delay and the occurrence causing the delay; and
 - B. activities that are critical to the maintenance of progress in the execution of the Contractor's Activities; and
 - (ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:
 - A. conditions precedent to an extension of time in clause 10.9 have been met; and
 - B. occurrence will delay it in achieving Completion in the manner described in clause 10.7; and
- (b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:

- (i) every 14 days after the first written claim, or such other period as may be approved by the Principal's Representative in writing, until after the end of the effects of the delay; and
- (ii) containing the information required by paragraph (a).

The Principal's Representative may, within 14 days of receiving the Contractor's claim or further claim for an extension of time for Completion, by written notice to the Contractor, request additional information in relation to the claim or further claim. The Contractor must, within 14 days of receiving such request, provide the Principal's Representative with the information requested.

10.9 Conditions Precedent to Extension of Time

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

- (a) the Contractor gives the notices and claims required by clauses 10.6(b) and 10.8 as required by those clauses;
- (b) the Contractor complies with any request for additional information under clause 10.8 within the time required;
- (c) the cause of the delay is beyond the reasonable control of the Contractor; and
- (d) the Contractor is actually, or will be, delayed:
 - (i) on or prior to the Date for Completion of the Works or the Portion, by reason of one or more of the causes set out in clause 10.7(a) in the manner described in clause 10.7(a); or
 - (ii) after the Date for Completion of the Works or the Portion, by reason of an act or omission of the Principal or the Principal's Representative (including any breach of this Contract or Variation directed by the Principal's Representative) in the manner described in clause 10.7(b).

If the Contractor fails to comply with the conditions precedent in this clause 10.9:

- (e) the Principal will not be liable upon any Claim by the Contractor; and
- (f) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

10.10 Extension of Time

Subject to clause 10.11, if the conditions precedent in clause 10.9 have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Principal's Representative, and notified to the Principal and the Contractor within 28 days after the latest of the:

- (a) Contractor's written claim under clause 10.8; and
- (b) provision by the Contractor of any additional information regarding the claim required under clause 10.8.

A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Completion or to grant an extension of time to any Date for Completion within the relevant 28 day period will not cause an affected Date for Completion to be set at large, but nothing in this paragraph will prejudice any right of the Contractor to damages.

10.11 Reduction in Extension of Time

The Principal's Representative will reduce any extension of time to the relevant Date for Completion it would otherwise have determined under clause 10.10 to the extent that the Contractor:

- (a) contributed to the delay; or
- (b) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.12 Unilateral Extensions

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Completion, under clause 10.10, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor and the Principal, unilaterally extend any Date for Completion by any period specified in a notice to the Contractor and the Principal.

The Principal's Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the Contractor.

The discretion to grant an extension of time under this clause 10.12 may only be exercised by the Principal's Representative and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 16 or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert, arbitration or litigation proceedings).

10.13 Delay Damages

For each day by which the Date for Completion of the Works or a Portion is extended due to:

- (a) a breach of this Contract by the Principal;
- (b) the cancellation of a Track Possession or power isolation specified in the Contract as available for use by the Contractor:
 - (i) where the cancellation does not arise from industrial action:
 - A. less than 4 weeks prior to the time at which it was planned to commence; or

- B. with more than 4 weeks' notice, but without the provision of an alternative Track Possession or power isolation at a time the Contractor is reasonably able to utilise in substitution for the cancelled Track Possession or power isolation; or
- (ii) where the cancellation arises from any industrial action related to enterprise bargaining agreement negotiations, less than 24 hours prior to the time at which it was planned to commence;
- (c) a Variation the subject of a direction by the Principal's Representative under clause 6.2, except where that Variation is directed in the circumstances described in clause 8.2(c);
- (d) a Latent Condition which satisfies the description in clause 3.5(c), to the extent that the Latent Condition comprises of:
 - (i) unexploded ordnance; or
 - (ii) mine subsidence,

the Contractor will be entitled to be paid the additional actual costs reasonably and necessarily incurred by the Contractor as a direct result of the delay the subject of the extension of time with no margin or Contractor labour and(as determined by the Principal's Representative) up to but not exceeding the maximum daily amount set out in Schedule 1 provided that the Contractor provides evidence of such costs and the Contractor demonstrates that any relevant resources cannot be redeployed or utilised for other parts of the Contractor's Activities which are not affected by an event under this clause 10.13.

In respect of costs under paragraph (b)(ii) above, the Contractor will only be entitled to its costs of plant and equipment and not any Subcontractor costs.

The valuation of entitlements to money under clauses 3.5(c), 10.1 and 14.3 is not a Variation for the purposes of clause 10.13(c).

The amounts payable pursuant to this clause 10.13 will be a limitation upon the Principal's liability to the Contractor for any delay or disruption that:

- (e) the Contractor encounters in carrying out the Contractor's Activities; and
- (f) arises out of, or in any way in connection with, the breach of this Contract by the Principal,

and the Contractor will not be entitled to make, nor will the Principal be liable upon, any Claim in these circumstances other than for the amount which is payable by the Principal under this clause 10.13.

10.14 Suspension

The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Contractor's Activities. Nothing in this clause limits the Principal's rights under clause 2.10.

If the suspension under this clause 10.14 arises in the circumstance set out in clause 2.10(f) then clauses 2.10(f) and 2.10(g) will apply, otherwise where it arises as a result of:

- the Contractor's failure to carry out its obligations in accordance with this Contract (including under clause 4.5 or clause 4.6 or where the Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or AMB compliance in accordance with this Contract or where any process, procedure, test method, calculation, analysis or report required by this Contract has resulted in or will result in a non-conformance), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the Contractor's failure to perform its obligations in accordance with this Contract:
 - (i) a direction to suspend under this clause 10.14 will entitle the Contractor to:
 - A. be paid by the Principal the additional costs reasonably and necessarily incurred by it as a direct result of the suspension as determined by the Principal's Representative; and
 - B. an extension of time to any relevant Date for Completion where it is otherwise so entitled under this clause 10;
 - (ii) the Contractor must take all steps possible to mitigate the additional costs incurred by it as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.14(b).

10.15 Acceleration directed by the Principal's Representative

- (a) The Principal's Representative may request the Contractor at any time to price a proposed direction to accelerate, giving the Contractor details of the proposed acceleration with the request.
- (b) Within 5 Business Days of receiving a request from the Principal's Representative under clause 10.15(a), the Contractor must, at its cost, provide the Principal's Representative with a written notice containing the following details:
 - the Contractor's strategy for acceleration ("Acceleration Strategy"), including details of the changes to the Contractor's Activities and effect on the Contractor's Program;
 - the Contractor's estimated cost of accelerating the Contractor's Activities as proposed, together with a detailed breakdown of the estimated cost ("Acceleration Cost Estimate"),

- (c) The Principal's Representative may by written notice expressly stated to be pursuant to this clause 10.15(c):
 - (i) accept the Acceleration Strategy and the Acceleration Cost Estimate and direct the Contractor to proceed with the acceleration in accordance with the Acceleration Strategy and the Acceleration Cost Estimate;
 - (ii) accept the Acceleration Strategy but not the Acceleration Cost Estimate and direct the Contractor to proceed with the acceleration in accordance with the Acceleration Strategy;
 - (iii) notify the Contractor of any modifications which it requires to be made to the Acceleration Strategy, in which case the procedures under clauses 10.15(a) to 10.15(c) are to be performed again, taking account of the modifications notified;
 - (iv) not proceed with the acceleration;



- (d) If the Principal's Representative gives a direction to the Contractor to accelerate under clause 10.15(c)(i) or 10.15(c)(ii) then:
 - the Contractor must accelerate the performance of the Contractor's obligations under the Contract to the degree which the direction requires and in accordance with any Acceleration Strategy as accepted by the Principal's Representative;
 - (ii) the Contractor must provide an updated Contractor's Program within the time directed by the Principal's Representative detailing the period which will elapse between the date on which the acceleration of the Contractor's Activities commences and the revised Date for Completion;
 - (iii) to the extent that the Contractor, but for the direction, would have been entitled to an extension of time to the Date for Completion, the Contractor will:
 - A. be entitled to be paid:
 - the Acceleration Cost Estimate if accepted, or such other price as the Principal's Representative and the Contractor have otherwise agreed; or

- where an Acceleration Cost Estimate has not been accepted and the parties have not agreed another price for the acceleration, then the direct, reasonable, proven and necessarily incurred costs in accelerating the performance of its obligations under the Contract as required by the Principal's Representative's direction (such costs to be determined by the Principal's Representative), but otherwise will not be entitled to any payment nor to any relief from any of its obligations under the Contract; and
- not be entitled to an extension of time to the Date for Completion for the period to which the acceleration relates; and
- (iv) if the direction to accelerate is given to overcome delay for which the Contractor is not entitled to an extension of time, the Contractor must comply with the direction to accelerate at its own cost; and
- (v) if neither clause 10.15(d)(iii) or 10.15(d)(iv) applies, the Contractor will be entitled to be paid:
 - A. the Acceleration Cost Estimate if accepted, or such other price as the Principal's Representative and the Contractor have otherwise agreed; or
 - B. where an Acceleration Cost Estimate has not been accepted and the parties have not agreed another price for the acceleration, then the direct, reasonable, proven and necessarily incurred costs in accelerating the performance of its obligations under the Contract as required by the Principal's Representative's direction (such costs to be determined by the Principal's Representative), but otherwise will not be entitled to any payment nor to any relief from any of its obligations under the Contract.
- (e) Any costs payable under any of clauses 10.15(d)(iii) or 10.15(d)(v) shall be the Contractor's sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim arising out of or in any way in connection with any direction pursuant to this clause 10.15.

11. Payment

11.1 Contractor's Payment Entitlements

(a) Subject to clause 17.12 and to any other right to set-off that the Principal may have, the Principal must pay the Contractor the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Contract, in accordance with the procedure in this clause 11.

(b) The Contract Sum is not subject to rise and fall.

11.2 Payment Claims

The Contractor may give the Principal's Representative a claim for payment on account of the Contract Sum and any other amount expressly payable by the Principal to the Contractor under the Contract on each Payment Claim Date.

Each claim for payment must:

- (a) generally follow the form of the Payment Breakdown Schedule and otherwise be in such form as the Principal's Representative reasonably requires;
- (b) include all the evidence reasonably required by the Principal's Representative of the amount of work completed in accordance with this Contract and the amount payable;
- (c) for each monthly claim pursuant to clause 11.2 (a "Progress Claim"), set out the amount claimed for work completed in accordance with the Contract and incorporated in the Works or to which clause 11.7 applies, to the end of the previous month and details of how the amount has been calculated;
- (d) include such further information and evidence in respect of the payment claim as is reasonably required by the Principal's Representative.

The Contractor may not include in any payment claim under this clause 11 any amount:

- (e) for the provision of Asset Management Information until all of the information has been submitted to the Principal in accordance with the Contract and to the satisfaction of the Principal; or
- (f) in respect of a Claim which is barred by clause 18.6 or any other provision of this Contract.

11.3 Payment Statements

The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 11.2, a Completion Payment Claim under clause 11.9 or a Final Payment Claim under clause 11.11, issue to the Contractor and the Principal a payment statement which, identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and which sets out:

- (a) its determination of the value of the Contractor's Activities carried out in accordance with this Contract, using the methodology in clause 11.2(c) where the payment statement relates to a Progress Claim;
- (b) the amount already paid to the Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under this Contract;
- (d) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Sum

and which the Principal proposes to pay to the Contractor or the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal; and

- (e) if the amount in paragraph (d) is less than the amount claimed in the Progress Claim, Completion Payment Claim or Final Payment Claim:
 - (i) the reason why the amount in paragraph (d) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim; and
 - (ii) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works or Contractor's Activities covered by the payment statement has been satisfactorily carried out in accordance with this Contract.

Failure by the Principal's Representative to set out in a payment statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.

The Contractor agrees that the amount referred to in the payment statement in respect of paragraph (d) above for the purposes of section 9 and 10 of the SOP Act, is the amount of the "progress payment" (as defined in the SOP Act) calculated in accordance with the terms of this Contract to which the Contractor is entitled in respect of this Contract.

Where the Principal has notified the Contractor in accordance with clause 19(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Contractor for the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative give the Principal's Representative a tax invoice (which complies with the GST Legislation) for the amount of the payment statement.

11.4 Payment

- (a) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Principal to the Contractor, subject to clauses 11.1, 11.2, 11.6, 11.8, 15.3, 15.7(a) and 17.12, the Principal must, within 15 Business Days of receipt of the payment claim to which the payment statement relates pay the Contractor the amount set out in the payment statement referred to in clause 11.3:
- (b) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Contractor to the Principal, the Contractor must, within 5 Business Days of the Principal's Representative issuing the payment statement under clause 11.3, pay the Principal the amount set out in the payment statement referred to in clause 11.3.

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11.5 Payment on Account

A payment of moneys under clause 11.4(a) is not:

- (a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Contract;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with this Contract,

but is only to be taken as payment on account.

11.6 Payment Claim Requirements

Prior to making a payment claim under clause 11.2, the Contractor must have:

- (a) complied with clause 1.5;
- (b) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.7;
- (c) provided the Principal's Representative with:
 - (i) a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 12, made out not earlier than the date of the payment claim;
 - (ii) a Contractor's Certificate of Design Compliance and a Contractor's Certificate of Construction Compliance, in the form of Schedule 19 and Schedule 20; and
 - (iii) where clause 11.16(j) applies, the statement and the evidence (if any) required to be provided by the Contractor pursuant to that clause; and
- (d) effected or procured to be effected the insurances required to be effected by the Contractor by clauses 14.4, 14.5 and 14.6 and (if requested) provided evidence of this to the Principal's Representative.

11.7 Unfixed Plant and Materials

The Contractor is only entitled to make a claim for payment for plant or materials intended for incorporation in the Works but not yet incorporated, and the Principal is only obliged to make payment for such plant or materials in accordance with clause 11.4(a) if so agreed by the Principal and if:

- (a) the Contractor provides evidence of:
 - (i) ownership of the plant or materials;
 - (ii) identification and labelling of the plant and materials as the property of the Principal; and

- (iii) adequate and secure storage and protection;
- (b) security acceptable to the Principal in the form of the unconditional undertaking in Schedule 8 issued by an Institution approved by the Principal in an amount equal to the payment claimed for the unfixed plant and materials has been provided by the Contractor to the Principal;
- (c) the plant and materials are on the Site or are available for immediate delivery to the Site;
- (d) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative;
- (e) the condition of the unfixed plant and materials has been confirmed in an inspection by the Principal's Representative; and
- (f) if the PPS Law applies, the Contractor has registered a Security Interest in the unfixed plant and materials in favour of the Principal in accordance with clause 17.26.

The only such unfixed plant or materials to be allowed for in a payment statement are those that have become or (on payment) will become the property of the Principal. Upon a payment against a payment statement that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest in the Principal.

The security provided in accordance with clause 11.7(b) will be released once the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose.

11.8 Payment of Employees and Subcontractors

- (a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal's Representative a statutory declaration in accordance with clause 11.6(c)(i).
- (b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.6(c)(i), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the employee or Subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (d) If the Principal receives notice of any Insolvency Event in relation to the Contractor the Principal will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.

(e) Nothing in this clause 11.8 limits or otherwise affects the Principal's right under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

11.9 Completion Payment Claim

No later than 28 days after the issue of the Notice of Completion for the Works or the last Portion to reach Completion, but subject to clause 11.6 the Contractor may lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating;

- (a) the Contract Sum;
- (b) all payments received on account of the Contract Sum; and
- (c) the balance, if any, due to the Contractor.

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Completion Payment Claim the Contractor must lodge with the Principal's Representative a First Statement of Outstanding Claims. The First Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract which occurred prior to the date of submission of the Completion Payment Claim.

The Completion Payment Claim and First Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and First Statement of Outstanding Claims.

11.10 Release after Completion Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:

- (a) has been included in the Completion Payment Claim or First Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with clause 11.9; and
- (b) has not been barred under another provision of this Contract.

11.11 Final Payment Claim

No later than 28 days after the expiration of the last Defects Rectification Period, but subject to clause 11.6 the Contractor may lodge with the Principal's Representative a payment claim marked "Final Payment Claim" stating:

(a) the Contract Sum;

- (b) all payments received on account of the Contract Sum; and
- (c) the balance, if any, due to the Contractor.

The Final Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Final Payment Claim the Contractor must lodge with the Principal's Representative a Second Statement of Outstanding Claims. The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract which occurred prior to the date of submission of the Final Payment Claim.

The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Contractor's Activities the Works or this Contract up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.

11.12 Release after Final Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:

- (a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.11; and
- (b) has not been barred under another provision of this Contract.

11.13 Interest

If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable thereon from but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.

The rate of interest will be the rate from time to time prescribed for judgement debts under the *Uniform Civil Procedure Rules 2005* (NSW). Interest will be compounded at six monthly intervals.

This will be the party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

11.14 Correction of Payment Statements

The Principal's Representative may, in any payment statement:

- (a) correct any error; and
- (b) modify any assumptions or allowances made,

in any previous payment statement issued by the Principal's Representative.

11.15 Costs Allowed by Contractor

Unless otherwise provided in this Contract, it is agreed that the Contractor has, and will be deemed to have, allowed in the Original Contract Price for and will be wholly responsible for the payment of:

- (a) without limiting clause 19, all customs duties, tariffs and similar taxes (other than GST) and charges paid or payable on all items that are:
 - (i) intended to be used for, or that are to be incorporated into, the Works: or
 - (ii) otherwise used for the Contractor's Activities;
- (b) any long service leave levy which may be payable in respect of the Contractor's Activities or the Works;
- (c) all royalties, licence fees and similar payments for Intellectual Property in respect of:
 - (i) the items that are intended to be used for, or that are to be incorporated into, the Works; and
 - (ii) all Contract Documentation; and
- (d) all fluctuations in the value of the Australian dollar against other currencies.

The Contractor will have no entitlement to any increase in the Contract Sum or otherwise to make any Claim against the Principal in respect of any of those amounts, whatever they may actually be.

11.16 SOP Act

- (a) The 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.
- (b) In responding to the 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).
- (c) 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 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 Contract 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).

- (d) If an adjudication occurs under the SOP Act and the Principal has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 11.3;
 - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("overpayment"), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any setoff, counterclaim, deduction or similar right of defence; and
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, any amount paid to the Contractor by the Principal pursuant to the adjudicator's determination then becomes a debt due and payable by the Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (e) For the purposes of section 17(3) of the SOP Act the 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 Contract.
- (f) Without limiting clauses 11.8 or 17.12, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (g) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - A. any period for which money owed by the Principal to the Contractor has been unpaid; and

- B. the date by which payment of money owed by the Principal to the Contractor must be made.
- (h) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (i) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Contractor to the Principal.
- (j) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal within 5 days of the occurrence of the event in sub-paragraph (i) or (ii) above (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).

11.17 Title

Title in each item forming part of the Works will pass progressively to the Principal on the earlier of payment for that item or delivery of that item to the Site. Risk in all such items remains with the Contractor until Completion.

12. KPIs and Performance Adjustment

12.1 Key Performance Indicators

- (a) The Contractor:
 - (i) must, in carrying out the Contractor's Activities, comply with the KPIs as amended in accordance with the Contract; and
 - (ii) must ensure that all Contractor's Activities meet or exceed all Minimum Performance Scores.
- (b) The Contractor must report to the Principal at the frequency specified in Schedule 1, in the form of a KPI Performance Report in a form satisfactory to the Principal which:
 - (i) provides an analysis of the performance of the Contractor in meeting the KPIs;
 - (ii) identifies any non-compliances;

- (iii) proposes an action plan to remedy non-compliances and implement continuous improvements (Rectification Action Plan);
 and
- (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.
- (c) The Contractor acknowledges and agrees that:
 - (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;
 - (ii) it must provide any Rectification Action Plan required by the Principal and must implement and comply with any Rectification Action Plan required by the Principal; and
 - (iii) the Principal, acting reasonably, may amend the KPIs provided that the Contractor has been notified by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment.
- (d) The Principal and the Contractor must meet at the times specified in Schedule 1, to monitor and review the Contractor's performance under the Contract and the KPIs and, if required by the Principal, the Contractor's compliance with any Rectification Action Plan.

12.2 Performance Adjustments

This clause 12.2 only applies if specified in Schedule 1.

- (a) The parties acknowledge and agree that:
 - (i) failure to achieve KPIs may lead to a Performance Adjustment in accordance with Schedule 33;
 - (ii) the Performance Adjustments which may be made by the Principal in accordance with Schedule 33 are intended to reflect the anticipated diminution in the value of the Contractor's Activities in the event that the KPIs are not achieved;
 - (iii) the Performance Adjustments:
 - A. do not reflect any potential cost, expense, loss, damages, liability or Claim (other than anticipated diminution in value of the Contractor's Activities) which may arise from or in connection with any failure to achieve the KPIs; and
 - B. are not intended to apply as liquidated damages;
 - (iv) each of the parties require a formula for calculation of that diminished value that is able to be readily applied without unnecessary administrative costs, delay or difficulty; and

- (v) there are many and varied matters which form part of the diminished value which the Principal may suffer, many of which are difficult or impossible to calculate with precision.
- (b) To the extent permissible, the Contractor excludes and expressly waives any right of the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of the Performance Adjustments as penalties, or the enforceability or recoverability of the Performance Adjustments.
- (c) If the Performance Adjustment regime set out in Schedule 33 is found for any reason to be void, invalid or otherwise unenforceable, so as to disentitle the Principal from making a Performance Adjustment, the Principal will be entitled to recover from the Contractor, and the Contractor must pay on a full indemnity basis general damages at law arising out of or in connection with any loss suffered the Principal as a result of an event, action or omission which would have entitled the Principal to make any of the Performance Adjustments, up to the full amount of the applicable adjustment, if the relevant provision of this Contract had not been found void, invalid or otherwise unenforceable.
- (d) The liability of the Contractor in respect of any cost, expense, loss, damages, liability or Claim which may arise out of or in connection with any failure to achieve the KPIs is not affected, reduced or otherwise limited to or by the Performance Adjustments.

13. Completion

13.1 Progressive Inspection and Testing

At any time prior to Final Completion and including at the times stated in Schedule 1, the Principal's Representative may direct that any materials or work forming part of the Contractor's Activities in respect of the Works or that Portion be tested. The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Contractor's Activities or Works as may be required. On completion of any test the Contractor must make good the Contractor's Activities or Works so that they fully comply with this Contract.

The Principal's Representative may direct that any part of the Contractor's Activities or the Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.

The tests prescribed in this Contract must be conducted by the Contractor as and when provided for in this Contract, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.

Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.

Unless otherwise stated in this Contract before conducting a test under this Contract the Principal's Representative or the Contractor must give not less than two Business Days' notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.

Without prejudice to any other rights or remedies under this Contract, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

Each party must promptly make the results of tests available to the other and to the Principal's Representative.

Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the Contractor unless:

- (a) this Contract provides that the Contractor must bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under clause 13.1;
- (b) the test shows that the material or work is not in accordance with this Contract:
- (c) the test is in respect of a part of the Contractor's Activities or the Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of this Contract.

Where the extra costs are not to be borne by the Principal, they will be borne by the Contractor and will be a debt due from the Contractor to the Principal or paid by the Contractor to the Principal on demand.

13.2 Contractor to Notify

- (a) The Contractor must give the Principal's Representative written notice 21 days before it anticipates achieving Completion of the Works or a Portion.
- (b) Following the issue by the Contractor of a notice under clause 13.2(a) the Contractor must:
 - (i) prepare a detailed procedure for the progressive inspection by the Principal's Representative of the Works or that Portion; and
 - (ii) unless otherwise required by the Principal's Representative, provide a draft defects management plan (without identifying any defects in respect of the Works or that Portion).
- (c) The procedure and draft defects management plan referred to in clause 13.2(b) must be submitted to the Principal's Representative and, prior to the inspection under clause 13.3(a) must, if required by the Principal's Representative, be amended to ensure that the:

- (i) procedure provides the Principal's Representative with sufficient time to properly carry out this progressive inspection and the final inspection which the Principal's Representative is required to undertake under clause 13.3 to determine whether Completion of the Works or a Portion (as the case may be) has occurred; and
- (ii) draft defects management plan fully addresses the matters the Principal's Representative directs.

13.3 Inspection before Completion

- (a) The Principal's Representative, the Contractor's Representative and the Independent Certifier must, within 7 days of receipt by the Principal's Representative of the notice referred to in clause 13.2(a), jointly inspect the Works or the Portion at a mutually convenient time. The Principal's Representative may invite any other person to attend an inspection under this clause 13.3(a) who may provide comments to the Principal's Representative in relation to any non-compliance of the Contractor's Activities or the Works with this Contract.
- (b) Following the joint inspection under clause 13.3(a), the Independent Certifier must issue a notice to the Principal and the Contractor either:
 - (i) containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or
 - (ii) stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated in clause 13.3(b)(i).
- (c) When the Independent Certifier issues a notice under either clause 13.3(b)(i) or clause 13.3(b)(ii), the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when the Contractor considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative and the Independent Certifier in writing by means of a Contractor's Certificate of Completion in the form of Schedule 21.

Thereafter the Principal's Representative, the Contractor's Representative and the Independent Certifier must jointly inspect the Contractor's Activities at a mutually convenient time.

- (d) Following the joint inspection under clause 13.3(c), the Independent Certifier must within 21 days of receipt of a notice under clause 13.3(c), or of receipt of a notice under clause 13.3(e), issue a notice to the Principal and the Contractor:
 - (i) if satisfied that Completion of the Works or the Portion has been achieved:

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A. stating the date on which the Independent Certifier determines Completion of the Works or the Portion was achieved; and

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- B. containing a list of any minor Defects, of the type described in paragraph (a) of the definition of "Completion" in clause 1.1, that are apparent; or
- (ii) if not satisfied that Completion of the Works or the Portion has been achieved:
 - A. containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or
 - B. stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated by clause 13.3(d)(ii)A.
- (e) If the Independent Certifier issues a notice under either clause 13.3(d)(ii)A or clause 13.3(d)(ii)B, the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when it considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Independent Certifier and the Principal's Representative by notice in writing, after which the second paragraph of clause 13.3(c), clause 13.3(d) and this clause 13.3(e) will reapply.
- (f) Where there are Portions, for the purposes of this Contract and without affecting the Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion:
 - (i) no separate Date for Completion of the Works is specified in this Contract;
 - (ii) Completion of the Works is achieved by achieving Completion of all Portions:
 - (iii) Completion of the Works will be taken to have occurred once Completion of all Portions has occurred: and
 - (iv) the Date of Completion of the Works will be taken to be the Date of Completion of the last Portion to reach Completion.

13.4 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Contractor to the Principal's Representative under either of clauses 13.3(c) or 13.3(e) is not given by the Contractor yet the Principal's Representative is of the opinion that Completion of the Works or a Portion has been achieved, the Principal's Representative may at any time and for any reason in its absolute discretion direct the Independent Certifier to issue a Notice of Completion under clause 13.3(d)(i) for the Works or the Portion.

13.5 Hand Over upon Completion

The Contractor acknowledges that the Principal may require a progressive handover of the Works and that this handover will take place by the Contractor handing over each Portion once that Portion has reached Completion. The Principal's obligations

under clause 3.1(b) in respect of the Site will then cease in respect of so much of the Site, access to which was provided for that Portion which is handed over to the Principal.

13.6 Part of the Works or a Portion

- (a) Without limiting clause 13.6(b), further Portions may be created by the Principal's Representative by issuing a written direction to the Contractor which clearly identifies for each, the:
 - (i) portion of the Works;
 - (ii) Date for Completion; and
 - (iii) respective amounts for security, delay damages and liquidated damages (which will unless otherwise stated in the Principal's Representative's direction all be calculated pro-rata according to the ratio of the Principal's Representative's valuation of the Portion to the Contract Sum).
- (b) Without limiting clause 13.6(a), the Principal may, after the Contractor is given written notice by the Principal's Representative, occupy or use any part of the Works or a Portion although the whole of the Works or the Portion has not reached Completion.
- (c) If the Principal's Representative gives a notice under clause 13.6(b):
 - (i) the Principal must allow the Contractor reasonable access to the part of the Works or the Portion referred to in the notice and being occupied or used by the Principal, to enable the Contractor to bring the Works or the relevant Portion of which the area being occupied or used forms part to Completion; and
 - (ii) this will not otherwise limit or affect the obligations of the parties under this Contract, including the obligation of the Contractor to achieve Completion of the Works or the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Completion.

13.7 Liquidated Damages for Delay in Reaching Completion

- (a) Subject to clause 13.7(e), if Completion of the Works or a Portion has not occurred by the Date for Completion for the Works or the Portion, the Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1 for every day after the Date for Completion of the Works or the Portion up to and including:
 - (i) the Date of Completion of the Works or the Portion; or
 - (ii) the date that this Contract is terminated under clause 15,

whichever is first.

(b) The parties:

- (i) agree that the amount of liquidated damages provided for in Schedule 1 constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Principal as a result of Completion of the Works or a Portion not occurring on or before the relevant Date for Completion (except for amounts referred to in clause 13.7(d));
- (ii) desire to avoid the difficulties of proving damages in connection with such failure and agree that the liquidated damages payable by the Contractor in accordance with clause 13.7(a) are reasonable and do not constitute nor are they intended to be a penalty;
- (iii) agree that the amount of liquidated damages payable by the Contractor under clause 13.7(a) will be recoverable from the Contractor as a debt immediately due and payable to the Principal; and



- (c) The Contractor:
 - (i) acknowledges that the liquidated damages referred to in clause 13.7(a) do not include any allowances for any liability of the Principal to Other Contractors; and
 - (ii) must indemnify the Principal against any Claim that the Principal must pay to any Other Contractor as a result of a breach of clause 10.1 by the Contractor.
- (d) If clause 13.7(a) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages as a result of the Contractor failing to achieve Completion of the Works or a Portion by the relevant Date for Completion, but the Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the Contractor would have had if clause 13.7(a) had not been void, invalid or otherwise inoperative.
- (e) The Contractor's aggregate liability under clauses 13.7(a), and 13.7(d) is limited to the amount set out in Schedule 1.

13.8 Final Completion

- (a) The Contractor must give the Principal's Representative written notice two months before it anticipates completing all the work to be completed prior to achieving Final Completion.
- (b) The Principal's Representative and the Contractor's Representative must, within 20 Business Days before the date the Principal's Representative expects Final Completion to occur, but no earlier than 20 Business Days

- before the end of the latest Defects Rectification Period, jointly inspect the Works at a mutually convenient time.
- (c) Following the joint inspection under clause 13.8(b), the Principal's Representative must issue a notice to the Principal and the Contractor containing a list of the items that are apparent and it believes must be completed before Final Completion is achieved.
- (d) If the Principal's Representative issues a notice under clause 13.8(c), the Contractor must continue to bring the Works to Final Completion and thereafter when the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Final Completion in accordance with Schedule 22. Thereafter, the Principal's Representative and the Contractor's Representative must jointly inspect the Works at a mutually convenient time.
- (e) Following the joint inspection under clause 13.8(d), the Principal's Representative must within 15 Business Days of receipt of a notice under clause 13.8(d), or of receipt of a notice under clause 13.8(f), issue a notice to the Principal and the Contractor:
 - (i) if satisfied that Final Completion has been achieved, stating the date on which the Principal's Representative determines Final Completion was achieved; or
 - (ii) if not satisfied that Final Completion has been achieved:
 - A. containing a list of the items which it believes must be completed before Final Completion is achieved; or
 - B. stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 13.8(e)(ii)A.
- (f) If the Principal's Representative issues a notice under clause 13.8(e)(ii)A or clause 13.8(e)(ii)B, the Contractor must continue to proceed to bring the Works to Final Completion and thereafter when it considers it has achieved Final Completion of the Works the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 13.8(d), clause 13.8(e) and this clause 13.8(f) will reapply.

13.9 Effect of Notice of Completion or Final Completion

- (a) A notice issued under clause 13.3(d)(i) or 13.8(e)(i) will not:
 - (i) constitute approval by the Principal, the Principal's Representative, or the Independent Certifier of the Contractor's performance of its obligations under this Contract;
 - (ii) be taken as an admission or evidence that the Works or the Portion complies with the requirements of this Contract; or
 - (iii) prejudice any rights or powers of the Principal the Principal's Representative or the Independent Certifier.

(b) Without limiting clause 13.9(a), the parties agree that, in the absence of manifest error on the face of the certification, the Principal's Representative's or the Independent Certifier's certification as set out in a Notice of Completion or Notice of Final Completion (as applicable) is final and binding on the parties for the purposes only of establishing that Completion of the relevant Portion or Final Completion (as applicable) has occurred.

14. Care of the Works, Risks and Insurance

14.1 Care of the Works

Except where it arises from an Excepted Risk, and without limiting the generality of the Contractor's obligations, the Contractor:

- (a) from and including the earlier of the date of commencement of work and the date on which the Contractor is given access to the Site, or a part of the Site, until 4:00pm on the Date of Completion of the Works or the last Portion to reach Completion will:
 - (i) be responsible for the care of and will bear the risk of, and indemnify the Principal against any loss of, or damage to:
 - A. the Contractor's Activities;
 - B. the Works;
 - C. Temporary Works;
 - D. Construction Plant;
 - E. unfixed plant and materials (whether on or off the Site) the value of which has been included in a payment schedule under clause 11.3; and
 - F. things entrusted to the Contractor by the Principal or brought onto the Site by a Subcontractor for the purpose of carrying out the Contractor's Activities; and
 - (ii) provide the storage and protection necessary to preserve these things; and
- (b) after the time after which the Contractor ceases to be responsible under paragraph (a) for the care of a part of the Works or any other thing referred to in subparagraph (a)(i), will bear the risk of, and indemnify the Principal against, any loss of or damage to that part of the Works or other thing, arising from:
 - (i) any act or omission of the Contractor during the Defects
 Rectification Period (including any extension under clause 8.6) or
 any other Contractor's Activities; or
 - (ii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Works or other thing under paragraph (a) in connection with the Contractor's Activities.

14.2 Indemnity

The Contractor must indemnify the Principal against:

- (a) any loss of or damage to property of the Principal;
- (b) any liability to or claims by a third party in respect of loss of or damage to property, the loss of use of or access to property, or injury to or death of persons; and
- (c) without limiting or otherwise affecting paragraph (a), any loss or damage to existing property in or upon which the Contractor's Activities are being carried out.

caused by, or arising out of, or in any way in connection with, the Contractor's Activities, but the Contractor's responsibility to indemnify the Principal will be reduced proportionally to the extent than an act or omission by the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor contributed to the loss, damage, injury or death provided that the Contractor has complied with its obligations under clause 2.9(a)(ii)B.

The indemnity in this clause 14.2 will not:

- (d) exclude any other right of the Principal to be indemnified by the Contractor;or
- (e) apply to the extent to which the Contractor must indemnify the Principal under clause 14.1.

14.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage, and while the Contractor is responsible for its care, if loss or damage occurs to anything for which the Contractor is responsible under clause 14.1, the Contractor must:

- (a) subject to paragraph (b), promptly replace or otherwise make good the loss or repair the damage; and
- (b) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the Contractor, only comply with paragraph (a) to the extent directed by the Principal's Representative.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk (but subject to paragraph (b)), be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applied.

14.4 Works Insurance - Alternative 1

This alternative applies if so stated in Schedule 1.

The Principal will effect and maintain insurances on the terms of the summary which is included in Exhibit B. This insurance will cover the Contractor, the Principal, the

Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted in Exhibit B, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that prior to the date of this Contract it reviewed and examined Exhibit B and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance summarised in Exhibit B do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance summarised in Exhibit B; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies summarised in Exhibit B or any insurance taken out under this clause 14.4.

14.4 Works Insurance - Alternative 2

This alternative applies if so stated in Schedule 1.

Before commencing the Contractor's Activities, the Contractor must insure all the things referred to in clause 14.1 against loss or damage resulting from any cause until the Contractor ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance must cover the Contractor's liability under clause 14.3 and things in storage off site and in transit to the site but may exclude:

- the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to the Works;
- (d) damages for delay in completing or for the failure to complete the Works;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause; and
- (f) loss or damage resulting from the Excepted Risk referred to in paragraph (a) of the definition of Excepted Risk.

The insurance cover must be for an amount not less than the aggregate of the:

(g) Contract Sum;

- (h) provision in Schedule 1 to provide for costs of demolition and removal of debris;
- (i) provision in Schedule 1 for consultants' fees and Principal's consultants' fees;
- (j) value in Schedule 1 of any materials or things to be supplied by the Principal for the purposes of the Contractor's Activities; and
- (k) additional amount or percentage in Schedule 1 of the total of the items referred to in sub-paragraphs (g) to (j) of this paragraph.

Insurance shall be in the joint names of the parties, must cover the parties, consultants and subcontractors whenever engaged in the Contractor's Activities for their respective rights, interests and liabilities and, except where the Contract otherwise provides, must be with an insurer and in terms both approved in writing by the Principal (which approvals must not be unreasonably withheld).

14.5 Public Liability Insurance – Alternative 1

This alternative applies if so stated in Schedule 1.

The Principal will effect and maintain insurance on the terms of the summary which is included in Exhibit B. The insurance will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted on the policies, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees prior to the date of this Contract it reviewed and examined Exhibit B and:

- has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance summarised in Exhibit B do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance summarised in Exhibit B; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies summarised Exhibit B, or any insurance taken out under this clause 14.5.

14.5 Public Liability Insurance – Alternative 2

This alternative applies if so stated in Schedule 1.

Before commencing the Contractor's Activities, the Contractor must effect and maintain for the duration of the Contract, a public liability policy.

The policy must:

- (a) be in the joint names of the parties;
- (b) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties,

of the parties, the Principal's Representative, consultants and subcontractors from time to time, whenever engaged in the Contractor's Activities;

- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 14.4
 Alternative 2) and the death of or injury to any person (other than liability which the Law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any Construction Plant not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in Schedule 1; and
- (f) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals must not be unreasonably withheld).

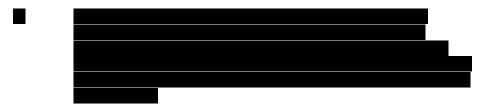
14.6 Contractor's Other Insurance Obligations

The effecting of insurance will not limit the liabilities or obligations of a party under any other provision of this Contract.

The Contractor must, or in the case of asbestos liability insurance, either the Contractor or its specialist asbestos removal Subcontractor must (if required by clause 14.6(a)(iii) below), before the Contractor commences the Contractor's Activities or as otherwise required by this Contract:

- (i) workers' compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Contractor's Activities are being performed;
- (ii) an insurance policy covering physical loss, destruction or damage to the Construction Plant;
- (iii) if the Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, asbestos liability insurance;
- (iv) professional indemnity insurance covering civil liability of the Contractor in performing professional activities and duties in connection with the Works and Contractor's Activities;

- (v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Contractor's Activities, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances, and including:
 - A. insurance against personal injury or death, as required under all applicable Laws; and
 - B. in addition to the public liability insurance required under this Contract, insurance for third party property damage and personal injury or death;
- (vi) not used;
- (vii) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law; and
- (viii) any other insurance that the Principal may reasonably require the Contractor to obtain,
- (b) ensure the asbestos liability insurance, motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the Law), and any insurance required by sub-paragraph (a)(vii):



- (ii) cover loss or damage to property (other than property described in clause 14.1 and the death of or injury to any person (other than liability which the Law requires to be covered under a workers' compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Contractor's Activities;
- (iii) includes a cross-liability clause in accordance with clause 14.10; and
- (iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1;
- (c) ensure the asbestos liability insurance is in place before any work involving asbestos or asbestos decontamination work commences;
- (d) ensure that any insurance policy required by sub-paragraph (a)(vii) is in place before the Contractor's Activities covered by such policies commence;
- (e) ensure the professional indemnity insurance:

- (i) covers claims for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its Subcontractors in carrying out the Contractor's Activities;
- (ii) covers the Contractor for liability to the Principal arising from errors or omissions in:
 - A. design or documentation of the Works or the Temporary Works; or
 - B. other professional services,

carried out by the Contractor or any of its Subcontractors; and



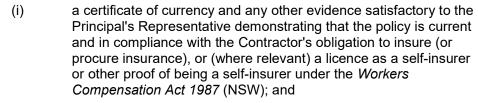
the amount stated in Schedule 1;

- (f) in relation to the workers' compensation insurance or similar insurance:
 - (i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the Contractor's employees;
 - (ii) ensure that each of its Subcontractors has such workers compensation insurance or similar insurance covering the Subcontractor's employees; and
 - (iii) ensure it insures against liability for death of or injury to persons employed by the Contractor or its Subcontractors as required by any Law for an amount not less than the amount stated in Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law; and
- (g) not used.

14.7 General Insurance Requirements

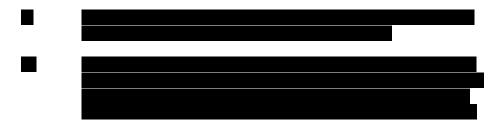
The Contractor must:

(a) in respect of any insurance policy (including an insurance policy which this Contract requires the Contractor to procure to be effected by a Subcontractor) which it is required to effect or procure to be effected, pursuant to this Contract and where required by the Principal's Representative, provide the Principal's Representative (or other person nominated for this purpose by the Principal's Representative) within 5 days of a request with:





(b) ensure that (except for professional indemnity or workers compensation or similar insurance):



- (iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice in writing to the Principal about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and
- (c) ensure that it:
 - (i) does not do anything which prejudices any insurance;
 - (ii) where required, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;



- immediately notifies the Principal's Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and
- (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

If the Contractor fails to:

(e) effect or procure to be effected insurance which is with insurers of the Required Rating and on terms satisfactory to the Principal's Representative,

as required by clauses 2.2(c), 14.4, 14.5, 14.6 or this clause 14.7, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Contractor to the Principal.

The Principal may refuse payment until the Contractor produces evidence of compliance with its insurance obligations under clauses 2.2(c), 14.4, 14.5 and 14.6 to the satisfaction of the Principal. The rights given by this clause 14.7 are in addition to any other right.

14.8 Period of Insurance

The insurance the parties are required to have in place under this clause 14 must be maintained:

- (a) in the case of the works and public liability insurance policy required by clauses 14.4, and 14.5 so as to provide cover until the latest to occur of:
 - (i) Contractor ceases to be responsible under clause 14.1 for the care of anything; and
 - (ii) the Principal's Representative issues a notice under clause 13.8(e)(i) stating the date on which Final Completion was achieved:
- (b) in the case of the Construction Plant insurance:
 - (i) until the Contractor ceases to bear the risk of loss of or damage to anything under clause 14.1; and
 - (ii) at any time it is being used in connection with the Contractor's Activities:
- (c) in the case of the workers compensation insurance and motor vehicle insurances, until the Principal's Representative issues a notice under clause 13.8(e)(i) stating the date on which Final Completion was achieved;
- (d) in the case of professional indemnity insurance, before commencing work covered by the policy referred to in clause 14.6(e) until at least the period specified in Schedule 1 after the Date of Final Completion;
- (e) in the case of asbestos liability insurance and insurance required under clause 14.6(a)(viii), for so long as there is a risk that an event covered by the insurance may occur in relation to the Works or the Contractor's Activities; and
- (f) in the case of insurance required under clause 14.6(a)(vii), during the period required by any Law.

14.9 Notice of Potential Claim

(a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by this Contract (except for the professional indemnity insurance policy);

- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences that may give rise to a claim.

14.10 Cross Liability

Where this Contract requires insurance to be effected in joint names the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;
- (c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

14.11 Risk of Deductibles

The Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 14.

15. Default or Insolvency

15.1 Contractor's Default

If the Contractor commits a breach of this Contract referred to below, the Principal may give the Contractor a written notice.

The breaches by the Contractor to which this clause applies are:

- (a) not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this Contract, in breach of clause 10.1;
- (b) suspension of work, or failing to proceed with the Contractor's Activities with due expedition and without delay, in breach of clause 10.1;
- (c) failing to provide the security, in breach of clause 2.7;
- (d) failing to provide evidence of insurance, in breach of clause 14;
- (e) failing to use the materials or standards of workmanship required by this Contract, in breach of clause 4.1;

- (f) not complying with any direction of the Principal's Representative made in accordance with this Contract, in breach of clause 9.1(a);
- (g) not complying with the requirements of this Contract regarding the Contract Management Plan in a material respect;
- (h) not complying with its environmental obligations under this Contract;
- (i) not complying with its obligations under this Contract regarding work health and safety;
- (j) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 2.3; or
- (k) any other failure to comply with a material obligation under the Contract.

15.2 Contents of Notice

A written notice under clause 15.1 must:

- (a) state that it is a notice under clause 15.1 or clause 15.3 (as the case may be);
- (b) specify the alleged breach;
- (c) require the Contractor to remedy the breach or, in the case of a notice by the Principal where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and
- (d) specify the time and date by which the Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 21 clear days after the notice is given).

15.3 Rights of the Principal Following Notice

Upon giving a notice under clause 15.1, the Principal may suspend payments to the Contractor until the date upon which the Contractor remedies the breach or makes arrangements satisfactory to the Principal.

If, by the time specified in a notice under clause 15.1, the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor:

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate this Contract.

15.4 Immediate Termination or Take-Out

If:

(a) whether or not the Contractor is then in breach of this Contract:

- (i) an Insolvency Event occurs:
 - to the Contractor;
 - B. where the Contractor comprises more than one person, any one of those persons; or
 - C. to a person specified in Schedule 1; or
- (ii) the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 2.10(d);
- (b) the Contractor fails to comply with any of its obligations under clause 4.5 or 4.6; or
- (c) a Change in Control occurs in respect of an entity that comprises the Contractor without the prior written consent of the Principal (other than a Change in Control permitted under clause 9.13(c);
- (d) the maximum amount for the Contractor's aggregate liability under clauses 12.7(a) and 12.7(d) has been reached,

then subject to the next paragraph, the Principal may, without giving a notice under clause 15.1, exercise the right under clause 15.3(a) or 15.3(b).

The Principal may not exercise a right under 15.3(b) in respect of an Insolvency Event where:

- (e) The Contractor comprises more than one person and an Insolvency Event occurs to one, but not all, of those persons; and
- (f) the Contractor, remaining or replacement entities comprising the Contractor, or the Guarantor (as relevant) are of sufficient commercial and financial standing demonstrates (and continues to demonstrate) to the satisfaction of the Principal that it is still able to carry out the Contractor's Activities and of sufficient commercial and financial standing to enable it to comply with its obligations under this Contract or the Parent Company Guarantee (as relevant).

15.5 Principal's Common Rights After Take-Out or Termination

If:

- (a) the Principal:
 - (i) exercises its rights under clause 15.3(a); or
 - (ii) terminates this Contract under clauses 15.3(b), 15.4 or 15.9;
- (b) the Contractor repudiates this Contract and the Principal otherwise terminates this Contract; or
- (c) this Contract is frustrated under the Law,

then:

(d) the Contractor:

- (i) must novate to the Principal or the Principal's nominee those Subcontracts between the Contractor and its Subcontractors that the Principal directs;
- (ii) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to:
 - A. execute, sign, seal and deliver all notices, deeds and documents; and
 - B. undertake actions in the name of the Contractor,

for the purposes referred to in clause 15.5(d)(i); and

- (iii) must immediately hand over to the Principal's Representative all copies of:
 - A. any documents provided by the Principal to the Contractor;
 - B. all Contract Documentation prepared by the Contractor to the date on which the Principal exercises its rights under clauses 15.3(a) or 15.3(b) (whether complete or not); and
 - C. any other documents or information in existence that is to be provided to the Principal under the terms of this Contract; and

(e) the Principal:

- (i) will be entitled to require the Contractor to remove from the Site or any area affected by the Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Works;
- (ii) may complete that work;
- (iii) may take possession of such of the Construction Plant,
 Temporary Works and other things on or in the vicinity of the Site
 or Extra Land as are owned by the Contractor and are reasonably
 required by the Principal to facilitate completion of the work; and
- (iv) must, if it takes possession of the items referred to in clause 15.5(e)(iii):
 - A. for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary Works or other things at

a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 16; and

B. maintain the Construction Plant, Temporary Works or other things and, subject to clause 15.6, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 15.5(e)(iii) which are surplus.

This clause 15.5 will survive the termination or frustration of this Contract.

15.6 Principal's Entitlements after Take-Out

- (a) If the Principal exercises the right under clause 15.3(a), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under this clause 15.6.
- (b) When work taken out of the hands of the Contractor under clause 15.3(a) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate certifying the amount.
- (c) If the cost incurred by the Principal is greater than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due to the Contractor from the Principal.
- (d) Without limiting clause 15.6(c), if the Principal exercises the right under clause 15.3(a), the Principal will be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (e) If the Contractor is indebted to the Principal, the Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 15.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the Contractor.

15.7 Principal's Rights after Termination

Subject to clause 15.11, if the Principal terminates this Contract under clauses 15.3 or 15.4, or if the Contractor repudiates this Contract and the Principal otherwise terminates this Contract the Principal will:

not be obliged to make any further payments to the Contractor, including any money that is the subject of a payment claim under clause 11.2 or a payment statement under clause 11.3;

- (b) be absolutely entitled to call upon, convert and have recourse to and retain the proceeds of any unconditional undertaking held under clause 2.7; and
- (c) be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination.

This clause 15.7 survives the termination of this Contract.

15.8 Contractor's Rights after Repudiation or Wrongful Termination

- (a) If the Principal:
 - (i) repudiates this Contract and the Contractor terminates this Contract; or
 - (ii) wrongfully:
 - A. exercises or attempts to exercise any right or power conferred on it by clauses 15.3, 15.4 or 15.9; or
 - B. determines or purports to determine this Contract at common law,

then the:

- (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 15.9 and the Contractor's sole rights in such circumstances will be those set out in clause 15.10; and
- (iv) Contractor:
 - A. will not be entitled to the payment of damages;
 - B. will not be entitled to any payment on a quantum meruit basis; and
 - C. waives all other rights it has to make a Claim in such circumstances.
- (b) This clause 15.8 will survive the termination of this Contract.

15.9 Termination for Convenience

Without prejudice to any of the Principal's other rights or entitlements or powers under this Contract, the Principal may:

(a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Contract effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and

(b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the Contractor's Activities or the Works either itself or by engaging Other Contractors.

15.10 Payment for Termination for Convenience

If the Principal terminates this Contract under clause 15.9, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
 - for work carried out prior to the date of termination, the amount which would have been payable if this Contract had not been terminated and the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination;
 - (ii) the cost of plant and materials reasonably ordered by the Contractor for the Works and for which it is legally bound to pay provided that:
 - A. the value of the plant or materials have not been previously paid or included in the amount payable under sub-paragraph (a)(i); and
 - B. title in the plant and materials vests in the Principal upon payment;
 - (iii) the reasonable cost of removing from the Site all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the Contractor's Activities that are not part of, or to be part of, the Works;
 - (iv) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the Contractor's Activities and not included in any other payment by the Principal; and
 - (v) the amount specified in Schedule 1, for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs (a)(ii), (a)(iii) and (a)(iv); and
- (b) must take all steps possible to mitigate the costs referred to in subparagraphs (a)(ii) and (a)(iii).

To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 2.7 when the Contractor has complied with all its obligations under this clause.

The amount to which the Contractor is entitled under this clause 15.10 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Contract and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Contract other than for the amount payable under this clause 15.10.

This clause 15.10 will survive the termination of this Contract by the Principal under clause 15.9.

15.11 Preservation of Rights

Subject to clause 15.8, nothing in this clause 15 or that the Principal does or fails to do pursuant to this clause 15 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 17.12) which it may have where the Contractor breaches (including repudiates) this Contract.

15.12 Termination by Frustration

If under the law this Contract is frustrated the Principal will:

- (a) pay the Contractor the following amounts as determined by the Principal's Representative:
 - (i) an amount calculated in accordance with clause 15.10(a)(i) for work carried out prior to the date of frustration;
 - (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 15.10(a)(ii); and
 - (iii) the costs calculated in accordance with the terms of clauses 15.10(a)(iii) and 15.10(a)(iv); and
- (b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 2.7 when the Contractor has complied with its obligations under this clause.

The amount to which the Contractor is entitled under this clause 15.12 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the frustration of this Contract and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Contract other than for the amount payable under this clause 15.12.

Without limiting any other provision of this Contract, this clause 15.12 will survive the frustration of this Contract.

15.13 Codification of Contractor's Entitlements

This clause 15 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

- (a) cannot otherwise terminate, rescind or treat this Contract as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this Contract as repudiated,

otherwise than in accordance with this clause 15.

16. Disputes

16.1 Notice of Dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or the subject matter of this Contract, ("Dispute") the Dispute must be determined in accordance with the procedure in this clause 16.

Where such a Dispute arises, either party may give a notice in writing to the Principal's Representative and the other party (**"Notice of Dispute"**). The Notice of Dispute must:

- (a) specify the Dispute;
- (b) provide particulars of the party's reasons for being dissatisfied;
- (c) set out the position which the party believes is correct; and
- (d) in the case of a Dispute in respect of a direction of the Principal's Representative under one of the clauses referred to in Schedule 1 (a "Schedule 1 Dispute"), be given in accordance with clause 16.2.

Where the notice is given by the Contractor, if the Contractor fails to provide sufficient particulars of the Dispute to enable the Principal's Representative to properly consider the matter, then the Principal's Representative may request the Contractor to provide further particulars of the Dispute in which event the Contractor must provide the further particulars within 14 days of receipt of the request to provide the further particulars.

16.2 Time for Submitting Notice Concerning Principal's Representative's Direction

If the Contractor wishes to have a direction by the Principal's Representative under one of the clauses referred to in Schedule 1 opened up, reviewed, decided and substituted the Contractor must give a Notice of Dispute in respect of the Dispute to the Principal and the Principal's Representative within 14 days of the date of the direction, after which the Principal's Representative may review the Dispute and make a determination in accordance with clause 16.3.

If the Contractor fails to give such a Notice of Dispute to the Principal and the Principal's Representative within the time period required by this clause 16.2:

- (a) the direction will be final and binding and will not be capable of being challenged, opened up or reviewed in any forum; and
- (b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 18.4, the Claim will be barred in accordance with clause 18.6.

16.3 Determination of Schedule 1 Disputes by the Principal's Representative

Upon receipt of a Notice of Dispute in respect of a Schedule 1 Dispute which is given in accordance with clause 16.2, the Principal's Representative may review and make a determination in respect of the Dispute.

The determination of the Principal's Representative in respect of any such Notice of Dispute:

- (a) must be in writing;
- (b) must be given within 21 days after the Notice of Dispute is given or where further particulars have been requested under clause 16.1, within 21 days after the further particulars have been provided to the Principal's Representative;
- (c) will be substituted for the relevant direction the subject of the Notice of Dispute; and
- (d) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

If the Principal's Representative fails to make a determination as required by this clause 16.3 the direction the subject of the Notice of Dispute will be deemed to be confirmed by the Principal's Representative.

16.4 Response to Notice of Dispute

Where a Notice of Dispute has been given in accordance with clause 16.1 and 16.2 (where applicable) then the party to whom the Notice of Dispute is addressed must:

- (a) if the Notice of Dispute does not relate to a Schedule 1 Dispute, within 21 days of the date of:
 - (i) receipt of the Notice of Dispute; or
 - (ii) if any further particulars have been requested under clause 16.1, receipt of those particulars; or
- (b) if the Notice of Dispute does relate to a Schedule 1 Dispute and if the direction is confirmed, or deemed to have been confirmed, by the Principal's Representative under clause 16.3, within 42 days of the receipt of the Notice of Dispute,

provide a response in writing indicating whether or not it agrees with the position set out in the Notice of Dispute.

16.5 Executive Negotiation

- (a) If the Dispute is not resolved within 14 days of:
 - (i) the date of receipt of the response to the Notice of Dispute pursuant to clause 16.4; or

(ii) if no response is received, the date specified for the provision of a response pursuant to clause 16.4,

(the "Referral Date") either party may by notice in writing refer the Dispute to the Executive Negotiators who must:

- (iii) meet and undertake genuine and good faith negotiations with a view to:
 - A. clarifying and narrowing the issues in dispute in the event that litigation is commenced in respect of the Dispute; and
 - B. resolving the Dispute; and
- (iv) if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.
- (b) If appropriate in the circumstances, at or prior to the meeting referred to in clause 16.5(a) the parties will exchange documents critical to the resolution of the Dispute.

16.6 Expert Determination

If a Dispute relating to a Schedule 1 Dispute is referred for resolution under clause 16.5 and it is not resolved within 21 days after the Referral Date, the dispute must be submitted to an expert determination.

The dispute will be referred to an expert determination whether or not the Executive Negotiators have complied with clauses 16.5(a)(iii), 16.5(a)(iv) and 16.5(b).

16.7 The Expert

The expert determination under clause 16.6 is to be conducted by:

- (a) an independent industry expert agreed by the Principal and the Contractor; or
- (b) where the parties are unable to agree upon an independent industry expert within 42 days after the Referral Date, or where an independent industry expert appointed under this clause 16.7:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
 - (iv) does not make a determination within the time required by clause 16.8(e),

an independent industry expert appointed by the Chair of Resolution Institute.

16.8 Rules of Expert Determination

- (a) An expert determination conducted under this clause 16 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (b) The expert determination must be made in accordance with the rules for the expert determination process included in the agreement which appears in Schedule 26 or such other rules as the parties and the expert may agree.
- (c) The expert must:
 - (i) disclose to the parties any interest he or she has in the outcome of the determination; and
 - (ii) not communicate with one party to the determination without the knowledge of the other.
- (d) Each party will:
 - (i) bear its own costs in respect of any expert determination; and
 - (ii) pay one-half of the expert's costs.
- (e) Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 16 within the period set out in the agreement between the parties and the expert.

16.9 Agreement with Expert

The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 26 or such other terms as the parties and the expert may agree.

16.10 Determination of Expert

The determination of the expert:

- (a) must be given to the parties in writing;
- (b) will be:
 - (i) substituted for the relevant direction of the Principal's Representative; and
 - (ii) final and binding,

unless a party gives a notice of appeal to the other party within 21 days of receipt of the determination; and

(c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed by way of litigation.

Where a party gives a notice of appeal under this clause 16.10, either party may commence litigation in respect of the Dispute.

16.11 Litigation

If a Dispute does not relate to a Schedule 1 Dispute and is referred for resolution under clause 16.1, then whether or not the Executive Negotiators have complied with clauses 16.5(a)(iii), 16.5(a)(iv) and 16.5(b), if the Dispute is not resolved, or no agreement on a procedure to resolve the Dispute has been reached, within 14 days after the Referral Date, or within such longer period of time as these persons may agree in writing, either party may commence litigation in respect of the Dispute.

16.12 Survive Termination

This clause 16 will survive the termination of this Contract.

16.13 Continuation of Work

Despite the existence of a Dispute between the parties this Contract, the Contractor must:

- (a) continue to carry out the Contractor's Activities; and
- (b) otherwise comply with its obligations under this Contract.

16.14 Urgent Relief

Nothing in this clause 16 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

16.15 Dispute under related contracts

The parties acknowledge and agree that:

- (a) the provisions of this clause 16 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed; and
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Certifier Deed.

17. General

17.1 Notices

- (a) At any time and from time to time the Principal's Representative may notify the Contractor of an electronic portal or document management system to be used for the purposes of this Contract. The Principal's Representative's notice will set out:
 - (i) the relevant electronic portal or document management system;

- (ii) the date of this Contract for the use of the electronic portal or document management system;
- (iii) any password, login details or similar information required for the Contractor to use the electronic portal or document management system;
- (iv) address details for the Principal, the Principal's Representative and the Contractor; and
- (v) any other information reasonably necessary for the use and service of notices via the electronic portal or document management system.
- (b) Any notices contemplated by this Contract must be in writing and must:
 - (i) before the date referred to in clause 17.1(a)(ii), be delivered or posted to the relevant address shown in Schedule 1 (or to any new address notified by the intended recipient); and
 - (ii) on and from the date referred to in clause 17.1(a)(ii):
 - A. in the case of notices by the Contractor:
 - 1) without limiting clause 17.1(b)(ii)A.2), be sent to the Electronic Portal address of the Principal or the Principal's Representative (as applicable); and
 - 2) under clauses 10, 11, 13, 15, 16 or 18 or concerning a claim for payment, in addition to the copy of the notice sent pursuant to clause 17.1(b)(ii)A.1), also be delivered or posted to the relevant address shown in Schedule 1 (or to any new address notified by the intended recipient); and
 - B. in the case of notices by the Principal or the Principal's Representative:
 - 1) be delivered or posted to the relevant address shown in Schedule 1 (or to any new address notified by the intended recipient); or
 - 2) except in relation to notices by the Principal under clauses 15.3, 15.4, 15.9 or 16.1, be sent to the Electronic Portal address of the intended recipient.
- (c) For the avoidance of doubt, no notice referred to in clause 17.1(b)(ii)A.2) shall be effective unless delivered in accordance with both clauses 17.1(b)(ii)A.1) and 17.1(b)(ii)A.2).

- (d) Subject to clause 17.1(g), a notice sent by the Electronic Portal will be taken to have been received on the date recorded on the notice on which it was registered on the Electronic Portal.
- (e) Subject to clause 17.1(g), a notice sent by post will be taken to have been received:
 - (i) in the case of international post, 7 Business Days after the date of posting; and
 - (ii) in the case of posting within Australia, 2 Business Days after the date of posting.
- (f) Subject to clause 17.1(g), a notice sent by email (whether or not containing attachments) will be taken to have been received on the earlier of:
 - the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
 - (ii) receipt by the sender of an automated message confirming delivery; and
 - (iii) the time of receipt as acknowledged by the recipient in writing,

provided that:

- (iv) the communication will be taken to be so given by the sender and received by the recipient regardless of whether the email or any of its attachments is opened by the recipient; and
- (v) if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (g) Where clause 17.1(b)(ii)A.2) applies, the relevant notice will be taken to have been received on the later of:
 - (i) the date determined in accordance with clause 17.1(d); and
 - (ii) the date determined in accordance with clause 17.1(e) or 17.1(f) (as the case may be).

17.2 Governing Law and jurisdiction

- (a) This Contract is governed by and will be construed according to the Laws of New South Wales.
- (b) Each party irrevocably:
 - 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 Contract; 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 17.2(b)(i).

17.3 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Contract by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Contract.
- (b) Any waiver or consent given by the Principal under this Contract will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Contract; or
 - (ii) any other failure by the Contractor to comply with a requirement of this Contract, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Contract or failure to comply with any other requirement of this Contract.

17.4 Assignment

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

17.5 Entire Agreement

This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; and
- (b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the date of this Contract and that are not expressly included in this Contract.

17.6 Joint and Several Liability

The rights and obligations of the Principal and the Contractor, if more than one person, under this Contract, are joint and several. Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts

and omissions (including breaches of this Contract) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

17.7 Severability

If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

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

17.8 Indemnities to Survive

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

Nothing in this clause 17.8 prevents any other provision of this Contract, as a matter of interpretation also surviving the termination of this Contract.

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

17.9 Stamp Duty and Other Fees

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Contract and the performance of its obligations in respect of this Contract.

17.10 Taxes

Without limiting clause 2.3 but subject to clause 19, the Contractor must pay all Taxes that may be payable in respect of the Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the Contractor's Activities.

17.11 Confidentiality

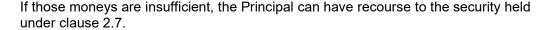
- (a) Subject to clause 17.11(b), the Contractor must:
 - (i) keep confidential this Contract and any information relating to the Contractor's Activities and any discussions concerning this Contract;
 - (ii) not use the information referred to in sub paragraph (a)(i) except as necessary for the performance of the Contractor's Activities; and
 - (iii) ensure that each of its officers, employees and Subcontractors complies with the terms of sub-paragraphs (a)(i) and (a)(ii).

- (b) The Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the Contractor; or
 - (ii) the disclosure of which is:
 - A. required by Law;
 - B. consented to in writing by the Principal; or
 - C. given to a court in the course of proceedings to which the Contractor is a party.
- (c) The Contractor must:
 - (i) execute and submit to the Principal within 14 days of this Contract a Confidentiality Undertaking in the form in Schedule 3;
 - ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
 - (iii) ensure that each Subcontractor, including suppliers and consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) The Contractor acknowledges that the Principal may disclose this Contract (and information concerning the terms of this Contract) under or in accordance with any one or more of the following:
 - (i) the Government Information (Public Access) Act 2009 (NSW);
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
 - (iii) any other Law.
- (e) The 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 17.11(d).
- (f) The Contractor must indemnify the Principal against any claim, costs, penalties, losses, damage, expense, loss or liability suffered or incurred by the Principal arising out of or in any way in connection with a breach under clause 17.11(a) and any Confidential Undertaking under clause 17.11(c) provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal may have contributed to the liability, claim, costs, losses, damages, fines or penalties.

17.12 Right of Set-Off

The Principal may at any time withhold, set-off or deduct from moneys otherwise due to the Contractor:

- (a) any debt or other moneys due from the Contractor to the Principal (including any debt due from the Contractor to the Principal pursuant to section 26C of the SOP Act);
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act; or



17.13 Entire Contract

Despite any progress payments that may be made to the Contractor under clause 11.4, this Contract is an entire contract.

17.14 Principal May Act

- (a) The Principal may, either itself or by a third party, perform an obligation under this Contract that the Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.
- (b) Where the Principal or the Principal's Representative is entitled under this Contract to exercise any right or power to:
 - (i) direct or instruct the Contractor to; or
 - (ii) itself step in to,

take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.

Where the Principal or the Principal's Representative does exercise any such right or power, the Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Works.

17.15 Process Agent

If the Contractor is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the Contractor must:

- (a) appoint a local process agent acceptable to the Principal as its agent to
 accept service of process under or in any way in connection with this
 Contract. The appointment must be in a form acceptable to the Principal and
 may not be revoked without the Principal's consent; and
- (b) obtain the process agent's consent to the appointment.

17.16 Indemnity

The Contractor must indemnify the Principal against:

- (a) any liability to or claim by any other person; and
- (b) all costs, expenses, losses, damages, fines and penalties suffered or incurred by the Principal,

arising out of, or in any way in connection with:

- (c) the Contractor's breach of a term of this Contract; and
- (d) any Defect or the consequence of any Defect,

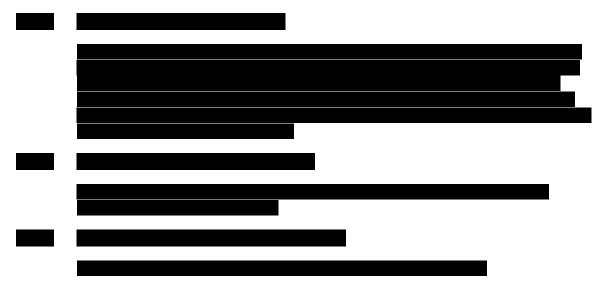
provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal may have contributed to the liability claim, costs, losses, damages, fines or penalties.

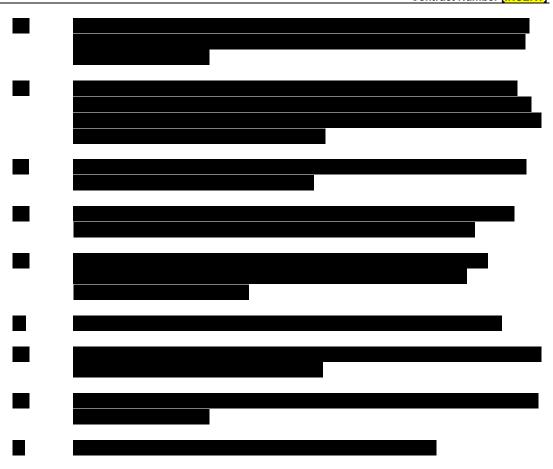
17.17 Variations

Subject to clause 6.3, this Contract may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

17.18 Provisions Limiting or Excluding Liability

Any provision of this Contract which seeks to limit or exclude a liability of the Principal or the Contractor is to be construed as doing so only to the extent permitted by Law.





17.22 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 or the Commonwealth) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Principal and the Contractor under this Contract with respect to proportionate liability are as specified in this Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

- (b) To the extent permitted by Law:
 - the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor

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will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

(c) The Contractor must:

- (i) in each subcontract into which it enters for the carrying out of the work under this Contract or for the supply of materials or services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (ii) require each Subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the carrying out of the work under this Contract, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (d) The Contractor must ensure that all policies of insurance covering third party liability (other than motor vehicle insurance) it is required by this Contract to effect or maintain (including the professional indemnity policy referred to in clause 14.6(e)):
 - (i) cover the Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
 - (ii) do not exclude any potential liability the Contractor may have to the Principal under or by reason of this Contract.
- (e) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an expert appointed in accordance with the provisions of this Contract.

An expert has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the expert.

17.23 Prior Work

The Contractor agrees that the work in connection with the Contractor's Activities carried out by the Contractor prior to the date of this Contract will be deemed to be governed by the provisions of this Contract and will be deemed to be part of the

Contractor's Activities and any payments made to the Contractor by the Principal prior to the date of this Contract in respect of the Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this Contract.

17.24 Design Life

- (a) The Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 6.20 of the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the design lives of the asset elements referred to in the Works Brief where those design lives are for periods longer than those provided for in those Acts.
- (b) If the waiver referred to in clause 17.24(a) is held to be without effect or otherwise unenforceable, or if it is severed from this Contract, the Contractor shall indemnify and keep the Principal indemnified at all times from and against all costs that the Principal may suffer or incur out of the Principal's loss of the benefit of the waiver.
- (c) The indemnity in clause 17.24(b) is to continue and remain in full force and effect until the expiration of the last of the design lives referred to in the Works Brief.
- (d) The parties agree that any action by the Principal on the indemnity in clause 17.24(b) is not a "civil action" for the purposes of section 6.19 or 6.20 of the *Environmental Planning and Assessment Act 1979* (NSW).

17.25 Counterparts

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

17.26 Personal Property Securities Act

- (a) By signing this Contract, the Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law ("Security Interest"), the Contractor shall do anything (including amending this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
 - ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
 - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this Contract.

- (b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.
- (c) The Contractor:
 - (i) acknowledges that the Security Interests created under or pursuant to this Contract relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
 - (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

17.27 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods and the Sale of Goods (Vienna Convention) Act 1986 (NSW) does not apply to this Contract.

17.28 Chain of responsibility legislation

- (a) To the extent heavy vehicles are used in the performance of the Contractor's Activities, the Contractor:
 - (i) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
 - (ii) must ensure that:
 - any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits and are appropriately secured;
 - B. operators carrying freight containers have a valid Container Weight Declaration; and
 - C. drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements:

- (iii) must proactively provide reasonable assistance to the Principal's Representative to enable the Principal (and any of the Principal's personnel) to satisfy its duties and responsibilities under the COR Laws:
- (iv) must obtain and maintain, and ensure that each of its personnel or Subcontractors obtains and maintains, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
- must undertake any audits or monitoring as requested by the Principal's Representative to demonstrate compliance with this clause; and
- (vi) warrants that it is familiar with and has the capability and resources to comply with the COR Laws and ensure that its personnel and Subcontractors comply with all COR Laws.
- (b) Where used in this clause 17.28:
 - (i) "COR Laws" means any section of the Heavy Vehicle Law under which the Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle Law);
 - (ii) "COR Systems" means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with the COR Laws;
 - (iii) "Heavy Vehicle Law" means the:
 - A. Heavy Vehicle National Law (NSW) within the meaning of that term under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW); and
 - B. regulations in force under the Heavy Vehicle National Law (NSW) as applied (with modifications) under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW) as amended, reproduced or updated from time to time; and
 - (iv) terms which are defined in the Heavy Vehicle Law have the meaning given in the Heavy Vehicle Law.

17.29 No Merger

Terms contained in this Contract which are capable of taking effect, or capable of continuing after Completion, will remain in full force and effect and will not merge on Completion.

18. Notification of Claims

18.1 Notice of Variation

If a direction by the Principal's Representative, other than a "Variation Order" under clause 6.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

- (a) within the time specified in Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Variation;
- (b) within the time specified in Schedule 1 of giving the notice under clause 18.1(a), submit a written Claim to the Principal's Representative, which includes the details required by clause 18.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with this Contract and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 18.1.

18.2 Notice of Other Claims

If the Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this Contract by the Principal) under, arising out of, or in any way in connection with, this Contract, the Contractor's Activities or the Works, including anything in respect of which:

- (a) it is otherwise given an express entitlement under this Contract; or
- (b) this Contract expressly provides that:
 - (i) specified costs are to be added to the Contract Sum; or
 - (ii) the Contract Sum will be otherwise increased or adjusted,

as determined by the Principal's Representative,

the Contractor must give the Principal's Representative the notice required by clause 18.3(a) and a Claim in accordance with clause 18.3(c).

18.3 Prescribed Notices

- (a) Any written notice referred to in clauses 18.1(a) and 18.2 must:
 - be provided not later than the time specified in Schedule 1 after the first occurrence of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
 - (ii) expressly specify:

- A. that the Contractor proposes to make a Claim; and
- B. the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 18.1(b) must include:
 - (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (ii) the provisions of this Contract or other legal basis upon which the Claim is based; and
 - (iii) details of the amount claimed and how it has been calculated.
- (c) Any written Claim referred to in clause 18.2 must:
 - (i) be provided not later than the time specified in Schedule 1 of giving the written notice under clause 18.3(a); and
 - (ii) include:
 - A. detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - B. the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
 - C. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - D. details of the amount claimed and how it has been calculated.

18.4 Submission of Claims

Claims submitted by the Contractor under clauses 18.1(b) and 18.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.

If within 28 days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 28th day.

18.5 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 18.3(b) or 18.3(c) every 28 days after the written Claim under clause 18.1(b) or 18.2 (as the case may be) was submitted or

given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

18.6 Bar

If the Contractor fails to comply with clauses 2.3(d), 16.2, 18.1, 18.2, 18.3 or 18.5:

- (a) the Principal will not be liable upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

18.7 Other Provisions Unaffected

Nothing in clauses 18.1 to 18.6 will limit the operation or effect of any other provision of this Contract that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

19. General Provisions Relating to GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party ("Supplier") under or in connection with this Contract, including the Contractor's Activities or the Works, the party providing 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 19(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 Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of this Contract, where the Recipient is the Contractor, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 19 or otherwise) in respect of a taxable supply made by the Principal unless the Principal issues to the Contractor a tax invoice that complies with the GST Legislation 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 Contractor to the Principal under or in connection with this Contract:
 - (i) the Principal will issue to the Contractor a recipient created tax invoice ("RCTI") for each taxable supply made by the Contractor to the Principal under this Contract;
 - (ii) the Principal will issue to the Contractor an adjustment note for any adjustment event;
 - (iii) the 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 Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices to the Principal (including under clause 11.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Contractor in respect of any such taxable supply.
- (g) Each party acknowledges and warrants that at the time of entering into this Contract 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 Contract varies from the additional amount paid by the other party under this clause 19 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) In clauses 11.3 and 11.15 and this clause 19:
 - (i) "GST" or "Goods and Services Tax" means the tax payable on taxable supplies under the GST Legislation;
 - (ii) "GST Legislation" means A New Tax System (Goods and Services Tax) Act 1999 and any related Act imposing such tax or legislation that is acted to validate, recapture or recoup such tax;
 - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation; and
 - (iv) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

20. TfNSW's Statement of Business Ethics

- (a) The Contractor must at all times comply with TfNSW's Statement of Business Ethics, a copy of which is available at www.transport.nsw.gov.au.
- (b) Prior to the engagement of any Subcontractor by the Contractor, the Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with TfNSW's Statement of Business Ethics.

21. NSW Code of Practice

21.1 NSW Code and NSW Guidelines

In addition to terms defined in this document, terms used in this clause 21 have the same meaning as is attributed to them in the New South Wales Industrial Relations Guidelines: Building and Construction Procurement ("NSW Guidelines") (as published by the NSW Treasury July 2013 and updated in September 2017). The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

21.2 Primary Obligation

- (a) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement ("NSW Code") and NSW Guidelines.
- (b) The Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Contractor engages a Subcontractor, the Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 21, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

21.3 Access and information

- (a) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (b) The 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 Contractor, including but not limited to the Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;

- (iv) inspect and copy any record relevant to the Works;
- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor, its Subcontractors and related entities.

(c) The 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.

21.4 Sanctions

- (a) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (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 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 Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

21.5 Compliance

- (a) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The 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 NSW Guidelines does not relieve the Contractor from responsibility to perform the Works and any other obligation under the Contract, 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 NSW Guidelines.

- (c) Where a change in the Contract or the Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the 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 and NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the 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 Contractor as to the course it must adopt within 10 Business Days of receiving notice.

22. Modern Slavery

- (a) The Contractor warrants that:
 - (i) it is not aware (including through the making of reasonable inquiries), of any Modern Slavery occurring within its operations or supply chain (or in those of any entity it owns or controls); and
 - (ii) as at the date of this Contract:
 - A. it (and any entity it owns or controls or Subcontractor of the Contractor) has not been convicted of any Modern Slavery Offence; and
 - B. it is not aware of any circumstance within its operations (or in those of any entity it owns or controls) that could give rise to an official investigation or prosecution of a Modern Slavery Offence.
- (b) The Contractor agrees that it must:
 - (i) at all times:
 - A. comply, and take reasonable steps to ensure any entity it owns or controls complies, with the Modern Slavery Laws; and
 - B. take reasonable steps (including developing strategies, due diligence processes and training) to ensure that:

- Modern Slavery is not occurring (whether directly or indirectly) in the operations and supply chains of the Contractor and any entity it owns or controls; and
- 2) it (and any entity it owns or controls) does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery;
- (ii) provide to the Principal any MS Information and other assistance, as reasonably requested by the Principal (and within the time required by the Principal), to enable the Principal to:
 - A. meet its obligations under the Modern Slavery Laws; or
 - B. enable the Principal to meet its respective obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions),

including cooperating in any Modern Slavery audit undertaken by the Principal, (including by a third party on behalf of the Principal) or the NSW Audit Office, providing reasonable access to the Principal's or NSW Audit Office's auditors to interview the Contractor's personnel and disclosing the source, place and country of origin of goods, plant, equipment or other materials and work or services being procured or supplied under or in connection with this Contract:

- (iii) comply with any policies, procedures, investigations or additional conditions relating to Modern Slavery notified in writing by the Principal to the Contractor from time to time during the term of this Contract; and
- (iv) without limiting the Contractor's obligations at Law, at all times during the performance of the Contractor's Activities and for a period of seven (7) years after Completion of the last Portion to achieve Completion, the Contractor must:
 - A. maintain; and
 - B. promptly upon request from the Principal, give the Principal access to, and/or copies of,

a complete set of records in the possession or control of the Contractor to trace, so far as practicable, the supply chain of all goods, plant, equipment or other materials and work or services provided under this Contract and to enable the Principal to assess the Contractor's compliance with this clause 22.

(c) The Contractor must not (and must ensure any entity it owns or controls does not) at any time engage in any Modern Slavery Practice.

- (d) If the Contractor is a 'reporting entity' for the purposes of any Modern Slavery Law, it must provide to the Principal a copy of any report or statement (unredacted) it has prepared under the Modern Slavery Law within 7 days of providing that report or statement in accordance with the Modern Slavery Law, and otherwise, promptly upon the Principal's request.
- (e) If the Contractor becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Contractor must take reasonable steps to respond to and remedy the occurrence, including in accordance with any internal Modern Slavery strategy and procedures of the Contractor and any relevant code of practice, code of conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board. The Contractor must immediately notify the Principal in writing of the actual or suspected occurrence of Modern Slavery and the steps it is taking to respond to and remedy the occurrence, which must be satisfactory to the Principal.
- (f) The Contractor must promptly notify the Principal in writing if it becomes aware of any change in the Contractor's operations or supply chain (including in respect of any entity that it owns or controls) which may:
 - (i) give rise to a position where any information (including any MS Information) that has been provided by the Contractor to the Principal under this clause 22 is incorrect, inadequate or incomplete; or
 - (ii) otherwise put the Contractor in breach of this clause 22 or result in any inconsistency with any of the original attestations or warranties given by the Contractor under this clause 22,
 - and if the Contractor gives notice under this clause 22(f) the Contractor must thereafter promptly provide any further information that may be requested by the Principal.
- (g) The Contractor must take reasonable steps to ensure all Subcontracts contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 22, having regard to the nature and origin of the procurement.
- (h) The Contractor consents to the Principal sharing MS Information obtained from the Contractor in respect of Modern Slavery pursuant to this clause 22, with any other NSW Government agency or entity and, without limiting any other provision of this clause 22, the Contractor:
 - (i) agrees that the communication of MS Information to any NSW Government agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (ii) releases and indemnifies the Principal and the State of New South Wales from and against any claim (of any kind or nature) in respect of any matter arising out of such communications, including the use of the MS Information by the recipient.

23. Pandemic Changes in Law and Pandemic Relief Events

23.1 Acknowledgements

- (a) The parties acknowledge that:
 - (i) as at the date of this Contract:
 - A. COVID-19 exists; and
 - B. the precise nature, extent, impact and duration of COVID-19 is unknown; and
 - (ii) after the date of this Contract, future Pandemics may occur and that the nature, extent, impact and duration of any such future Pandemic is unknown.
- (b) The Contractor acknowledges and warrants that:
 - (i) the Initial Pandemic Management Plan includes:
 - A. all mitigation measures (including the Pandemic Mitigation Measures) that the Contractor is implementing with respect to COVID-19, including those in response to any and all Pandemic Laws in response to or which are applicable to COVID-19 in effect on the date of this Contract: and
 - B. the COVID-19 related baseline assumptions on which the Contract Sum and the Contractor's Program are based; and
 - (ii) the Contract Sum and the Contractor's Program contain sufficient allowance for the impact of all Pandemic Laws in response to, or which are applicable to, COVID-19 on the Contractor's Activities (including the Pandemic Mitigation Measures) in effect on the date of this Contract.
- (c) Except as stated in this clause 23 and clause 10.10, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the impact of any Pandemic, any Pandemic Laws, any Pandemic Change in Law or any Pandemic Relief Events on the Contractor's Activities.

23.2 Contract Management Plans and other measures

The Contractor must:

(a) without limiting clause 2.2, provide the Principal's Representative with a copy of each Subcontract for the supply of Critical Domestic Materials or Key Plant and Equipment as soon as reasonably practicable after such Subcontract is entered into:

- (b) ensure that all relevant Contract Management Plans take COVID-19 and any other future Pandemic, all Pandemic Laws and all Pandemic Relief Events into account for the period during which the Pandemic Laws and Pandemic Relief Events remain in force or effect and relevant to the Contractor's Activities;
- (c) proactively monitor the potential impacts of COVID-19 and any future Pandemic and all Pandemic Laws and Pandemic Relief Events on the Contractor's Activities; and
- implement mitigation measures to minimise any potential impact of COVID
 and any future Pandemic and all Pandemic Laws and Pandemic Relief
 Events on the Contractor's Activities, including:
 - (i) as set out in the relevant updated Contract Management Plans and otherwise consistent with good industry practice;
 - (ii) as set out in the Pandemic Mitigation Measures; and
 - (iii) sequencing the Contractor's Activities and employing construction and manufacturing methodologies and practices that minimise the impacts of COVID-19 and any future Pandemic and all Pandemic Laws and Pandemic Relief Events on the Contractor's Activities.

23.3 Early warning

Without limiting clauses 23.4, 10.8 or 10.10, where there is a Pandemic Change in Law or the Contractor considers that a Pandemic Relief Event has occurred, the Contractor must promptly (and in any event within 5 Business Days of becoming aware of the Pandemic Change in Law or Pandemic Relief Event) give the Principal's Representative notice in writing, together with detailed particulars of the following:

- (a) details of the Pandemic Change in Law or Pandemic Relief Event;
- (b) the likely duration of Pandemic Change in Law or Pandemic Relief Event and the impact of the Pandemic Change in Law or Pandemic Relief Event on the Contractor's Activities;
- (c) the Contractor's plan to deal with the consequences of the Pandemic Change in Law or Pandemic Relief Event which must as a minimum include details of the steps that the Contractor will take to:
 - (i) avoid, mitigate, resolve or to otherwise manage the relevant effect of the Pandemic Change in Law or Pandemic Relief Event;
 - (ii) minimise any delay to the Contractor's Activities caused by the Pandemic Change in Law or Pandemic Relief Event; and
 - (iii) minimise any additional cost to the Principal in respect of the Pandemic Change in Law or Pandemic Relief Event; and
- (d) such other information as the Principal's Representative may require (acting reasonably).

23.4 Claims in relation to Pandemic Changes in Law or Pandemic Relief Events

- (a) Without limiting clause 10.10, where there is a Pandemic Change in Law or Pandemic Relief Event and the Contractor wishes to claim additional costs or an extension of time to any Date for Completion on account of the Pandemic Change in Law or Pandemic Relief Event the Contractor must, within 5 Business Days after the commencement of the Pandemic Change in Law or Pandemic Relief Event:
 - (i) give a written notice to the Principal stating that this clause 23.4 applies and containing details of the Pandemic Change in Law or Pandemic Relief Event;
 - (ii) the Contractor's plan to deal with the consequences of the Pandemic Change in Law or Pandemic Relief Event, including:
 - A. details of the steps the Contractor will take to avoid, mitigate, resolve or otherwise manage the effects of the Pandemic Change in Law or in dealing with the Pandemic Relief Event and mitigate any extra costs incurred by the Contractor in carrying out the Contractor's Activities in compliance with the Pandemic Change in Law or Pandemic Relief Event; and
 - B. an updated Pandemic Management Plan addressing the impacts of the Pandemic Change in Law or Pandemic Relief Event; and
 - (iii) the other information required by clause 10.8 or 18.3 (as applicable),

and clauses 10.8 to 10.10 or clause 6.4 (as applicable) will apply.

- (b) Without limiting clause 10.11 or 6.4, the: `
 - (i) Contractor's entitlement to an extension to any Date for Completion; or
 - (ii) costs that are to be added to the Contract Sum,

in connection with a Pandemic Change in Law or Pandemic Relief Event will be reduced to the extent that:

- (iii) the Contractor could have avoided or lessened the additional costs or the delay by implementing the measures set out in the Pandemic Mitigation Measures and the Initial Pandemic Management Plan; or
- (iv) the Contractor has saved any costs or achieved any productivity gains in respect of the Contractor's Activities as a result of the Pandemic Change in Law or Pandemic Relief Event.

- (c) Without limiting any other provision of this Contract, the 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 any:
 - (i) Claims for a Variation in connection with any Pandemic Change in Law or Pandemic Relief Event; and
 - (ii) program impacts of any Pandemic Change in Law or Pandemic Relief Event on the Contractor's Activities.
- (d) Upon request by the Principal's Representative from time to time, the Contractor must submit to the Principal's Representative a cost assessment by an assessor nominated by the Principal's Representative of any Claims for additional costs in connection with Pandemic Changes in Law and Pandemic Relief Events, and must provide on an open book basis any information or records requested by the independent cost assessor in relation to such costs.
- (e) The Principal may submit the updated Pandemic Management Plan and updated Pandemic Mitigation Measures and any other information provided by the Contractor pursuant to clause 23.4(a)(ii) to an independent expert appointed by the Principal for that expert to determine whether the updated Pandemic Management Plan and updated Pandemic Mitigation Measures and any other information provided by the Contractor pursuant to clause 23.4(a)(ii) complies with the requirements of this Contract.
- (f) The Contractor must comply with all Pandemic Changes in Law.

23.5 Pandemic Relief Event Allowances

- (a) Despite any other provision of this Contract but subject to clause 23.5(b), the Contractor is not entitled to claim:
 - (i) any extension of time or additional costs as part of a Variation in respect of any Pandemic Relief Event that occurs prior to the date which is 12 weeks after the date of this Contract (Impact Date); and
 - (ii) without limiting clause 23.5(a)(i), any additional costs in relation to a Pandemic Site Closure until the costs arising directly as a result of a Pandemic Site Closure exceed the amount specified in Schedule 1 (Pandemic Relief Event Site Allowance).
- (b) In the case of a Pandemic Relief Event that occurred prior to the Impact Date but continues thereafter:
 - (i) the Contractor will be entitled to an extension of time or additional costs for the impact on the Contractor's Activities caused by the Pandemic Relief Event in respect of the period after the Impact Date only; and

- (ii) the Contractor will not be entitled to make any Claim in respect of any additional costs or delay it suffered or incurred prior to the Impact Date.
- (c) The Contractor has the onus of establishing that:
 - (i) the additional costs arising directly as a result of a Pandemic Site Closure have exceeded the Pandemic Relief Event Site Allowance; and
 - (ii) the additional costs arising directly as a result of Pandemic Relief Events have occurred after the Impact Date,

(**Pandemic Costs**) and the Contractor must keep adequate records of all such additional costs claimed under this clause 23.5 that have accrued against those allowances and time periods, and must provide such records to the Principal on request.

(d) The Contractor must provide a monthly report to the Principal setting out the Pandemic Costs that the Contractor considers to have, up to the date of the report, accrued against the Pandemic Relief Event Site Allowance.

23.6 No duty to review or impact on rights

- (a) The Principal owes no duty to the Contractor to review any documents or information submitted by the Contractor under this clause 23 for errors, omissions or compliance with this Contract.
- (b) No review of, comments on, rejection of or failure to comment on or reject any claim, report or other information submitted by the Contractor under this clause 23 by the Principal:
 - is evidence of the Principal's acceptance that the relevant additional costs set out in the claim, report or other information have properly accrued towards the Pandemic Relief Event Site Allowance;
 - (ii) is an admission of liability; or
 - (iii) will lessen or otherwise affect:
 - A. the Contractor's liabilities or responsibilities under this Contract or otherwise according to Law; or
 - B. the Principal's rights against the Contractor, whether under this Contract or otherwise according to Law.

Schedule 1 - Contract Particulars

Conditions Precedent to

[Insert]

Completion: (Clause 1.1)

Contract Documents

General Conditions of Contract.

(Clause 1.1)

Schedules 1 to 37 (inclusive)

Exhibits A to H (inclusive)

Contractor: (Clause 1.1) [insert name] (ABN [insert ABN])

[insert address]

Date for Completion:

(Clause 1.1)

Portion 1 [Insert]

Defects Rectification Period:

(Clause 1.1)

The Defects Rectification Period for each Portion is the period commencing on the Date of Completion of the Portion and expiring 12 months after the Date of Completion of the last Portion to achieve Completion.

Environmental Representative:

(Clause 1.1)

[Insert name]

None

Hazardous Materials Report:

(Clause 1.1)

[Insert name], a copy of which is set out in Exhibit D.

Other Excepted Risk:

-

(Clause 1.1)

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Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

Inclement Weather Allowance:

(Clause 1.1)

The first 20 working days

Independent Certifier

Name:

(Clause 1.1)

Address: [Insert details]

Phone: [Insert details] Email: [Insert details]

Interface Contractors:

(Clause 1.1)

[Insert]

Any additional "Interface Contractors" detailed in

the Works Brief.

Original Contract Price:

(Clause 1.1)

[Insert details]

Portions:

(Clause 1.1)

Portion 1 - "Priority Project Works" that will be prioritised over all other parts of the Work being:

> Works to the Stacey Street North & Southbound being 4 bridges,

strengthening works, and 76 non-station locations. [Drafting Note: Portion 1 scope of works to be confirmed]

Portion 2 - All other parts of the Works which are not

Priority Project Works

Principal's Representative:

(Clause 1.1)

[Insert]

Reports: (Clause 1.1)

Refer to Exhibit D

The Site: (Clause 1.1) [Insert]

Third Party Agreements: [Insert] (Clauses 1.1 and 2.12(b))

Working days: (Clause 1.2(m))

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

Order of Precedence: (Clause 1.4)

- (a) the Contract excluding the Schedules and the Exhibits; then
- (b) the Schedules; then
- (c) Exhibit A the Works Brief (excluding any Preliminary Design); then
- (d) the remaining Exhibits.

Are Deed Polls in Schedule 16 and Schedule 24 required (Clause 1.5)

Yes

Names of persons in whose favour the Deed Poll in Schedule 16 and Schedule 24 are required (Clause 1.5)

[<mark>Insert details</mark>]

Amount for approval of Subcontracts:

(Clause 2.2(b))

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Parts of Works requiring approval for particular Subcontractor: (Clause 2.2(b))

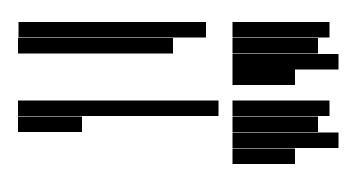
Subcontractors required to effect professional indemnity insurance:

(Clause 2.2(c))



Minimum amount of professional indemnity insurance required:

(Clause 2.2(c))



Subcontract prices for which security of payment provisions are required:

(Clause 2.2(e)(i))

Subcontractors required to execute deed in form of Schedule

(Clause 2.2(e)(iv)A)

(Clause 2.2(e)(iv)B)

The following categories:

all Subcontracts and consultant engagements which include any element of design.

Warranties required from Subcontractors:

(Clause 2.2(f))

Refer to Exhibit E

Subcontractors to be novated to Contractor:

(Clause 2.2(g))

Parent Company Guarantee:

(Clause 2.7(f))

Required Yes [Insert name of Guarantor]

The party responsible for payment of the Long Service Leave Levy is

(Clause 2.8)

Contractor

[Insert]

Number and form of copies of the work method statements:

(Clause 2.9(a)(i)C)

Number and form of copies of the 1 hard copy and 1 electronic copy in pdf format

The principal contractor under the WHS legislation is:

(Clause 2.11)

Person

Period of Appointment

The Contractor

From the date of this Contract until the date of completion of all construction work comprising the Contractor's Activities

Period after notice for inspection of Contemporaneous Work:

(Clause 2.13(a))

14 days

Site access dates:

(Clause 3.1(a) and 3.1(b)(i))

Site access to be provided in accordance with

Schedule 36.

Site access preconditions:

(Clause 3.1(c)(ii)E)

Any other Site access preconditions stated in the

Contract or any Third Party Agreement.

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

Maximum daily amount of delay damages for failure to give access:

[Insert details]

(Clause 3.1(e)(ii))

Contamination:

(Clause 3.9)

Alternative applying: [insert]

If Alternative 1 applies, definition of the Contamination Report

[insert name], a copy of which is set out in Exhibit D.

Condition surveys exist for the following properties:

(Clause 3.12)

[insert]

Consultants to be novated:

(Clause 5.2(b))

N/A

Number of copies of Design Documentation and survey information:

(Clause 5.5)

4 (3 bound and 1 unbound) plus one copy in electronic format

1011116

Percentages to be applied to Variation and daywork costs:

(Clauses 6.4 and 6.7)

Clause No percentage

6.4(b)(ii)A(including a valuation required to be made by clauses 3.5(c)

or 3.9(f)(vi))

[Insert] %

6.4(b)(ii)B

6.7 [Insert] %

Provisional Sum Work:

(Clauses 1.1 and 7.3)

[<mark>Insert</mark>]

L\351614717.11 OFFICIAL

[Insert] %

Percentage for Overhead Costs and profit

[Insert]%

(clause 7.3(b)(ii)(B)(2))

Parts of the Site within which the Works must be located:

(Clauses 3.11 and 7.6(b)(i))

[Insert]

New Defects Rectification Period:

12 months

(Clause 8.6)

Contractor's Personnel

(Clauses 2.1(d), 9.4(a) and 9.4(b)(i))

Contractor's Representative - [Insert name]

Project Manager - [Insert name]

Site Supervisor - [Insert name]

Design Manager - [Insert name]

Quality Manager - [Insert name]

Community Relations Manager – [Insert name]

Safety Manager - [Insert name]

Environmental Manager – [Insert name]

Is the Contractor required to submit a Project Training Management Plan:

[YES/NO]

(Clause 9.16)

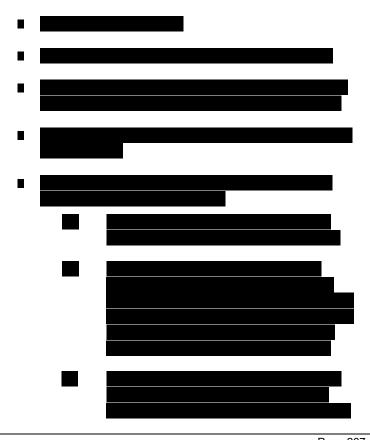
Training Target

(Clause 9.16(f)(i))

- (a) The Contractor must ensure that by the Date of Completion of the last Portion to achieve Completion:
 - (i) at least 20% of the Contractor's tradespersons engaged in the Contractor's Activities were made up of Apprentices; and

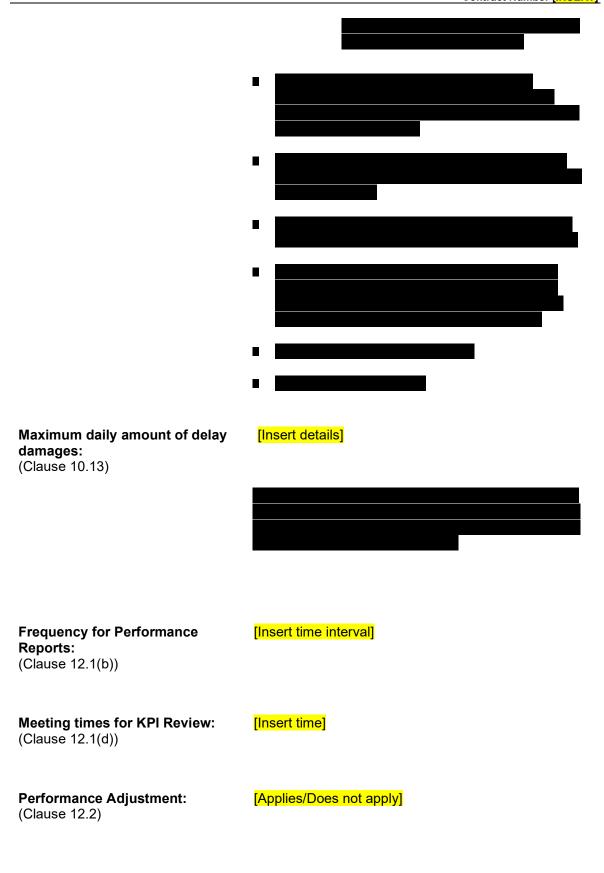
- (ii) A minimum of [Note to Contractor: insert a minimum of number] Trainees must have worked on the Contractor's Activities for a period of no less than 12 weeks;
- (iii) A minimum of Note to Contractor:
 insert a minimum of number
 Apprentices must have worked on the
 Contractor's Activities for a period of
 no less than 12 weeks;
- (iv) A minimum number Note to
 Contractor: insert a minimum of
 number of Apprentices and Trainees
 undertaking a qualification relating to
 identified critical skill shortage areas
 including but not limited to:
 - A. Cert III in Civil Construction;
 - B. Other trades areas identified as critical skill shortages specific to the package as nominated to the Contractor.

Causes of delay entitling Contractor to extension of time: (Clause 10.7(a))



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Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]



Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

Progressive Inspection and Testing:

(Clause 13.1)

- Site handover
- Endorsement of SOHI by OEH
- Temporary works design approval
- Demolition
- Scaffolding
- Precast concrete shop drawing and steel barriers, prior to commencement/casting
- Anti-throw screen shop drawing approvals
- Piling
- Pre-pour
- Stage 1,2, and 3 submissions
- Heritage asset removal, transport, storage and reinstall
- Possession
- Site open to traffic

Liquidated damages:

(Clause 13.7(a))

[Insert] per day

Limit of liability for liquidated damages for delay:

(Clause 13.7(e))

Insurance of the Works

(Clause 14.4)

Alternative applying

Alternative 1

Public liability insurance

(Clause 14.5)

Alternative applying

Alternative 1

Amount of Contractor's insurance:

(Clauses 14.6(a) and 14.6(f)(iii))

- Workers compensation insurance or similar insurance as required under clause 13.6 for an amount as required by Law
- **Construction Plant Insurance** Current market value of the Construction Plant
- **Professional Indemnity Insurance**
- **Motor Vehicle Insurance**
- **Asbestos Liability Insurance**
- Insurance required by Law or Change in Law As required by Law

Period for Professional Indemnity 7 years

Insurance:

(Clause 14.8(d))

Person in Insolvency Event:

(Clause 15.4(a)(i)C)

Iname of any Guarantor to the Contractor to be inserted] ABN [insert ABN])

[insert address]

Amount for termination for convenience:

(Clause 15.10(a)(v))

Clauses in respect of which disputes concerning directions of a Principal's Representative must be submitted within 14 days of date of direction:

(Clauses 9.1(b), 16.1(d) and 16.2)

2.3(d)(ii), 2.12(b)(vi)C, 2.12(b)(viii), 2.13(e), 2.13(f), 3.1(e)(ii), 3.5(c), 3.7(h)(iv), 3.8 (final paragraph), 3.9(f), 6.4, 6.7, 7.3, 8.5, 8.6, 9.8(c)(ii), 10.10, 10.11, 10.13, 10.14(b), 11.3, 13.3(b), 13.3(d), 15.6(b), 15.10(a) and 15.12(a).

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

Executive Negotiators: Principal: ###

(Clauses 1.1 and 16.5) Contractor: [Insert Name]

Addresses: Principal: [Insert details including email address]

(Clause 17.1(b)(i))

Principal's Poprosontative: Uncert details including

Principal's Representative: [Insert details including

email address]

Contractor: [Insert details including email address]

Time for giving notices: 14 days

(Clauses 18.1(a) and 18.3(a))

Time for written Claims: 28 days

(Clauses 18.1(b) and 18.3(c))

Pandemic Relief Event Site [Insert amount]

(Clause 23.5(a)(ii))

Allowance

L\351614717.11

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Schedule 2 - Payment Breakdown Schedule

(Clause 11.2(a))

Original Contract Price Details

[This Schedule will be completed prior to execution of the Contract]

ITEM	DESCRIPTION	TOTAL (\$) EXCLUDING GST
	Total Original Contract Price (Excluding GST) \$	

Schedule 3 - Form of Confidentiality Undertaking

(Clause	s 2.2(e)(iii) a	and 17.11(c)(i))	
То:]	1	
all inforr	nation recei	t/Supplier/Contractor/S ved/generated from the ct of work performed by	

The Consultant/Supplier/Contractor/Subcontractor hereby undertakes:

- (a) To disclose information to its employees only on a need-to-know basis;
- (b) Not to disclose information to any other person without first obtaining the written consent of the Principal;
- (c) To ensure that its employees to whom information is disclosed will comply with (a) and (b) above.

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

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

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

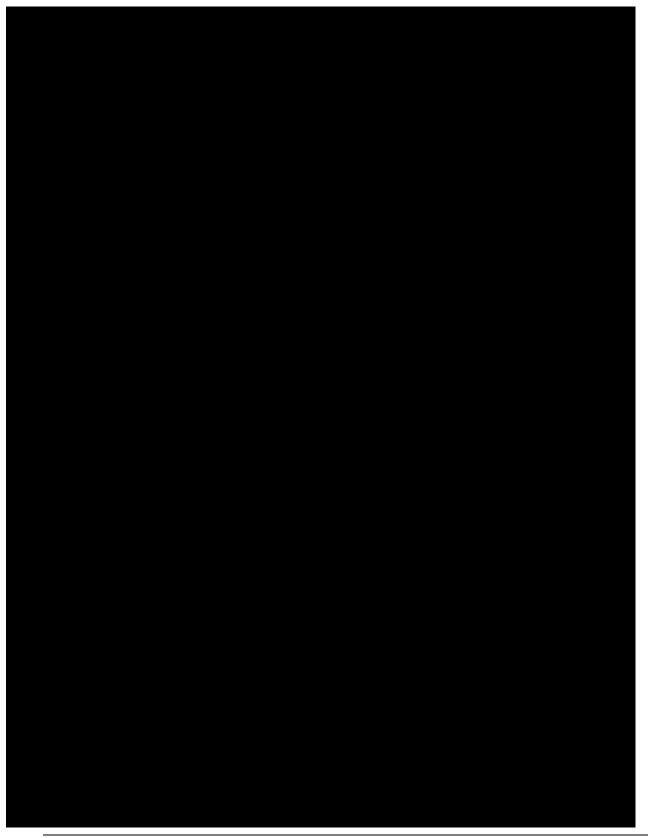
The Consultant/Supplier/Contractor/Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict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

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

the Princ	ipal into the public domain.	
Dated:		
SIGNED	for and on behalf of:	
(Print Co	mpany Name)	
Ву:	(Print Name)	(Signature)
in the pre	esence of:	
	(Print Name)	(Signature)

This undertaking will remain in force until each part of the confidential information is released by

Schedule 4 - Action in Complying with Planning Approval and Third Party Agreements



OFFICIAL

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L\351614717.11

Schedule 5 - Subcontractors - Security of Payment

(Clause 2.2(e)(i))

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

1. Options as to Form of Security

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

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

2. Trust for Cash Security and Retention Moneys

A clause which has the effect that:

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

3. Payment Provisions

A clause which:

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

after the last day for payment by the Principal to the Contractor for such work;

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

A clause that prescribes an interest rate for overdue payments that is not less than the interest rate specified in clause 11.13 of the General Conditions of this Contract.

4. Alternative Dispute Resolution

A clause that requires alternative dispute resolution procedures of the type required in this Contract.

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

5. Documents to be Provided to Subcontractors

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

- (a) clause 2.2(e)(i);
- (b) this Schedule 5;
- (c) clause 11; and
- (d) clause 15.

Schedule 6 - Consultant Deed of Covenant

(Clause 2.2(e)(ii))



This deed poll is made the

day of

20

To: Sydney Metro (ABN 12 354 063 515) of Level 43, 680 George Street, Sydney NSW 2000 (the "Principal")

By: [] ("Consultant")

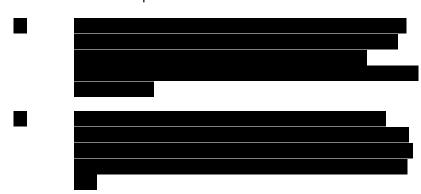
Recitals

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

Operative

1. Duty of Care

- (a) The Consultant:
 - (i) warrants to the Principal that:



C. the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right;

(ii) acknowledges that:

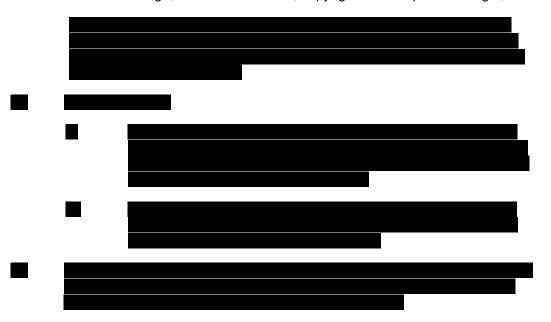
- A. in performing the Professional Services it will owe a duty of care to the Principal; and
- B. it is aware that the Principal will be relying upon the skill and judgment of the Consultant in performing the Professional Services and the warranties given by the Consultant in this deed poll.
- (b) The Consultant must:
 - (i) fully cooperate with each other consultant and contractor engaged by the Principal ("Other Contractor");
 - (ii) carefully coordinate and integrate the Professional Services with the services and work carried out by each Other Contractor;
 - (iii) carry out the Professional Services so as to minimise any interfering with, disrupting or delaying, the services and work carried out by each Other Contractor;
 - (v) ensure title to and intellectual property (including any patent, registered design, trademark or name, copyright or other protected right) in or in relation to the Professional Services will vest upon its

creation for the purposes of the Contract in the Principal;

- (vi) obtain an assignment to the Principal from any third party who owns any intellectual property right in the Professional Services;
- (vii) if any intellectual property rights in or in relation to documents, designs and computer programs created for the purposes of the Contract is not capable of being vested in the Principal because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, those rights, provide to the Principal an irrevocable licence to use that Intellectual Property, by sublicence from the Consultant or direct licence from a third party; and
- (viii) ensure that the intellectual property created for the purposes of the Contract is not used, adapted or reproduced other than for the purposes of the Contract without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).
- (c) The Consultant must indemnify the Principal from and against:
 - (i) any liability to or claim by any other person; and
 - (ii) all claims against, and costs, expenses, losses and damages,

suffered or incurred by the Principal arising out of, or in any way in connection with:

- (iii) the Consultant's breach of a term of, or warranty under, this deed poll; or
- (iv) any actual or alleged infringement of any patent, registered design, trademark or name, copyright or other protected right,



2. Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address or sent to the (or to a party's new address which that party notifies to the others):
 - (i) to the Principal: [Insert details including email]
 - (ii) to the Consultant: [Insert details including email]
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by email (whether or not containing attachments) will be taken to have been received on the earlier of:
 - the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
 - (ii) receipt by the sender of an automated message confirming delivery; and
 - (iii) the time of receipt as acknowledged by the recipient in writing, provided that:

- (iv) the communication will be taken to be so given by the sender and received by the recipient regardless of whether the email or any of its attachments is opened by the recipient; and
- (v) if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next day, which is not a Saturday, Sunday or public holiday in New South Wales.
- (d) If the Consultant is a foreign company (as defined in the *Corporations Act*), the Consultant must within 14 days of the date of this deed poll:
 - (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed poll; and
 - (ii) obtain the process agent's consent to the appointment.

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

3. Miscellaneous

- (a) This deed poll will be construed in accordance with the law of the State of New South Wales and the Consultant irrevocably submits to the jurisdiction of the Courts of that State.
- (b) This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Schedule

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

Executed as a deed poll.

Signed Sealed and Delivered by the Consultant					
[] by or in the presence of:)	(Signature)		
(Signature	e of Witness)				
(Name of	 Witness in Full)				

Schedule 7 - Approvals to be obtained by the Principal

(Clause 2.3(c)(i))

- The Planning Approval.
- [Insert details].

Schedule 8 - Form of Unconditional Undertaking

(Clause 2.7)		
This deed poll ("Undertaking") made the	day of	20

In favour of: Sydney Metro (ABN 12 354 063 515) of Level 43, 680 George Street,

Sydney NSW 2000 (the "Principal")

Given by: [] ("Institution")

Recitals:

A. By a contract dated []
("Contract") between []
("Contractor") and the Principal the Contractor agreed to carry out the Contractor's
Activities (as defined in the Contract).

B. Under the provisions of the Contract, the Contractor is required to provide this Undertaking to the Principal.

Operative:

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

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

Executed as a deed p	ooll.		
Signed Sealed and D)elivered)	
by [] being signed)	
sealed and delivered	by its duly constituted)	(Signature)
Attorney [] under)	
Power of Attorney No	in the)	
presence of:)	
(Signature of Witness)		
(Name of Witness in F			

Schedule 9 - Information Documents and Materials

(Clause 3.6)

[This schedule will be completed prior to execution of Contract.]

List of Information Documents and Materials

Item	Description	Author / Source	Date	Format
	Part A – XXXX			
A1				
	Part B – XXXX			
B1				
B2				
В3				
	Part C – XXXX			
C1				
C2				
	Part D – XXXX			
D1				
D2				
D3				
D4				
D5				

Schedule 10 - Prices and Rates for valuation of Variations and Overhead Costs

(Clauses 3.7(h)(iii), 3.9(f)(v), 6.4(b)(i)A and 6.7(a))

[Information to be inserted from the ECI Deed (which may include prices and rates as referred to below)]

Part A

The prices and rates referred to in clauses 3.7(h)(iii), 3.9(f)(v), 6.4(b)(i)A and 6.7(a) of the Contract are those set out in the table below:

ITEM	DESCRIPTION	RATE (\$) EXCLUDING GST

Part B - Overhead Costs

(Clauses 1.1, 6.4(b) and 7.3(b))

1. On-site overheads

The on-site overheads are those overhead costs and expenses which are specific to the Site including:

- (a) on-site personnel with project management, site supervision, administration and support functions;
- (b) site accommodation including amenities and parking facilities;
- (c) phones lease and installation, rental and charges including mobiles;
- (d) storage area and facilities;
- (e) office supplies and consumables;
- (f) site services;
- (g) furniture and office fittings;
- (h) site-based computers;
- (i) printing, photocopying and stationery;
- (j) reproduction of drawings;
- (k) project specific insurances only (and not corporate held insurances);
- (I) project specific software, data processing and network systems;
- (m) security;
- (n) cleaning;
- (o) postage;
- (p) site communications;
- (q) first aid and personnel protective equipment for the personnel referred to in paragraph (a);
- (r) small tools; and
- (s) waste disposal associated with site accommodation, including amenities and parking facilities (excluding waste disposal associated with construction activities).

2. Off-site overheads

The off-site overheads are on account of costs and expenses related to off-site business functions of the Contractor (in respect of the Works) including the following matters:

(a) safety and quality;

- (b) research and development;
- (c) financial, legal, human resources and commercial;
- (d) executive management;
- (e) corporate infrastructure and support;
- (f) parent company fees;
- (g) corporate head offices running costs and payroll;
- (h) bonds and bank guarantees.

Schedule 11 - Form of Warranty

(Clause 2.2(f))

This Deed Poll is made the day of 20

To: Sydney Metro (ABN 12 354 063 515) of Level 43, 680 George Street, Sydney NSW 2000 (the "Principal")

[Add other beneficiaries as nominated by Sydney Metro] ("Beneficiary").

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

Recitals

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

Operative

1. Quality

The Warrantor:

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

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

2. Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 7 of the Schedule:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in order to

achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

3. Warrantor to bear cost

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

4. Principal not liable

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

5. This deed poll may not be revoked

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

6. Governing Law

This deed poll is governed by the laws of the State of New South Wales.

7. Jurisdiction

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

8. Enforcement of this deed poll

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

Name of Director in full

Name of Secretary/other Director in full

Sc	he	dı	ule	
----	----	----	-----	--

Item 1:	Name and Address of Warrantor		
Item 2:	Equipment (Recital A)		
Item 3:	Contractor (Recital A)		
Item 4:	Subcontractor (Recital A)		
Item 5:	Contract (Recital A)		
Item 6:	Detailed Warranty of Warrantor (Clause 1(b))		
Item 7:	Period of Years (Clause 2)		
	[insert period] years from the expiry of defined in the General Conditions (include General Conditions).		
Execute	d as a deed poll.		
	ed by [insert name of Warrantor] nsert ABN]) by or in the presence		
		-	
Signatur	e of Director		Signature of Secretary/other Director
		-	

Schedule 12 - Form of Statutory Declaration

(Clause 11.6(c)(i))

Statu	ory Declaration		Oaths Act (NSW) Nint	h Sc
				٠
of 				
do solen	 nnly and sincerely declare that:	•		
1.	I am the representative of			
	("the Contractor")			
	in the Office Bearer capacity	of:		
2.	The Contractor has a con	•	J:	
	("the Contract")			••
3.	I personally know the facts w	hich I have set out in this c	leclaration.	
4.	All employees who have at a Contract:	ny time been engaged by t	the Contractor for work done under the	,
			o the date of this declaration payable yment on work under the Contract, ar	
	the Contractor as at t	he date of this declaration	benefits to which they are entitled fro in respect of their employment on wo prise agreement, act or regulation,	
	with the exception of the emember employee listed below:	nployees and respective a	mounts unpaid or not accrued for eac	ch
	Employee:	Amount	unpaid or not accrued:	
		-		
5.			exure A, is a supporting statement for ruction Industry Security of Payment	
5A.	complied with all requirement	ts under the Building and Co	m a Subcontractor, the Contractor ha construction Industry Security of Payme on 2015 (NSW), with the exception of th	nt

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:	
	i) have been paid all remuneration and benefits due and payable to them by; or	
	ii) had accrued to their account all benefits to which they are entitled from;	
	the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and	
	(c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,	insert names and addresses
	except for the following subcontractors to the Contractor who have failed to provide such a declaration:	of the Contractor's subcontractors who have not submitted a declaration.
	Subcontractor: Due amount unpaid:	and unpaid amounts due or
		otherwise due to each of them by the Contractor in
		respect of this claim
		insert names of the
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:	subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.
	Employee, subcontractor or supplier: Amount unpaid or not accrued:	
10.	In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.	
11.	Attached to and forming part of this declaration, 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, Pay-Roll Tax Act 1971 and Industrial Relations Act 1996) which is a written statement:	
	(a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;	
	(b) under section 18(6) of schedule 2 of part 5 of the Pay-Roll Tax Act 2007 in the form and providing the detail required by that legislation; and	

	(c)	under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.	
12.		rsonally know the truth of the matters which are contained in this declaration and the attached contractor's Statement.	
13.		statutory declarations and Subcontractor's Statements received by the Contractor from contractors were:	
	(a)	given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Pay-Roll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and	
	(b)	given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.	
14.I am	writt	vare of anything which would contradict the statements made in the statutory declarations or ten statements provided to the Contractor by its subcontractors, as referred to in this laration.	
	O (NSV	plemn declaration conscientiously believing the same to be true and by virtue of the Oaths N). I am aware that I may be subject to punishment by law if I wilfully make a false statement tion.	
Declare		on	
	((place) (day) (month) (year)	
		 Declarant)	
Before r			
(Sigr	ature	of person before whom the declaration is made)	
(Nan	ne of ti	he person before whom the declaration is made)	
(Title* o	f the p	erson before whom the declaration is made)	
And as a		ess, I certify the following matters concerning the person who made this declaration	
[*strike o	out the	text that does not apply]	
1.		'I saw the face of the declarant.	
	,	OR If did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.	
2.		'I have known the declarant for at least 12 months. OR	
		'I confirmed the declarant's identity using the following identification document:	
		Identification document relied on	
		(may be original or certified copy)	
Signatui	re of p	erson before whom the declaration is made	
Before r	ne:		
(Signatu	ire of p	person before whom the declaration is made)	
(Name o	of the p	person before whom the declaration is made)	
(Title* or	f the p	erson before whom the declaration is made)	

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

- * The declaration must be made before one of the following persons:
 - where the declaration is sworn within the State of New South Wales:
 - (i) a justice of the peace of the State of New South Wales;
 - (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or (iii) a notary public.
 - where the declaration is sworn in a place outside the State of New South Wales:
 - (i) a notary public; or
 - (ii) any person having authority to administer an oath in that place.

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

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:
of	(Business name)
	(Address of subcontractor)
nas entered into a contract witn ABN:	
	(Business name of principal contractor)
	e 2) (Not
Contract number/identifier 3)	(Note
This Statement applies for work b	petween:/ and/ inclusive, (Note 4)
subject of the payment claim date	ed:/ (Note 5)
the Subcontractor on whose beha	alf this declaration is made, hereby declare that I am in a position to know contained in this Subcontractor's Statement and declare the following to lief:

- (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)

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

` '	Signaturename		
(g)	Position/Title	[)ate
/			

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

- 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 Relation 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.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.

Name of Witness in full

Schedule 13 - Property Owner's Certificate (Clause 3.4(c)(ii)) This deed poll is made the day of 20 Sydney Metro (ABN 12 354 063 515) of Level 43, 680 George Street, Sydney NSW To: 2000 (the "Principal") By:]. [Property Address: 1. I/We confirm that the following works has been carried out and completed on my/our property to my/our satisfaction: [Insert description of works on property and property] 2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired. 3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1. 4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal. Executed as a deed poll. Signed sealed and delivered by in the presence of: Signature Signature of Witness

Schedule 14 - Form of Subcontractor Deed

(Clause	e 2.2(e)(iv))			
THIS D	EED POL	L is made on		20	by
			AC	CN of	
			(th	ne "Subcontracto	or").
RECITA	ALS:				
A.	2000 (th	Metro (ABN 12 354 0 ne "Principal") has en ractor") for the constru	tered into a contr]
В.	execution	ocontractor has an agron and completion of the ontract Works") for the	ne [bcontract") with	the Contractor for the] (the
C.	It is a co	ondition of the Subcont	ract that the Sub	contractor execu	tes this Deed Poll.
	ANTS ANI	NESSES THAT THE S D AGREES with and fo			•
1.		omply with its obligation the Subcontract Works			
2.		sons named in the Sch I under this Deed Poll.	nedule may assig	gn or charge the b	penefits and rights
3.	The Sul	ocontractor:			
	(a)	must, if required by a of the attached Deed contractor as the Pri	d of Novation (At	tachment 1) with	gn a deed in the form such substitute
	(b)	for this purpose irrev power and authority Deed of Novation.			e its attorney with full sign the attached
4.	This De	ed Poll is governed by	the laws of the S	State of New Sout	th Wales.

L\351614717.11 OFFICIAL

4.

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

PERSONS NAMED IN THE SCHEDULE TO THE DEED POLL

Sydney Metro	(ABN 12 354 063 515)
--------------	----------------------

[Insert relevant details]

	ITED	AS A	\mathbf{r}	\sim 1 1
- x	 	$\Delta > \Delta$	 1) P	

Executed by [insert name] (ABN [insert ABN]) by or in the presence of:	
Signature of Director	Signature of Secretary/other Director
Name of Director in full	Name of Secretary/other Director in full

Attachment 1 (to Schedule 14)

THIS partie		NOVATION is made on [] 20[] between the following
1.]] ("Substitute Contractor")	
2.	[] ("Original Contractor")	
3.	[] ("Subcontractor").	

RECITALS:

- A. By deed dated [] (the "Deed") between:
 - (i) **Sydney Metro (ABN** 12 354 063 515) of Level 43, 680 George Street, Sydney NSW 2000 (the "**Principal**"); and
 - (ii) Original Contractor,

the Principal engaged the Original Contractor to undertake the Works (as defined in the Deed).

- B. The Original Contractor has entered into an agreement ("Subcontract") with the Subcontractor for the execution and completion of the [] ("Subcontract Works") as part of the Works.
- C. The Principal has terminated the Deed and has engaged Substitute Contractor to complete the Works.
- D. The Principal and Substitute Contractor wish to effect a novation of the Subcontract.

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

- Substitute Contractor must perform all of the obligations of the Original Contractor under the Subcontract which are not performed at the date of this deed. Substitute Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of Original Contractor.
- 2. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if Substitute Contractor was originally named in the Subcontract in place of Original Contractor.
- 3. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

[Insert appropriate execution clauses]

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

Schedule 15 - Options

(Clause 6.3)

Not used

Schedule 16 - Form of Contractor Deed Poll

(Clause 1.5)

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

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

Contractor's address] ("Contractor"),

in favour of: [insert name of Beneficiary of Deed Poll] (ABN [insert Beneficiary's

ABN]) of [insert Beneficiary's address] ("Owner").

RECITALS

A. Sydney Metro of Level 43, 680 George Street, Sydney NSW 2000, is responsible for developing the *[Insert]* ("Program").

- B. As part of the Program Sydney Metro is responsible for procuring the execution and completion of certain works [Insert details of project] (the "Works") on behalf of the Owner and the New South Wales Government, and has entered into a contract ("Main Contract") with the Contractor to achieve this.
- C. The Owner is relying on Sydney Metro to procure the Contractor to execute and complete the Works in accordance with the Main Contract.
- D. The Owner will suffer loss if Sydney Metro does not procure the Contractor to execute and complete the Works in accordance with the Main Contract.
- E. It is a condition of the Main Contract that the Contractor executes this Deed Poll.

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

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

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

Period in which delay occurs	Rate per hour or part thereof
During peak hours	
During other hours	

- 4. The aggregate of the Contractor's liability to the Owner under this Deed Poll and the Contractor's liability to Sydney Metro under the Main Contract:
 - (a) will not exceed the liability which the Contractor would have had under the Main Contract if the Main Contract had named, as Principal, the Owner and Sydney Metro jointly and severally; and
 - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Main Contract.
- 5. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.
- 6. The Owner may assign or charge the benefits and rights accrued under this Deed Poll.
- 7. This Deed Poll is governed by the laws of the State of New South Wales.
- 8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Owner.
- 9. Where terms used in this Deed Poll are defined in the Main Contract, those terms have the meaning given to them in the Main Contract.

Executed as a deed poll.

Executed by [insert Contractor's name] ABN [insert Contractor's ABN] by or in the presence of:	
Signature of Director	Signature of Secretary/other Director
Name of Director in full	Name of Secretary/other Director in full

Schedule 17 - Deed of Guarantee and Indemnity

This deed poll ("Dee	d Poll") made at	on	20
	354 063 515), a NSW Gove ation Act 1988 (NSW), of Lev		
[(Guarantor)] ABN [] of [1

RECITALS

- A. The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Contractor to perform the Obligations.
- C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

THIS DEED POLL PROVIDES

1. Definitions

1.1 Definitions and Interpretation

In this Deed Poll:

Contract means the **[Insert details]** Contract dated on or about the date of this Deed Poll between the Principal and the Contractor.

Contractor means [insert details].

Event of Default means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Insolvency Provision means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement,

arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Obligations means all the liabilities and obligations of the Contractor to the Principal under or arising out of or in any way in connection with the Contract or the work to be carried out or performed by the Contractor under the Contract, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this Deed Poll;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default, and irrespective of:
- (g) whether the Contractor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed Poll, including any assignment of any liability or obligation or of this Deed Poll; or
- (i) the capacity in which the Contractor and the Principal comes to owe or be owed such liability or obligation,

and *Obligation* means any liability or obligation forming part of the Obligations.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed Poll), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed Poll or at any time in the future.

Specified Rate means the rate which is above the rate expressed as a percentage per annum:

- (j) which is the average of the bid rates shown at approximately 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
- (k) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

1.2 Defined terms

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

1.3 Interpretation

In this Deed Poll 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 Poll 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:
 - (1) 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
 - (2) 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 Poll or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed Poll 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:
 - (1) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - 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 Poll;
- (i) a reference to:
 - a party or clause is a reference to a party or clause of or to this Deed Poll;
 and
 - (2) a paragraph or a sub-paragraph is a reference to a paragraph or subparagraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (I) 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 Poll or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Contractor of all the Obligations.

2.2 Payment by Guarantor

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 Perform Obligations

If the Contractor defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Contractor in the same manner as the Contractor is required to perform the Obligations.

3. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Contractor to perform the Obligations duly and punctually; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason.

4. Liability as guarantor and indemnifier

A reference in this Deed Poll to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed Poll. The use of the expression "Guarantor" in this Deed Poll

in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed Poll.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed Poll is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.
- (b) This Deed Poll binds each person who has executed it, notwithstanding that:
 - (1) any person, whether named as a party or not, does not execute this Deed Poll;
 - (2) the execution of this Deed Poll by any person is invalid, forged or irregular in any way; or
 - (3) this Deed Poll is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantor under this Deed Poll will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed Poll, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed Poll, of any Insolvency Event in relation to the Contractor or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;

- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor:
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;
- (I) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;
- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed Poll, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;
- (o) the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor;
- (p) (where the Guarantor is an individual) the death or mental incapacity of the Guarantor; or
- (q) the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
 - (1) the enforcement of this Deed Poll against any Guarantor; or
 - (2) any claim for contribution against any Guarantor.

5.3 No merger

- (a) This Deed Poll is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the Principal.
- (b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed Poll will not merge in that judgment or order.

5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Contractor, or any particulars concerning any Obligation.

5.5 Appropriation

(a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or

has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.

(b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed Poll, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed Poll.

5.6 Void or voidable transactions

If:

- (a) the Principal has at any time released or discharged:
 - (1) the Guarantor from its obligations under this Deed Poll; or
 - (2) any assets of the Guarantor from a Security, in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or
- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
 - (1) the Guarantor from its obligations under this Deed Poll; or
 - (2) any assets of the Guarantor from a Security;

and

- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

The liability of the Guarantor under this Deed Poll will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the Principal.

5.8 Claim on the Guarantor

The Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.

5.9 No representation by Principal etc.

The Guarantor acknowledges that it has not entered into this Deed Poll as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Contractor or any other person.



6. Representations and Warranties

6.1 General representations and warranties

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and warrants to the Principal:

- (a) this Deed Poll constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed Poll by the Guarantor does not breach any law, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the business assets or financial condition of the Guarantor;
- (d) all information relating to the Guarantor provided to the Principal in connection with this Deed Poll is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed Poll as the trustee of any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed Poll does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Securities Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed Poll and to authorise the execution and delivery of this Deed Poll and the performance of its obligations under this Deed Poll; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate.

6.3 Representations and warranties repeated

Each representation and warranty in this Deed Poll will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed Poll must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed Poll. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3.

7.4 Merger

If the liability of the Guarantor to pay to the Principal any money under this Deed Poll becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed Poll must be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding. If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and
- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed Poll, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed Poll is received by the Principal in a currency (Payment Currency) other than the currency (Agreed Currency) in which that amount is required to be paid under this Deed Poll (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed Poll in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.

8. Expenses and stamp duties

8.1 Expenses

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) the preparation, negotiation and execution of this Deed Poll and any subsequent consent, agreement, approval, waiver, amendment to or discharge of this Deed Poll; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

(a) The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, financial institutions duty and debits tax which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed Poll or any payment, receipt or other transaction contemplated by this Deed Poll; and

(b) the Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

8.3 Goods and Services Tax

If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed Poll (GST Liability) then:

- (a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed Poll for that supply the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

9. Assignment

The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed Poll and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed Poll and where applicable, the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.7 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed Poll.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.7 will only apply where the Guarantor is a foreign company (as defined in section 9 of the *Corporations Act 2001* (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed Poll (including but not limited to any question relating to the existence, validity or termination of this Deed Poll) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.

(e) The language of the arbitration will be English.

10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.5 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

10.6 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed Poll hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.7 Award final and binding

Any award will be final and binding upon the parties.

11. Miscellaneous

11.1 Notices

- (a) Any notices contemplated by this Deed Poll must be in writing and delivered to the relevant address as set out below (or to any new address that a party notifies to the others).
 - (1) to the Principal: **[to be completed, including email addresses]**
 - (2) to the Guarantor: [to be completed, including email addresses]
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by email (whether or not containing attachments) will be taken to have been received on the earlier of:
 - (1) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered:
 - (2) receipt by the sender of an automated message confirming delivery; and
 - (3) the time of receipt as acknowledged by the recipient in writing, provided that:

- (4) the communication will be taken to be so given by the sender and received by the recipient regardless of whether the email or any of its attachments is opened by the recipient; and
- (5) if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next day.

11.2 Continuing obligation

This Deed Poll is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed Poll as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed Poll.

11.4 Form of demand

A demand on the Guarantor for payment under this Deed Poll may be in the form and contain any information as the Principal determines. It need not specify the amount of the Guaranteed Money, nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

11.5 Entire agreement

This Deed Poll constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed Poll; or
- (b) any correspondence or other documents relating to the subject matter of this Deed Poll that may have passed between the parties prior to the date of this Deed Poll and that are not expressly included in this Deed Poll.

11.6 Joint and several liability

The obligations of the Guarantor, if more than one person, under this Deed Poll, are joint and several. Each person constituting the Guarantor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed Poll) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them. This Deed Poll binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed Poll.

11.7 Severance

If at any time any provision of this Deed Poll 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 Poll; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed Poll.

11.8 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to the Principal.

11.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed Poll by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed Poll.
- (b) Any waiver or consent given by the Principal under this Deed Poll will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (1) a breach of any term of this Deed Poll; or
 - (2) any other failure by the Guarantor to comply with a requirement of this Deed Poll,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed Poll or failure to comply with any other requirement of this Deed.

11.10 Consents

Any consent of the Principal referred to in, or required under, this Deed Poll may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed Poll expressly provides otherwise.

11.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed Poll, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.12 Set-off

(a) The Principal may (without prior notice at any time) set off any obligation then due and payable by the Guarantor under this Deed Poll against any obligation (whether or not due and payable) by the Principal to the Guarantor, regardless of the place or currency of payment of either obligation or the office or branch through which either obligation is booked. If the obligations are in different

currencies, the Principal may convert either obligation into the currency of the other obligation at a market rate of exchange determined by it for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Principal may effect the set off in an amount estimated by it in good faith to be the amount of that obligation.

- (b) The Principal is not obliged to exercise any right of set off pursuant to clause 11.12(a), which is in addition to its other rights of combination of account, set-off or lien (by contract or operation of law).
- (c) On its exercise of any set off pursuant to clause 11.12(a) against the Guarantor, the Principal will promptly notify the Guarantor of details of that set-off.

11.13 Variations

This Deed Poll may only be varied by a document signed by or on behalf of both the Principal and the Guarantor.

11.14 Provisions limiting or excluding liability

Any provision of this Deed Poll which seeks to limit or exclude a liability of the Principal or the Guarantor is to be construed as doing so only to the extent permitted by law.

11.15 Counterparts

- (a) This Deed Poll need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed Poll in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

Executed as a deed poll.

Executed by [insert Contractor's name] ABN [insert Contractor's ABN] in the presence of:	
Signature of Director	Signature of Secretary/other Director

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

Name of Director in full

Name of Secretary/other Director in full

] ABN [

] ("Subcontractor").

Schedule 18 - Deed of Novation (Principal, Contractor and Subcontractor)

(Cla	ause 2.2(g))			
THI	S DEED OF N	OVATION is made	on [] between the following parties:
 Sydney Metro (ABN 12 354 063 515) of Level 43, 680 George Street, Sydney NSW 2000 ("Principal") 				
2.	[] ABN [] of [] ("Contractor"); and

Recitals

3. [

A. By agreement dated [] (the "Subcontract"), the Principal engaged the Subcontractor to, and the Subcontractor agreed to, undertake certain works for the Principal (the "Subcontract Works").

] of [

- B. By agreement dated [] (the **"Contract"**), the Principal engaged the Contractor to, and the Contractor agreed to, undertake certain works for the Principal, which includes the Subcontract Works.
- C. Under the Contract and the Subcontract, the Contractor and the Subcontractor must enter into this deed when the Principal requires them to do so.
- D. Subject to this deed, the Subcontractor agrees to accept the Contractor in place of the Principal for the performance of all the obligations of the Principal and to release completely and discharge the Principal from all of its obligations under the Subcontract and from all claims and demands in respect of it.

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

- 1. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if the Contractor was originally named in the Subcontract as the Principal.
- The Subcontractor:
 - (a) releases and forever discharges the Principal from its obligations under the Subcontract and from all claims and demands in respect of the Subcontract; and
 - (b) accepts the liability of the Contractor in place of the liability of the Principal in respect of the Subcontract.
- 3. The Contractor must perform all the obligations of the Principal under, and be bound by, the Subcontract as if the Contractor were originally named in the Subcontract as the Principal.

- 4. Upon the execution and exchange of this deed:
 - (a) the Principal must release any securities given to it by the Subcontractor in accordance with the Subcontract;
 - (b) the Subcontractor must give the Contractor security in the same form and for the same amounts as any security required by the Subcontract; and
 - (c) the Subcontractor must ensure that the Contractor is appropriately noted on all relevant insurance policies as required by the Subcontract.
- 5. This deed is governed by the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a d Executed by [] AB by or in the presence of:		
Signature of Director		Signature of Secretary/other Director
Name of Director in full		Name of Secretary/other Director in full
Executed by [] AB by or in the presence of:	N []	
Signature of Director		Signature of Secretary/other Director
Name of Director in full		Name of Secretary/other Director in full
Executed by [] ABN or in the presence of:	[] by	
Signature of Director		Signature of Secretary/other Director
Name of Director in full		Name of Secretary/other Director in full

Schedule 19 - Contractor's Certificate of Design Compliance

(Clauses 5.3 and 11.6(c)(ii))

CONTRACTOR'S CERTIFICATE OF DESIGN COMPLIANCE	
CONTRACTOR:	
<u>DESIGN PACKAGE</u>	DESCRIPTION
(Attach schedule of work packages if insufficient space) I certify that the design for the packages or part thereof described above has been completed to the extent	
indicated above in accordance with the requirements of the Contract between the Principal and, and complies with the requirements of the Contract,	
subject to the register of outstanding minor design non-conformances and unresolved issues attached.	
I further certify that the attached compliance re design packages.	cords as required by the Contract reflect the true status of the
SIGNATURE:(Contractor's Representative)	SIGNATURE:(Contractor's Subcontractor/Designer)
·	DATE:

Schedule 20 - Contractor's Certificate of Construction Compliance

(Clauses 7.1(c) and 11.6(c)(ii))

CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE		
CONTRACTOR:		
WORK PACKAGE		DESCRIPTION
	(Attach ashadula af wark nackagas	if incufficient anges
(Attach schedule of work packages if insufficient space) I certify that the procurement/construction of the work packages or part thereof described above have been		
completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and, and comply with the requirements of the Contract,		
subject to the register of outstanding minor construction non conformance and unresolved issues attached.		
I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.		
NAME:(Contractor's Repres	SIGNATURE: entative)	DATE: / /

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

THIS SECTION MUST BI SUBCONTRACTOR/DES	E COMPLETED BY THE RELEVANT CONTRACTOR'S SIGNER
thereof described above I requirements of the Conti and comply with the requ	nent/construction of the work packages (one certificate per work package) or part nave been completed to the extent indicated above in accordance with the ract between the Principal and
I further certify that the at work packages.	tached compliance records as required by the Contract reflect the true status of the
SIGNATURE:(Contractor's	s Subcontractor/Designer)
DATE:	_

Schedule 21 - Contractor's Certificate of Completion

(Definition of "Completion" in Clause 1.1 and Clause 13.3(c))

CONTRACTOR'S CERTIFICATE OF COMPLETION	
CONTRACTOR:	
Description of Portion or Works:	
I certify that the Completion of the above Portion/the Works has/have been achieved in accordance with the requirements of the Contract between the Principal and , complies with the requirements of the	
Contract, subject to the register of unresolved issues attached.	
I further certify that: (a) All Variation Orders (including concessions) are listed in the attached compliance register. (b) All identified Defects (including any non-conformities but excluding Defects accepted as minor by the Principal) have been satisfactorily rectified and their documentation closed out. (c) All required documentation has been submitted.	
I further certify that the attached compliance records as required by the Contract reflect the true status of the Portion/the Works.	
SIGNATURE:SIGNATURE:(Contractor's Representative) (Contractor's Subcontractor/Designer) DATE: DATE:	

Schedule 22 - Contractor's Certificate of Final Completion

(Clause 13.8(d))

CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION

CONTRACTOR:

I hereby certify that Final Completion has been achieved by[the Contractor] in accordance with the requirements of the Deed (including all Variation orders detailed in (a) below) between the Principal and the Contractor.

I further certify that:

- (a) All Variation Orders (including concessions) are listed in the attached compliance register.
- (b) All identified Defects (including any non-conformities have been satisfactorily rectified and their documentation closed out.
- (c) All required documentation has been submitted.
- (d) All notices regarding system deficiencies have been satisfactorily closed out.

I further certify that the attached compliance records as required by the Deed reflect the true status of the Portion/the Works.

SIGNATURE:	DATE: / / /
(Contractor's Representative)	

Schedule 23 - Form of Other Contractor Deed Poll

(Clause 7.4)

This Deed Poll made the day of 20

In favour of: [insert details] (ABN [insert details]) of [insert details]

("Contractor") and

Sydney Metro (ABN 12 354 063 515) of Level 43, 680 George Street, Sydney

NSW 2000 ("Principal")

Given by: [insert details] (ABN [insert details]) of [insert details]

("Other Contractor")

Recitals

- A. By a contract dated [insert date] ("Contract") between the Principal and the Contractor, the Contractor agreed to design and construct certain works ("Works"), on the land more particularly described in the Contract (the "Site").
- B. The Other Contractor has been appointed under a Contract ("Other Contract") to undertake certain works on the Site ("Other Contractor Works").
- C. For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW) (together, the **"WHS Legislation"**), the Works and the Other Contractor Works are a 'construction project' within the meaning of the WHS Legislation.
- D. Under the Contract, the Principal engaged the Contractor as principal contractor and authorised the Contractor to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- E. Under the provisions of the Contract, the Principal is required to procure the provision of this Deed Poll from each Other Contractor that undertakes Other Contractor Works (as that term is defined in the Contract).

This Deed Poll Provides

- In consideration of the Contractor accepting this Deed Poll, the Other Contractor agrees that
 - (a) the Other Contractor, its subcontractors and their respective personnel while they are on the Site, will comply with Site safety regulations, any Site rules or regulations and with all directions of the Contractor with respect to work health and safety;
 - (b) the Other Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the Contractor so that the Contractor discharges its obligations as principal contractor;
 - (c) the Other Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Contractor, the Principal and

- all other persons who have a work health and safety duty in relation to the same matter;
- (d) the Other Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Contractor while on Site;
- (e) the Contractor may exclude the Other Contractor, any of its subcontractors and their respective personnel from the Site for work health and safety reasons;
- (f) the Contractor may direct the Other Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
- (g) where high risk construction work is to be carried out in the performance of the Other Contractor Works, the Other Contractor must:
 - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (ii) provide a copy of the safe work method statement to the Principal and the Contractor prior to the commencement of high risk construction work;
 - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
 - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (v) where so directed by the Contractor, suspend the performance of any high risk construction work;
- (h) the Other Contractor shall in carrying out the work under the Other Contract, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
- (i) in its contracts with subcontractors, the Other Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Other Contractor under this Deed Poll.
- 2. The Other Contractor indemnifies the Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Contractor as a result of:
 - (a) any failure by the Other Contractor to comply with any direction given by the Contractor in accordance with this Deed Poll; or
 - (b) any breach by the Other Contractor, any of its subcontractors or their respective personnel of:
 - (i) their respective contractual or legislative work health and safety obligations; or
 - (ii) the provisions of this Deed Poll.
- 3. This Deed Poll will be governed by and construed in accordance with the law for the time being of New South Wales.

Executed as a Deed Poll.	
Executed by [Other Contractor] by or in the presence of:	
Signature of Director	Signature of Secretary/other Director
Name of Director in full	Name of Secretary/other Director in full

Schedule 24 - Form of Interface Agreement Deed Poll in favour of Rail Transport Agency and Transport for NSW

(Clause 1.5(b) and 1.5(c))

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

By: [Contractor] (ABN......) of("Contractor"),

in favour of: [Insert details of relevant Rail Transport Agency] ("Rail Transport

Agency") and

Sydney Metro (ABN 12 354 063 515) a NSW Government agency constituted by section 38 of the *Transport Administration Act* 1988 (NSW), of Level 43, 680 George Street, Sydney NSW 2000

Recitals

- A. Rail Transport Agency operates the commuter rail system in Sydney, including [Insert details] and surrounds where the Works (the "Project") is to be undertaken by the Contractor and others.
- B. Sydney Metro is responsible for developing certain major railway systems and other major transport projects and has engaged the Contractor to carry out certain works under a contract (**Contract**).
- C. Sydney Metro is responsible for procuring the execution and completion of the Project, and has entered into a safety interface agreement dated [insert date] for [Insert details of Project/Program] ("Interface Agreement") with Rail Transport Agency to cover the Project.
- D. Rail Transport Agency is relying on Sydney Metro to procure the Contractor (with others) to execute and complete the Project in accordance with the Contract to ensure that Rail Transport Agency will satisfy, among other things, its obligation to provide an operating commuter rail system.
- E. Rail Transport Agency will suffer loss if Sydney Metro does not procure the Contractor to execute and complete the Works in accordance with the Contract and the Interface Agreement.

Operative

This deed witnesses that the Contractor hereby covenants, warrants and agrees with and for the benefit of Rail Transport Agency and Sydney Metro as follows:

- 1. It will comply with the Interface Agreement.
- 2. During and upon Completion of the Project, the Contractor's Activities will satisfy the requirements of the Interface Agreement.
- 3. Rail Transport Agency and Sydney Metro may assign or charge the benefits and rights accrued under this Deed Poll.
- 4. This Deed Poll is governed by the laws of the State of New South Wales.
- 5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Sydney Metro.
- 6. Where terms used in this Deed Poll are defined in the Contract or the Interface Agreement, those terms have the meaning given to them in the Contract or the Interface Agreement.

Executed as a deed poll.

Executed by [Contractor] (ABN) by or in the presence of:	
Signature of Director	Signature of Secretary/other Director
Name of Director in full	Name of Secretary/other Director in full

Schedule 25 - Deed of Novation (Principal, Contractor and Consultant)

(Clause 5.2(b))

Deed of Novation

[ABN [1]
[ABN [1]
[ABN [1]

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.

"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 consent of each other party.

Schedule 1	
Contract (Clause 1.1)	
Governing Law and Jurisdiction (Clause 8.1 and 8.2)	

Executed as a deed.	
Executed by [Retiring Party and ABN] by or in the presence of:	
Signature of Director	Signature of Secretary/other Director
Name of Director in full	Name of Secretary/other Director in full
Executed by [Continuing Party and ABN] by or in the presence of:	
Signature of Director	Signature of Secretary/other Director
Name of Director in full	Name of Secretary/other Director in full

Executed by [Substitute Party and ABN] by or in the presence of:	
Signature of Director	Signature of Secretary/other Director
Name of Director in full	Name of Secretary/other Director in full

Schedule 26 - Expert Determination Agreement

(Clauses 16.8(b) and 16.9)

Expert Determination Agreement made at

on

Parties [] (Principal)

[Insert name and address of Contractor] (Contractor)

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

Background

- A. The Principal and the Contractor (together "the Parties" and each "a Party") are parties to a contract (Contract) for [to be inserted].
- B. By written notice dated **[to be inserted]**, the **[insert the Principal or 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 15.7 of the Contract (**Matter**).
- C. Pursuant to clause 15.7 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 New South Wales 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

1.1 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 (ie the Party who gave notice under clause 15.1 of the Contract) must, in addition to any particulars provided by Party A under clause 15.1 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,
 - (iv) 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

- 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 unless a notice of appeal is given in accordance with clause 16.10 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

6.1 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

7.1 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

- 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.
- 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.
- 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 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 27 Principal Supplied Items

(Clause 7.10)

Principal Supplied Items	[insert]
Place of Availability	[insert]
Date of Availability	The date which is [insert] days after the date on which the Principal receives a written notice from the Contractor requesting the relevant Principal Supplied Item but which date will not be earlier than [insert].

Schedule 28 - Report on training of apprentices and trainees

(Clause 9.16(f)(iii))

The Contractor must in its reports include information detailing:

- C. How 20% of its trades across the supply chain were made up of apprentices; and
- D. The minimum of [Note to Contractor: insert a minimum of number] trainees who have worked on the Contractor's package of works for a period of no less than 12 weeks;
- E. A minimum of [Note to Contractor: insert a minimum of number]
 Apprentices have worked on the Contractor's package of works for a period of no less than 12 weeks;
- F. A minimum number [Note to Contractor: insert a minimum of number] of apprentices and trainees undertaking a qualification relating to identified critical skill shortage areas including but not limited to:
 - a. Cert III in Civil Construction; and
 - b. Other trades areas identified as critical skill shortages specific to the package as nominated to the Principal Contractor.

Alternative 1 - applies where targets are set in hours or days

Requirement	Minimum targets for the Contract as a whole (in terms of time worked)	Quantity achieved by Contractor for reporting period
Apprentices to be engaged to carry out work under the Contract	(hours / days)	
Trainees to be engaged to carry out work under the Contract	(hours / days)	

^{*} Note: Days are to be calculated as hours/7.

[Individual targets may be set for specific trades and occupations as a subset of the total targets specified above - if not specified, delete this table]

The targets below for specific trades must be achieved as part of achieving the specified targets for the Contract as a whole.

Requirement	Minimum targets (in terms of time worked)	Quantity achieved by Contractor for reporting period
Apprentices to be engaged to carry out work in the following trades:	(hours / days)	

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• [specific trade]		
• [specific trade]		
Trainees to be engaged to	(harre / days)	
carry out work in the following occupations:	(hours / days)	
• [specific occupation]		
• [specific occupation]		

^{*} Note: Days are to be calculated as hours/7.

Alternative 2 - applies where targets are set as a percentage of estimated time worked by qualified tradespersons and occupations with recognised traineeships

Insert the targets in the table below. The specified target percentage SHOULD BE 20% of hours worked unless there is information supporting a different target.

Requirement	Minimum targets (in terms of time worked)	Quantity achieved by Contractor for reporting period
Apprentice hours as a percentage of hours worked by qualified trades	(% of hours worked)	%
Trainee hours as a percentage of hours worked by occupations with recognised traineeships:	(% of hours worked)	%

[Individual targets may be set for specific trades and occupations as a subset of the total targets specified above - if not specified, delete this table]

The targets below for specific trades must be achieved as part of achieving the specified targets for the Contract as a whole.

Requirement	Minimum targets (in terms of time worked)	Quantity achieved by Contractor for reporting period
Apprentice hours as a percentage of hours work by the following trades:	• (% of hours worked)	• %
[specific trade]	• (0/ of house worked)	•
[specific trade]	(% of hours worked)	%
Trainee hours as a percentage of hours worked by the following occupations:	• (% of hours worked)	• %
[specific occupation]	(% of hours worked)	%
[specific occupation]		

Schedule 29 - Track Possessions

(Clauses 1.1 and 7.12)

(a) The following Track Possessions with power isolations will be made available by the Principal for the Contractor in accordance with clause 7.12 for the Contractor to carry out the Contractor's Activities.

Config	Discipline (planned to work)	Start Date	Finish Date
[#INSERT]	[#INSERT]	[<mark>#INSERT</mark>]	[<mark>#INSERT</mark>]
[<mark>#INSERT</mark>]	[#INSERT]	[<mark>#INSERT</mark>]	[<mark>#INSERT</mark>]

- (b) In the case of the Track Possessions set out in the table above, periods of approximately five hours at the beginning, and at the end, of each Track Possession are to be provided for by the Contractor for the arrangement and coordination of safe working procedures and power isolations of overhead or transmission lines.
- (c) The Contractor must pay the Principal the relevant amount from the table below in respect of each Additional Track Possession or power isolation and in accordance with clause 7.12 of the Contract.

Type of additional Track Possession	Approximate Period	Amount to be Paid to the Principal
Weekend Track Possession with power isolation	[insert]	[insert]
Weeknight Track Possession with power isolation	[insert]	[insert]
Power isolations	[insert]	[insert]

Schedule 30 Principal Deed of Novation

DEED OF NOVATION made at on

20

BETWEEN:

- (1) [Insert name and ABN] of [Insert] (Retiring Party);
- (2) [Insert name and ABN] of [Insert] (Continuing Party); and
- (3) [Insert name and ABN] of [Insert] (Substitute Party).

RECITALS:

- (A) The Retiring Party and the Continuing Party are parties to a [insert title of Contract] dated [insert date] (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 of this deed.
- (C) The Continuing Party has agreed to the novation of the Contract on the terms 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.

Continuing Party Retained Liabilities means the undischarged obligations and Liability of the Continuing Party arising prior to the Effective Date.

Contract means the agreement between the Retiring Party and the Continuing Party [described in Schedule 1 or insert description here].

Contract Guarantees means the guarantees or bonds issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and/or, where required by the Contract, by a Related Entity of that party.

Effective Date means [the date of this deed or the date agreed by the parties from which the novation will be effective].

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).

Retiring Party Retained Liabilities means the undischarged obligations and Liability of the Retiring Party arising prior to the Effective Date.

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2. INTERPRETATION

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- (b) and unless the context indicates a contrary intention:
 - (i) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - (ii) "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;
 - (iii) 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;
 - (iv) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
 - 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;
 - (vi) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (vii) 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;
 - (viii) 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;
 - (ix) "includes" in any form is not a word of limitation; and
 - (x) a reference to "\$" or "dollar" is to Australian currency.

3. NOVATION

3.1 Novation

From the Effective Date:

- (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; and
- (b) any reference in the Contract to the Retiring Party shall be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

(a) From the Effective Date the Substitute Party will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party

under the terms of 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) From the Effective Date 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

From the Effective Date:

- (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, or but for this clause would have had against the Retiring Party under or in respect of the Contract,

except for the Retiring Party Retained Liabilities;

- (b) subject to clause 3.3(c), 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 terms of the Contract; and
- (c) the Continuing Party releases the Substitute 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,

in respect of the Retiring Party Retained Liabilities.

3.4 Release by Retiring Party

- (a) From the Effective Date the Retiring Party releases the Continuing Party from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

except for the Continuing Party Retained Liabilities.

(b) Nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract from the Effective Date.

3.5 Insurance

From the Effective Date:

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

3.6 Replacement of Guarantees

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From the Effective Date:

- the Substitute Party must have in place guarantees which replace the Contract Guarantees on similar terms in favour of the Continuing Party; and
- (b) the Continuing Party must have in place guarantees which replace the Contract Guarantees on similar terms in favour of the Substitute Party.

4. 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.

5. REPRESENTATIONS AND WARRANTIES

5.1 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.

5.2 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.

5.3 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.

6. DUTIES, COSTS AND EXPENSES

6.1 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).

6.2 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

6.3 GST

- (a) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (b) If GST is payable on a supply made under this deed by an entity (Supplier), the party providing the consideration for that supply must, in addition to any other amounts payable under any provision of this deed, pay an additional amount equal to the GST payable by the Supplier on that supply. The additional amount must be paid, and the Supplier must provide a tax invoice, at the same time as the other

consideration for that supply is to be provided under this deed. Terms used in this clause 6.3 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999.

7. GENERAL

7.1 Governing Law

This deed is governed by and must be construed according to the laws of New South Wales.

7.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts 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
- (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 7.2(a).

7.3 Amendments

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

7.4 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.

7.5 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.

7.6 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.

7.7 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.

7.8 Assignment

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

Schedule 1 [if needed]	
Contract (clause 1.1)	

EXECUTED by the parties as a deed:

[Note: Appropriate execution block to be inserted prior to execution.]

Schedule 31 - Financial Reporting

Financial Reporting Form

(Clause 9.11)

This Schedule 31 contains the form that is required to be completed and provided by the Contractor on the last Business Day of [March/Month] and [September] in accordance with clause 9.11 (Financial Reporting Form).

When completing the Financial Reporting Form, the Contractor is required to confirm if the information provided for each item in the previous half year is still current and accurate in the current half year. If such information is still current and accurate, the Contractor must indicate so in the table below (as applicable) and is not required to resubmit the same information in the current half year.

Item	Financial Reporting – Financial monitoring information requirements All information to be provided in a template excel format (to be provided by Sydney Metro) for each entity comprising the Contractor and the Guarantor on a six-monthly basis			
1. Financial Reporting Event notice	 a) Certified notice setting out whether any Financial Reporting Events have occurred in the 6 months prior to the reporting date 			
2. Liquidity	 a) Operating cash flow for the 6 months prior to the reporting date b) Net cash flow for the 6 months prior to the reporting date c) Current assets as at the reporting date 			

Item

Financial Reporting - Financial monitoring information requirements

All information to be provided in a template excel format (to be provided by Sydney Metro) for each entity comprising the Contractor and the Guarantor on a six-monthly basis

- d) Current liabilities as at the reporting date
- e) Total receivables as at the reporting date
- f) Receivables aged over 90 days as at the reporting date
- g) Work in progress as at the reporting date
- h) Total trade payables as at the reporting date
- i) Payables aged over 90 days as at the reporting date

3. Profitability

- a) Revenue for the 6 months prior to the reporting date
- b) Total cost of sales for the 6 months prior to the reporting date
- c) EBITDA for the 6 months prior to the reporting date
- d) Net profit after tax for the 6 months prior to the reporting date
- e) Gross margin for the 6 months prior to the reporting date
- f) Total number of projects on hand as at the reporting date
- g) Revenue for the prior corresponding period (i.e. the 6 month period in the previous financial year)
- h) Revenue from the top 5 customers in the last 6 months prior to the reporting date

Item Financial Reporting – Financial monitoring information requirements All information to be provided in a template excel format (to be provided by Sydney Metro) for each entity comprising the Contractor and the Guarantor on a six-monthly basis

- i) Revenue derived from state or federal government contracts in the 6 months prior to the reporting date
- i) Spend on top 5 subcontractors in the last 6 months prior to the reporting date
- k) Total subcontractor spend in the 6 months prior to the reporting date
- 4. Solvency
- a) Total borrowings as at the reporting date, including related party borrowings
- b) Total related party borrowings as at the reporting date
- c) Total available headroom on existing facilities as at the reporting date
- d) Total facility limit as at the reporting date
- e) Total facilities expiring within 12 months of the reporting date
- f) Total cash and cash equivalents as at the reporting date
- g) Interest expense in the 6 months prior to the reporting date
- h) Net assets as at the reporting date
- i) Intangible assets as at the reporting date
- i) Bonds called on projects in last six months (number and quantum)
- k) Reportable covenant breaches in the last 2 years (number of breaches, and details on each breach (e.g. what covenant was breached))`

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Item

Financial Reporting – Financial monitoring information requirements

All information to be provided in a template excel format (to be provided by Sydney Metro) for each entity comprising the Contractor and the Guarantor on a six-monthly basis

- I) Quantum of sales subject to debtor finance in the 6 months period prior to the reporting date
- m) Information on the security given and any cross guarantees with group entities at the balance date

5. Qualitative

- a) Number of board changes in the 2 years preceding the reporting date
- b) Number of senior executive changes in the 2 years preceding the reporting date
- c) License suspensions or investigations in the last 2 years (in any state) (y/n)
- d) Details of any allegations of unethical conduct
- e) Details of any late or qualified audits conducted in the 2 years preceding the reporting date
- f) Confirmation that all corporate insurance and licenses required by law are in place (y/n)
- g) Number of late ATO lodgements in the 2 years preceding the reporting date

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Schedule 32 KPIs

[Drafting Note: To be inserted]

Schedule 33 - Performance Adjustment

[Drafting Note: To be confirmed]

The Contract Sum for a month will be subject to Performance Adjustment as follows:

Adjusted Contract Sum = $A \times B$

where:

- **A** is the original Contract Sum applicable to the relevant month calculated in accordance with the Contract; and
- **B** is the applicable Performance Adjustment as set out in the following tables:

(a) Performance Adjustment for all KPIs in Schedule 1

Category	Performance score shortage for all KPIs in Schedule 1	Performance Adjustment
Acceptable	0 - 15	1
Unacceptable	Greater than 15	0.93

Note: Below example calculation is based upon Contractor achieving Total
Performance score of 84 out of 100

Total Performance Score for the period (out of 100)	84
(A) Performance Adjustment for the month (Refer Schedule 3)	0.93
(B) Adjusted Contract Sum (e.g. \$100 for the month)	\$100.00
Payable Contract Sum for the month (A x B)	\$93.00

Schedule 34 - Pandemic Mitigation Measures

Item	Mitigation category	Mitigation Measures
1.	Design management	
2.	Site cleaning and hygiene	
3.	Social distancing in site offices/sheds/onsite including any physical barriers	
4.	Procurement and supply chain measures	
5.	Construction methods	
6.	Methods of work including remote working and increased IT equipment/support	
7.	Site management, inductions and record keeping	
8.	Use of on-site vehicles and delivery of materials	

Schedule 35 Key Plant and Equipment

Schedule 36 Site Access Schedule

[Drafting Note: To be developed in ECI Phase]

Schedule 37 - Independent Certifier's Form of Design Certification

(Clause 9.8(e))

To: The Principal's Representative

Cc: The Contractor

From: [Insert name of Independent Certifier] (ABN [])

This certificate is given in accordance with the "Sydney Metro City & Southwest Independent Certification of the CIRA Works Independent Certifier Deed" (Contract No: [insert]) dated [insert] (Independent Certifier Deed).

Words defined in the "Medium Works Contract - Design and Construction -Design and Construct of Errant and Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract" (Contract No: [insert]) between Sydney Metro (ABN 12 354 063 515) and the Contractor dated [insert] (Contract) have the same meaning in this certificate.

In accordance with the Independent Certifier Deed, the Independent Certifier certifies that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed, the attached Design Documentation complies with all the requirements of the Contract (including the Works Brief).

Signed for and on behalf of

insert name of Independent Certifier

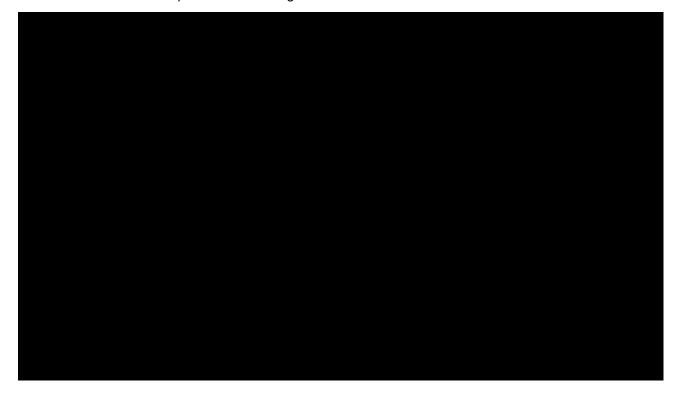
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Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

EXHIBIT A – WORKS BRIEF

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The Works Brief comprises the following documents:



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	Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]
EXHIBIT D. DDINOIDALIO INQUIDANOE DOLIO	NIEO.
EXHIBIT B – PRINCIPAL'S INSURANCE POLIC	SIES

	Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]
EXHIBIT C -PLANNING APPROVAL	

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

[Drafting Note: To be confirmed]

The Planning Approval comprises the following documents:

a) [Insert]

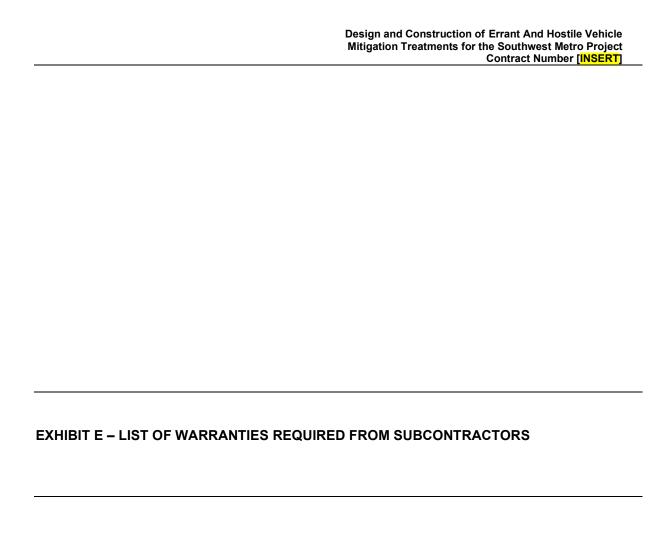
Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

EXHIBIT D - REPORTS

The following Reports are provided as a CD Version Only

Item	Description	Author / Source	Date	Format
A1.1				
A1.2				
A1.3				
A1.4				
A1.5				
A1.6				
A1.7				

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Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

Item	Warranty Period	Scope of Warranty

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	Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]
EXHIBIT F – PRELIMINARY DESIGN	

	Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]
EXHIBIT G – THIRD PARTY AGREEMENTS	

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [<mark>INSERT</mark>]	Design and Construction of Errant And Hostile Ve Mitigation Treatments for the Southwest Metro Pr Contract Number [<mark>INS</mark>		
BIT H – INDEPENDENT CERTIFIER DEED	H – INDEPENDENT CERTIFIER DEED	– INDEPENDENT	XHIBIT H – I

Design and Construction of Errant And Hostile Vehicle Mitigation Treatments for the Southwest Metro Project Contract Number [INSERT]

CONTRACT EXECUTION PAGE	
DATED day of	
Executed and delivered as a deed in Sydr	ney
EXECUTED by SYDNEY METRO (ABN 12 354 063 515) BY ITS AUTHORISED DELEGATE, IN THE PRESENCE OF:	
Signature of witness	Signature of authorised delegate
Name	Name
[Note to Contractor: Appropriate executi EXECUTED by [insert name and ABN of Contractor] in accordance with section 127 of the Corporations Act 2001 (Cth):	on panel to be confirmed prior to execution.]
Signature of director	Signature of director/secretary
Name	Name



Annexure C - ECI Program