Execution Version

Sydney Metro West

Western Tunnelling Works Design and Construction Deed

Contract No: 00013/13065

Sydney Metro
ABN 12 354 063 515

and

Gamuda Berhad t/a Gamuda (Australia) Branch
Company Registration No 197601003632 (29579-T), ARBN 632 738 768 and ABN 27 632 738 768

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THIS DEED is made on 28 FEBRUARY 2022

BETWEEN:

(1) **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 (the **Principal**); and

(2) **Gamuda Berhad** ARBN 632 738 768, a company incorporated in Malaysia on 6 October 1976 under the Companies Act 1965, and bearing company registration number 197601003632 (29579-T) trading as Gamuda (Australia) Branch ABN 27 632 738 768 of Suite 26.01, 100 Miller Street, North Sydney NSW 2060 (the **Tunnelling Contractor**).

RECITALS:

(A) The Principal is procuring Sydney Metro West on behalf of the NSW government and the people of New South Wales.

(B) The Project Works are a critical component of Sydney Metro West.

(C) Following the completion of a tender process, the Principal selected the Tunnelling Contractor as the successful tenderer for the delivery of the Project Works.

(D) The Principal and the Tunnelling Contractor now wish to enter into this deed to record the terms on which the Project Works will be designed, constructed, tested, commissioned and handed over by the Tunnelling Contractor to the Principal.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

ABC Commissioner means the commissioner of the Australian Building and Construction Commission referred to in subsection 15(1) of the BCIIP Act.

ABCC means the body referred to in subsection 29(2) of the BCIIP Act.

Aboriginal Object means an Artefact which is an 'Aboriginal object' as defined in the *National Parks and Wildlife Act 1974* (NSW).

Aboriginal Participation Plan means the Project Plan referred to as the Aboriginal Participation Plan in section 2.9 of the General Specification, as updated from time to time in accordance with the Tunnelling Specification and clause 11.4.

Acceleration has the meaning given in clause 19.9(a)(ii).

Acceptable Banking Institution means an "authorised deposit-taking institution" (as defined in the *Banking Act 1959* (Cth)) which, subject to clause 6.5(b), has the Required Rating.

Accepted Defect means a Defect (other than a Minor Defect) in relation to which the Principal has issued a direction under clause 17.2(a)(iii), 17.2(a)(iv) or 17.2(a)(v) prior to the Date of Milestone Achievement of any Milestone or the Date of Substantial Completion of any Portion (as applicable).

Accessible means, in relation to a part of the Construction Site, that such part is clean and clear and capable of safe use by the Tunnelling Contractor or an Interface Contractor for the purpose of carrying out the relevant works.

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 the same).

Accredited Site Auditor means a person who is accredited as a site auditor under the *Contaminated Land Management Act 1997* (NSW).

Act of Prevention means:

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

(b) an act or omission by the Principal or its Associates and not being an act or omission:

(i) permitted or allowed by this deed including any Direction given by the Principal or the Principal's Representative (other than a matter referred to in paragraph (c)); or

(ii) which is within a timeframe permitted, or allowed by this deed (other than a matter referred to in paragraph (c)); or

(iii) to the extent the act or omission is caused or contributed to by a breach by the Tunnelling Contractor of this deed or any negligent, or unlawful, act or omission of the Tunnelling Contractor, or its Associates, including any breach, act or omission in connection with the Tunnelling Contractor's obligations in respect of Interface Contractors; or

(iv) being the exercise by the Principal of any of its functions and powers pursuant to any Law; or

(c) subject to clause 17.3(a)(ii), a Change the subject of a Direction by the Principal's Representative except where the Change is approved under clause 15.7(d) or any other event or circumstance which is treated as a Change under this deed (subject to the first 10 day period in the circumstances set out in clause 12.13(e)).

[redacted]

Additional Third Party Agreement has the meaning given in clause 12.24(a)(iv).

Adjoining Owner means a party with an interest in an Adjoining Property.

Adjoining Property means a property specified in Schedule D11.

Adjoining Property Easement means an:

(a) Easement for Crane Access;

(b) Easement for Rock Anchors;

(c) Easement for Scaffolding; or

(d) Easement for Safety Structure,

and includes the Adjoining Property Easements contained in Schedule D12.

Adjoining Property Extra Land has the meaning given in clause 12.25(g)(i).

Adjoining Property Owner Agreement means an agreement with an Adjoining Owner substantially in the form of the Pro-forma Adjoining Property Owner Agreement (or such other form as the Principal may agree with any Adjoining Owner) and includes any Adjoining Property Owner Agreements contained in Schedule D8.

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

AFC Design Documentation means any Design Documentation which:

(a) the Tunnelling Contractor is entitled to use for construction in accordance with clause 6 of Schedule A26; or

(b) has been amended by a Change directed or approved by the Principal's Representative in accordance with clause 15.

Alternate Operator means an entity other than OpCo that is engaged by the Principal to operate and, if required by the Principal, maintain Sydney Metro West.

Agreed Defect means a Defect (other than a Minor Defect) that:

(a) the Principal, the Tunnelling Contractor and the Independent Certifier agree in writing; or

(b) the Principal's Representative otherwise directs,

does not need to be rectified in order to achieve Milestone Achievement of a Milestone or Substantial Completion of a Portion (as applicable).

Agreed Remediation Scope means the Agreed Remediation Scope (Other Remediation Components) and the Agreed Remediation Scope (Solid Waste) for each Key Contaminated Area.

Agreed Remediation Scope (Other Remediation Components) has the meaning given in Schedule E7.

Agreed Remediation Scope (Solid Waste) has the meaning given in Schedule E7.

[redacted]

Approval means any licence, permit, consent, approval, determination, certificate 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):

(a) to perform the Tunnelling Contractor's Activities;

(b) in connection with the Construction Site and any Extra Land prior to the Portion Handover Date (but only to the extent required for the performance of the Tunnelling Contractor's Activities);

(c) for the use and occupation of:

(i) any Portion (both individually and in combination with any earlier completed Portions) after Substantial Completion of the Portion; and

(ii) the Project Works after Substantial Completion of every Portion;

(d) for the use and occupation of:

(i) any Portion (both individually and in combination with any earlier completed Portions) after Completion of the Portion; and

(ii) the Project Works after Completion of every Portion; or

(e) otherwise to comply with Law,

and for the avoidance of doubt includes:

(f) the Planning Approvals; and

(g) any Environment Protection Licence issued in relation to the Tunnelling Contractor's Activities,

but does not include:

(h) any Direction given by the Principal or the Principal's Representative pursuant to this deed; or

(i) the exercise by the Principal of its rights under this deed.

Approved Corrective Action Plan has the meaning given in clause 24.4A(c).

Aquanet means Aquanet Sydney Pty Limited ABN 11 131 235 124.

Archaeological Clearance Works means the works undertaken under archaeological supervision in accordance with the 'Sydney Metro West Parramatta Construction Site Archaeological Research Design and Excavation Methodology' prepared by the Archaeological Consultant and approved by the NSW Department of Planning, Industry and Environment on 3 November 2021.

[redacted]

Archaeological Consultant means [redacted]

Archbold Road Contractor means [redacted]

Area of Contamination Concern means an area of the Construction Site specified in Schedule D14.

Artefact Risk Area means an area of the Construction Site specified in Schedule D17 in the column headed "Artefact Risk Areas".

Artefact means each:

(a) valuable mineral, fossil or coin;

(b) article or object of value or antiquity;

(c) article, object or relic of heritage significance; or

(d) other thing of geological, archaeological, anthropological or other special interest,

found on or under the surface of the Construction Site.

ASA or Asset Standards Authority means the Transport for NSW Asset Standards Authority, an independent unit established within Transport for NSW, and is the network design and standards authority for NSW Transport Assets.

ASA Authorisation means an authorisation issued by the ASA 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.

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Public Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which can be found on www.asa.transport.nsw.gov.au.

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

Asbestos Removal Control Plan means the *NSW Government Code of Practice – How to safely remove Asbestos*, amended from time to time, approved under section 274 of the WHS Act.

Asbestos Work has the meaning given in clause 23.7.

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

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

Asset Management Information means the information and documents relating to the operation and maintenance of the assets forming the Project Works and Handover Works as required by section 7 of the General Specification.

Associates means:

(a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative, but excludes:

  (i) the Independent Certifier;

  (ii) the Environmental Representative;

  (iii) Independent Acoustics Advisor;

  (iv) the Tunnelling Contractor and its Subcontractors;

  (v) any Interface Contractors and their respective subcontractors;

  (vi) OpCo and its subcontractors;

  (vii) any Alternate Operator and its subcontractors; and

  (viii) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (vii) above; and

(b) in respect of the Tunnelling Contractor, its Subcontractors and any of the respective employees, agents, contractors or officers of the Tunnelling Contractor and its Subcontractors (excluding the Independent Certifier and its employees, agents, consultants and officers).

Assurance and Governance Plan means the Project Plan referred to as the Assurance and Governance Plan in section 5.1.5 of the General Specification, as updated from time to time in accordance with clause 11.4.

ATSB means the Australian Transport Safety Bureau constituted under the *Transport Safety Investigation Act 2003* (Cth).

Ausgrid means the statutory state owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW).

Authority means:

(a) 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;

(b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Tunnelling Contractor's Activities; or

(c) any other person having jurisdiction over, or ownership of Utility Services, the Utility Service Works, the Local Areas or the Local Area Works,

and, to avoid doubt, includes the Clean Energy Regulator.

Background IP Rights has the meaning given in clause 14.6(b)(ii).

Bank Bill means a bill of exchange (under the *Bills of Exchange Act 1909* (Cth)) which has been accepted by any bank authorised under a Law of the Commonwealth or any State to carry on banking business.

Bank Bill Rate is, for the relevant period:

(a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average bid rate on the Reuters monitor system page BBSY (or any page which replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or

(b) if there is a manifest error in the calculation of the average bid rate under paragraph (a) or if no average bid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the Tunnelling Contractor and the Principal having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

BCIIP Act means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Code means the *Code for Tendering and Performance of Building Work 2016* (Cth), or any subsequent code of practice which takes effect and supersedes that code.

Building Work has the meaning given to that term in subsection 3(4) of the Building Code.

Business Day means any day other than a Saturday, Sunday or public holiday in Sydney, or 27, 28, 29, 30 and 31 December.

Call-off Services means each of the categories of Nominated Subcontract Work described in items 1 to 4 of Schedule A16.

Cash Deposit has the meaning given in clause 6.5A(b)(ii).

Cash Deposit Account has the meaning given in clause 6.5A(b)(ii).

Central Tunnelling Contract means the deed entered into between the Principal and the Central Tunnelling Contractor to design, construct, test, commission and hand over any physical works for the tunnelling and station excavations components of Sydney Metro West between Sydney Olympic Park and The Bays.

Central Tunnelling Contractor means, together, Acciona Construction Australia Pty Ltd ABN 66 618 030 872 and Ferrovial Construction (Australia) Pty Ltd ABN 98 150 820 116, the entity selected by the Principal to design, construct, test, commission and hand over any physical works under the Central Tunnelling Contract.

Certified Contaminated Land Consultant means a consultant that holds current certification in accordance with the NSW EPA Contaminated Land Consultant Certification Policy.

Certified Utility Services Design means:

(a) each certified approved for construction utility services works design specified in Schedule D21; and

[redacted]

Chain of Responsibility Provisions refers to any section of the Heavy Vehicle National Law under which the Tunnelling Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle National Law).

Chair has the meaning assigned to it in clause 25.3(b).

Change means any change or variation to the Project Works, the Temporary Works or the Tunnelling Contractor's Activities or the requirements of this deed for any of them, including:

(a) additions, increases, decreases, omissions, deletions, substitutions or alterations;

(b) changes to the character or quality, or demolition or removal, of any material or work;

(c) changes to the levels, lines, positions or dimensions of any part of the Project Works or the Temporary Works;

(d) changes to any sequence, method or timing of construction specified in this deed other than changes in programming requirements necessary for the Tunnelling Contractor to comply with its obligations under this deed; and

(e) changes to the Construction Site.

Change in Certified Utility Services Designs means any direction by a relevant Authority to the Tunnelling Contractor to carry out Utility Services Works which are an enhancement, an upgrade or an increase in the scope of the original Utility Service Works set out in the relevant Certified Utility Services Design.

Change in Codes and Standards means a change in, or the introduction of new, Codes and Standards taking effect after the date of this deed but excludes:

(a) a change which:

(i) as at the date of this deed, was published or of which public notice had been given (even as a possible amendment, repeal or change of an existing Codes and Standards or a possible new Codes and Standards) in substantially the same form as the change in an existing Codes and Standards or new Codes and Standards eventuating after the date of this deed;

(ii) is substantially the same as an existing Codes and Standards (as at the date of this deed); [redacted]

[redacted]

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 any of the following if it takes effect after the date of this deed:

(a) the amendment, repeal or change of an existing Law (other than an Approval, a decision of a court [redacted]

(b) a new Law (other than an Approval, a decision of a court or a [redacted]

[redacted]

but excludes an amendment, repeal or change of an existing Law, a new Law [redacted]

(d) in respect of Tax;

(e) which was caused or contributed to by any act or omission of the Tunnelling Contractor or its Associates; or

(f) which, as at the date of this deed:

(i) was published or of which public notice had been given in substantially the same form as the change in an existing Law or new Law eventuating after the date of this deed; or

(ii) in the case of paragraph (a) or (b) above:

(A) was the subject of a public notice of a possible amendment, repeal or change of an existing Law or a possible new Law or judgment in substantially the same form as the change in an existing Law or new Law eventuating after the date of this deed; or

(B) a person experienced and competent in the delivery of works and services similar to the Project Works or the Tunnelling Contractor's Activities would have reasonably foreseen or anticipated.

Change Order means a written document titled "Change Order" issued under clause 15.3(a).

Change Proposal Request means a written document titled "Change Proposal Request" issued under clause 15.2(a).

Claim includes any claim, action, demand or proceeding including for an increase in the Design Contract Sum or the Construction Contract Sum, for payment of money (including damages) or for an extension of time:

(a) under, arising out of, or in any way in connection with, this deed;

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

(c) otherwise at Law including:

(i) under or for breach of any statute;

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

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

Clean Energy Regulator means the Clean Energy Regulator established under the *Clean Energy Regulator Act 2011* (Cth).

[redacted]

Codes and Standards means:

(a) the relevant building codes (including the Building Code of Australia), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this deed, including any specified or required by this deed, including the Tunnelling Specification;

(b) the Government Policies; and

(c) the Sydney Metro Principal Contractor Health and Safety Standard.

Collateral Warranty Deed Poll means a deed poll in substantially the same form as Schedule A12.

Commonwealth means the Commonwealth of Australia.

Community Communications Strategy means the Project Plan of that name referred to in section 5.1.10 of the General Specification, an initial version of which is included in Attachment B of the General Specification, as updated from time to time in accordance with clause 11.4.

Compensable Hazardous Material means the following types of Hazardous Materials in relation to the Demolition Works to be performed by the Tunnelling Contractor:

(a) friable asbestos;

(b) asbestos containing façade pointing and mastic;

(c) asbestos containing window mastic;

(d) Compensable Transformer Oils; and

(e) Compensable Paint Containing Lead,

but only to the extent that they are identified in a Contractor Hazardous Material Investigation Document and:

(f) were not positively identified or assumed to be present in a Principal Hazardous Material Report in respect of the location where the relevant Demolition Works are to be carried out; or

(g) no Principal Hazardous Material Report was provided by the Principal with respect to Demolition Works to be performed on the relevant part of the Construction Site.

Compensable Paint Containing Lead means paint containing lead where lead concentrations are SCC ≥1500 mg/kg and/or TCLP ≥5mg/L.

Compensable Transformer Oils means transformer oils containing polychlorinated biphenyl at concentration levels ≥2 mg/kg.

Completed Portion has the meaning given in clause 10.3(a).

Completion means the stage in the execution of the Tunnelling Contractor's Activities in respect of a Portion when:

(a) Substantial Completion has been achieved in respect of the Portion;

(b) the Tunnelling Contractor has executed a certificate in the form of Schedule B20 for the Portion and provided it to the Principal's Representative and the Independent Certifier; and

(c) the Tunnelling Contractor has given to the Principal's Representative (with a copy to any of OpCo, an Alternate Operator or any Interface Contractor as required by the Principal) all:

(i) Asset Management Information in respect of the Project Works certified by the Independent Certifier under clause 16.13(j)(ii)(B)(bb); and

(ii) Work as Executed Design Documentation certified by the Independent Certifier under clause 16.14(c)(ii)(B);

(d) the Tunnelling Contractor has corrected all Minor Defects and Agreed Defects that are listed in the Notice of Substantial Completion; and

(e) to the extent:

(i) specific Property Works were not required to be completed as a condition precedent to Substantial Completion in accordance with clause 12.4(h); and

(ii) clause 12.4(ha) does not apply,

the Property Works referred to in paragraph (i) above have been completed by the Tunnelling Contractor in accordance with clause 12.4.

Completion Steering Committee means the group referred to in clause 18.8.

Completion Working Group means the group referred to in clause 18.9.

Condition Precedent means a condition precedent set out in Schedule A1.

Condition Precedent Deadline Date means the date which is 20 Business Days after the date of this deed or such other date agreed between the parties.

Configuration Management Framework means the framework established by the ASA from time to time for configuration management.

Consequential Loss means any:

(a) loss of income, loss of revenue, loss of profit, loss of rent, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or access or loss of production (whether the loss is direct or indirect); or

(b) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent.

Construction and Site Management Plan means the Project Plan referred to as the Construction and Site Management Plan in section 5.1.9 of the General Specification, an initial version of which is included in Attachment B of the General Specification, as updated from time to time in accordance with clause 11.4.

Construction Completion (Sydney Trains Protection Zone Works) has the meaning given to the term "Construction Completion" in the Sydney Trains Interface Agreement.

Construction Contract Sum means the sum of [redacted] as adjusted in accordance with this deed.

Construction Environmental Management Plan means the Project Plan referred to as the Construction Environmental Management Plan in section 5.1.11 of the General Specification, an initial version of which is included in Attachment B of the General Specification, as updated from time to time in accordance with clause 11.4.

Construction Heritage Management Plan means the Construction Heritage Management Plan referred to in section 2.7.3 of the General Specification (which is a sub-plan to the Construction Environmental Management Plan), as updated from time to time in accordance with clause 11.4.

Construction Manager means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

Construction Payment Schedule means Schedule E2.

Construction Plant means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, waterborne craft, appliances and things used in the carrying out of the Tunnelling Contractor's Activities but not forming part of the Project Works.

Construction Site means the Project Site and the Temporary Areas.

Construction Site Access Date has the meaning given in clause 12.1(d).

Construction Site Interface Work has the meaning given in clause 8.3(a)(ii).

Construction Traffic Management Plan means the Construction Traffic Management Plan referred to in section 5.1.11.1 of the General Specification (which is a sub-plan to the Construction Environmental Management Plan), an initial version of which is included in Attachment B of the General Specification, as updated from time to time in accordance with clause 11.4.

Construction Completion (TfNSW (Maritime) Construction Licence Works) has the meaning given to the term "Construction Completion" in the TfNSW (Maritime) Construction Licence.

Consultation has the meaning given in clause 25.3(e).

Contaminated Future Development Site means:

(a) the areas of the Construction Site identified in Schedule D16; or

(b) such other parts of the Construction Site as may be directed by the Principal's Representative.

Contamination means the presence in, on or under land or water or any other aspect of the Environment of:

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

(b) 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,

but excluding any Hazardous Material.

Contract Documentation and Materials has the meaning given in clause 14.6.

Contractor Hazardous Material Investigation Documents has the meaning given in clause 12.15(d).

Control has the meaning in the Corporations Act.

Corporate WHS Management System has the meaning given in the WHS Management Systems and Auditing Guidelines.

Corporations Act means the *Corporations Act 2001* (Cth).

Cost Centre means any cost centre specified in the Design Payment Schedule or the Construction Payment Schedule.

Cost Item means any cost item specified in the Design Payment Schedule or the Construction Payment Schedule.

[redacted]

[redacted]

Crown Building Work has the meaning given to that term in section 6.1 of the EP&A Act.

Data for the purposes of the definition of Emissions and Energy Data and clause 4.14(d)(i)(A), includes data, information, records and reports.

Date for Completion means, in respect of a Portion:

(a) the date that is 90 days after the Date of Substantial Completion of the relevant Portion; or

(b) where, in respect of that Portion an extension of time for Completion is granted by the Principal's Representative or by a determination under the Dispute Procedure or arbitration or litigation proceedings, the date resulting therefrom.

Date for Milestone Achievement means, in respect of a Milestone:

(a) the applicable date specified as the date for Milestone Achievement for that Milestone in section 3 of Schedule A2; or

(b) where, in respect of that Milestone, an extension of time for Milestone Achievement is granted by the Principal's Representative or by a determination under the Dispute Procedure or arbitration or litigation proceedings, the date resulting therefrom.

Date for Substantial Completion means, in respect of a Portion:

(a) at the date of this deed, the applicable date specified for that Portion in Schedule A2; or

(b) where, in respect of a Portion, an extension of time for Substantial Completion is granted by the Principal's Representative or by a determination under the Dispute Procedure or arbitration or litigation proceedings, the date resulting therefrom.

Date of Completion means, in respect of a Portion:

(a) the date notified in a Notice of Completion as the date Completion was achieved; or

(b) where another date is determined in a determination under the Dispute Procedure or arbitration or litigation proceedings as the date upon which Completion was achieved, that date.

Date of Milestone Achievement means, in respect of a Milestone:

(a) the date notified in the Notice of Milestone Achievement as the date Milestone Achievement was achieved; or

(b) where another date is determined under the Dispute Procedure or arbitration or litigation proceedings as the date upon which that Milestone was achieved, that date.

Date of Substantial Completion means, in respect of a Portion:

(a) the date notified in a Notice of Substantial Completion as the date Substantial Completion was achieved; or

(b) where another date is determined under the Dispute Procedure or arbitration or litigation proceedings as the date upon which Substantial Completion was achieved, that date.

Day 1 Clauses means clauses 1, 2, 3.3, 4.6, 4.7, 4.8, 4.20, 4.21, 6, 7.1, 7.2, 12.9, 12.24(a)(vii), 18.14, 22, 23.2, 23.4, 23.14(a), 25, 26, 27, 28, 29, 30, 31 and 32 and any other clauses or schedules required to have commenced in order to give effect to those clauses.

Declaration of Compliance means a declaration in substantially the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code.

Default Notice has the meaning given in clause 24.1.

Defect means:

(a) any defect, deficiency, fault, error or omission in the Project Works or Temporary Works; or

(b) any:

(i) cracking, shrinkage, movement or subsidence in the Project Works or Temporary Works; or

(ii) other aspect of the Project Works, Temporary Works or the Tunnelling Contractor's Activities,

which is not in accordance with the requirements of this deed,

but does not include any damage caused to the Project Works after the Portion Handover Date other than damage that is caused or contributed to by the Tunnelling Contractor or its Associates.

Defects Correction Period means a period referred to in clauses 17.6, 17.7, 17.8 or 17.9.

Deferred Activities has the meaning given in clause 19.9(a)(iii).

Delay Costs means [redacted]

Delay Costs Maximum Daily Amount means the daily amount (excluding GST) set out in Part 8 of the Construction Payment Schedule for the applicable Portion and at the relevant time.

Delivery Partner means [redacted].

Delivery Partner Deed means [redacted].

Delivery Site Integration Group has the meaning given to it in the Master Interface Deed.

Demolition Structural Engineer has the meaning given in section 1 of the Particular Specification.

Demolition Temporary Works has the meaning given in section 1 of the Particular Specification.

Demolition Temporary Works Independent Checker has the meaning given in section 1 of the Particular Specification.

Demolition Works has the meaning given in section 1 of the Particular Specification.

Demolition Work Plan has the meaning given in section 1 of the Particular Specification.

Design Contract Sum means the sum of [redacted] as adjusted in accordance with this deed.

Design Documentation means all:

(a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models (including Digital Engineering or any part thereof), samples, prototypes, calculations, drawings, shop drawings, digital design records and all other relevant data) in electronic, computer readable and written forms, or stored by any other means, which are required for the performance of the Tunnelling Contractor's Activities, or which the Tunnelling Contractor or any other person on behalf of the Tunnelling Contractor creates in performing the Tunnelling Contractor's Activities (including the design of Temporary Works);

(b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified by or on behalf of the Tunnelling Contractor for the purposes of the Tunnelling Contractor's Activities; and

(c) the amended Flood Model WTP Design Scenario, in the circumstances contemplated in clause 14A.2(b).

Design Life has the meaning given in section 9.2 of the General Specification.

Design Manager means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

Design Payment Schedule means Schedule E1.

Design Stage means each of Design Stage 1, Design Stage 2 and Design Stage 3.

Design Stage 1 means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element or component has been developed to a fixed design concept in relation to general details and any special details, including those details associated with foundation conditions, tunnel and structure geometry and interfaces with adjacent land formations and infrastructure.

Design Stage 2 means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element includes all the design standards, design reports, specifications, models, calculations and drawings and shop drawings for the discrete design element or component, and is the stage at which the design analysis, design details and drawings demonstrate that the Design Documentation, when fully developed, will comply with and satisfy all the requirements of this deed.

Design Stage 3 means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element is fully developed, including all design standards, design reports, specifications, models, calculations and drawings and shop drawings, for the discrete design element or component.

Designated Significant Subcontract means each contract entered into by the Tunnelling Contractor and a Designated Significant Subcontractor for the performance of the Tunnelling Contractor's Activities.

Designated Significant Subcontractor means the following Subcontractors:

[redacted]

Detailed Site Investigation means a detailed investigation of Contamination performed and reported in accordance with all guidelines made or approved by the EPA including the National Environment Protection (Assessment of Site Contamination) Measure 1999 and the Contaminated Land Guidelines: Consultants Reporting on Contaminated Land (NSW EPA, 2020).

Developed IP Rights has the meaning given in clause 14.6(b)(i).

Digital Engineering means a collaborative way of working, using digital processes, to enable more productive methods of planning, designing, constructing, operating and maintaining assets. This is achieved by aligning the management of computer-aided design (CAD), geographic information systems (GIS), building information models (BIM), documentation management systems and project controls.

Digital Engineering Execution Plan means the Project Plan referred to as the DEXP in section 5.1.13 of the General Specification, as updated from time to time in accordance with clause 11.4.

Direct Costs means [redacted]

Direction means any certificate, decision, demand, determination, direction, instruction, order, rejection, request or requirement.

Dispute has the meaning given to that term in clause 25.1.

Dispute Avoidance Process is the process set out in clause 7A of the IDAR Panel Agreement.

Dispute Procedure means the procedure for the resolution of Disputes set out in clause 25.

Draft Corrective Action Plan has the meaning given in clause 24.4A(a).

Draft Third Party Agreement has the meaning given in clause 12.24(a)(iii) and includes the Pro-forma Adjoining Property Owner Agreement.

Due Diligence Breach has the meaning given in clause 24.4A(a).

Early Design Services means those activities carried out by the Tunnelling Contractor under the Early Design Services Deed prior to the date of this deed.

Early Design Services Deed means the contract titled "Early Design Services Deed (Western Tunnelling Package)" between the Principal and the Tunnelling Contractor dated 20 December 2021.

Early Site Access Date means, in respect of a part of the Construction Site, the date specified as the "Early Site Access Date" for that part of the Construction Site in the Site Access Schedule.

Early Site Access Payment means the daily amount (excluding GST) set out in Part 6 of the Construction Payment Schedule for the applicable Portion.

Easement for Crane Access means an easement for crane access in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Easement for Rock Anchors means an easement for rock anchors in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Easement for Safety Structure means an easement for the installation of a safety structure in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Easement for Scaffolding means an easement for scaffolding in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Emissions and Energy Data means:

(a) any Data of the type that a registered corporation or any other person is required by the NGER Legislation to keep or to provide to the Clean Energy Regulator concerning greenhouse gas emissions, energy production or energy consumption;

(b) any Data of the type that a registered corporation or any other person is entitled to provide to the Clean Energy Regulator under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and

(c) any other Data concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person is required by any other Law to keep or to provide to any Authority.

Encumbrance means a mortgage, charge, pledge, lien, security interest, lease, title retention, preferential right, trust arrangement, contractual right of set-off and any other encumbrance, security agreement or arrangement in favour of any person, including any Security Interest.

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) (inclusive) of this definition.

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

Environmental Management System means any environmental management systems required by the Sydney Metro Construction Environmental Management Framework (CEMF) (SM ES-ST-204).

Environmental Manager means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

Environmental Notice means any notice (including any notice of an intention to issue an order under the EP&A Act), order or request for information issued by an Authority in respect of a matter concerning the Environment.

Environmental Representative or **ER** means [redacted] appointed by the Principal under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified to the Tunnelling Contractor.

EPA means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991* (NSW).

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Excavated Natural Material (ENM) means Waste which is excavated natural material in accordance with *The excavated natural material order 2014* (NSW EPA Resource Recovery Order under Part 9, Clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014).

Excepted Risk means:

(a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage, in each case occurring within Australia;

(b) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia (other than a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth)); or

(c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, in each case occurring within Australia and only to the extent not caused by the Tunnelling Contractor or its Associates.

Excluded Claim means any Claim:

(a) arising out of a Change in Law under clause 7.3(b);

(b) for a Change directed by the Principal's Representative pursuant to clause 7.4(a)(ii)(B) arising out of a Change in Codes and Standards;

(c) arising out of a change in the Planning Approvals under clause 7.5(b);

(d) arising out of a Site Investigation Location Difference under clause 12.11(c);

(e) for a Change to which clause 15.4 applies;

(f) for an extension of time under clause 19.6;

(g) for payment under clause 20 of any part of the original Project Contract Sum;

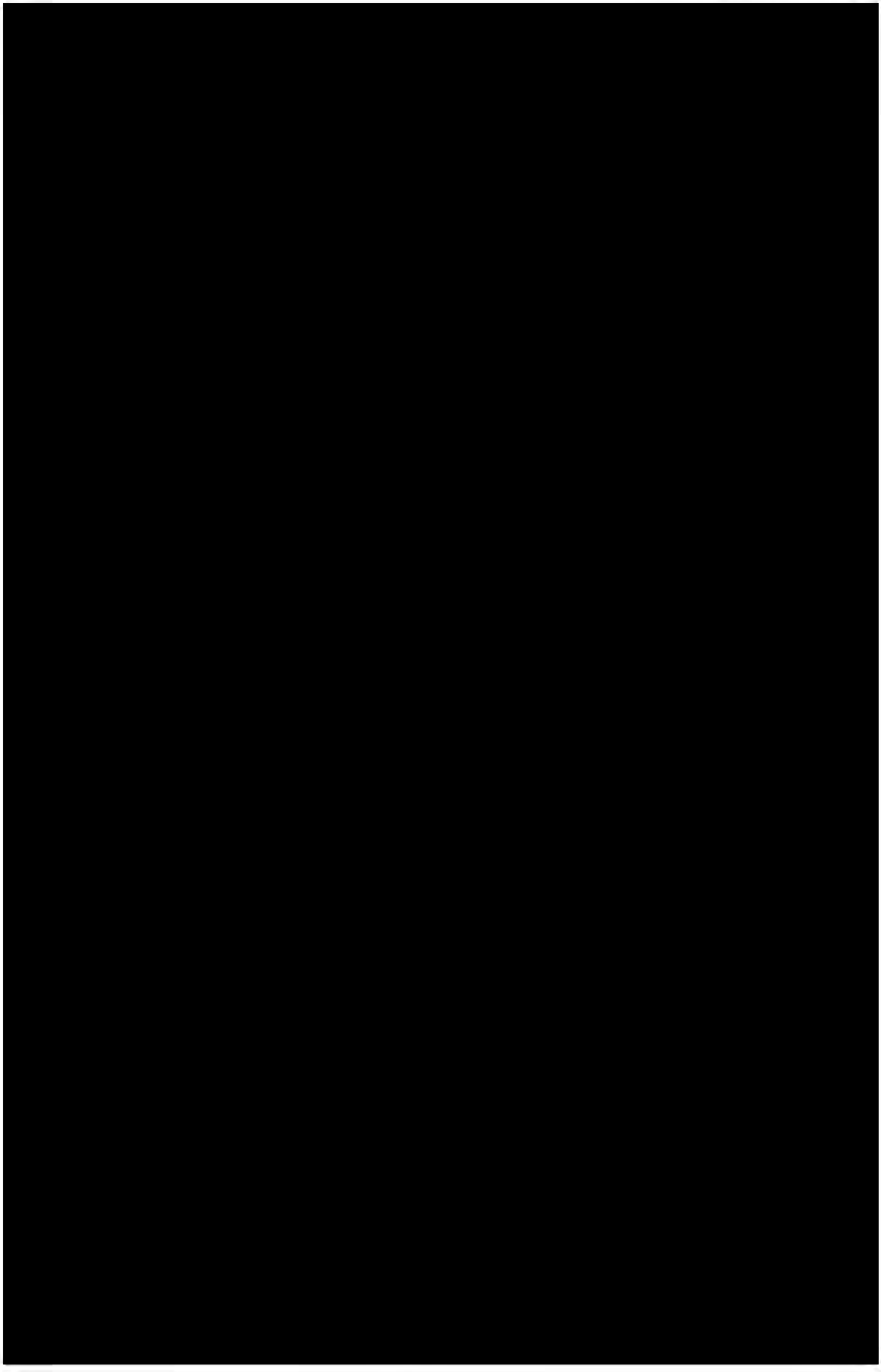
(h) for a Change directed by the Principal's Representative pursuant to clause 4.4(d) or 4.4(g); and

(i) for payment of Provisional Sum Work pursuant to clause 20.12.

Exclusion Sanction has the meaning given to that term in subsection 3(3) of the Building Code.

Excusable Cause of Delay means:

[redacted]



Existing Operations means:

(a) all infrastructure (including existing infrastructure, infrastructure that is under construction and Utility Services) which is owned, operated or under the control of an Existing Operator; and

(b) the businesses and operations undertaken by an Existing Operator,

on or in the vicinity of the Construction Site.

Existing Operator means:

(a) Transport Asset Holding Entity;

(b) Sydney Trains;

(c) NSW Trains;

(d) TfNSW Greater Sydney Division;

(e) Sydney Olympic Park Authority;

(f) GPT Group;

(g) Ausgrid;

(h) Sydney Water;

(i) Jemena;

(j) Telstra;

(k) NBN Co;

(l) Optus;

(m) Planning Ministerial Corporation;

(n) Blacktown City Council;

(o) Parramatta City Council;

(p) Endeavour Energy;

(q) Australia Turf Club;

(r) Parramatta Light Rail Contractor;

(s) WUA;

(t) Aquanet;

(u) Rosehill Network; or

(v) any other person who owns, operates or controls any infrastructure (including existing infrastructure, infrastructure that is under construction and the Utility Services) or undertakes any business or operation on or in the vicinity of the Construction Site,

and any of their related bodies corporate (as that term is defined in section 9 of the Corporations Act) and contractors.

Expert means a person(s) appointed to determine a Dispute pursuant to clause 25.5.

Extra Land means the land and buildings referred to in clause 12.6(a)(i) and includes any Adjoining Property Extra Land and any TPA Extra Land.

Final Certificate means the certificate issued by the Principal's Representative pursuant to clause 19.17(b).

Final Completion means that stage where:

(a) all Defects Correction Periods have expired; and

(b) all Defects that are the subject of a Direction by the Principal's Representative pursuant to clause 17.2(a) have either been accepted pursuant to clause 17.2(a)(iii) or otherwise rectified or overcome in accordance with clause 17.2(a).

Final Inspection has the meaning given in clause 17.13(a).

Financial Assessment has the meaning given to that term in clause 27.2(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 Tunnelling Contractor or any Designated Significant Subcontractor.

Financial Mitigation Plan means a plan which satisfies the requirements of clause 27.4 for the mitigation of a Financial Capacity Event.

Financial Reporting Event means any of the following events, as applicable to the Tunnelling Contractor or any Designated Significant Subcontractor:

(a) a downgrade in any applicable credit rating;

(b) a short term share price decrease of greater than 10%;

(c) a significant loss suffered or incurred on a project or under a contract;

(d) a significant fine or financial penalty;

(e) a profit warning to a stock exchange or the making of any public announcement regarding a material deterioration in financial position or prospects;

(f) a public investigation into improper financial accounting and reporting or suspected fraud;

(g) a material breach of a covenant to a lender or lenders;

(h) a material refinancing;

(i) a failure to pay a Significant Subcontractor (other than for reason of a bona fide dispute);

(j) any financial indebtedness becoming due as a result of an event of default; or

(k) its external auditor expressing a qualified opinion in relation to its audited accounts.

Flood Model Baseline Design Scenario means all those input variables relating to the design of the Project Works and Temporary Works as provided for and populated by the

Principal in the version of the Reference Flood Model provided to Tenderers as part of the Request for Tender.

Flood Model Output Schedule means the output variables from the Reference Flood Model used to demonstrate the compliance of the Design Documentation with the Flood Resilience Requirements.

Flood Model Tender Design Scenario means the Flood Model Baseline Design Scenario as amended by the Tunnelling Contractor as part of and to reflect the Tunnelling Contractor's Tender Design.

Flood Model WTP Design Scenario means (as applicable):

(a) the Flood Model Baseline Design Scenario;

(b) the Flood Model Tender Design Scenario; and

(c) each subsequent iteration of the input variables to the Reference Flood Model relating to the design of the Project Works and the Temporary Works developed in accordance with clause 14A.2(a).

Flood Resilience Requirements means each of the following requirements:

(a) section 4.1.6 of the Particular Specification;

(b) the flooding requirements set out in the Project Planning Approval, including:

(i) the requirements to not worsen the flooding characteristics described in the Project Planning Approval (including but not limited to Condition D10);

(ii) the measures identified in and under the Project Planning Approval to not worsen the flooding characteristics (including but not limited to measures in documents listed in Condition A1 and Mitigation Measure B2),

for all flood events up to and including the one (1) per cent Annual Exceedance Probability (AEP) flood event.

Force Majeure Event means any of the following:

(a) an Excepted Risk;

(b) a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia;

(c) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within a Key Plant and Equipment Manufacturing Country;

(d) an earthquake, tsunami, typhoon, cyclone or hurricane occurring within Australia or a Key Plant and Equipment Manufacturing Country;

(e) a flood which might at the date of this deed be expected to occur less frequently than once in every 100 years (based on the 1:100 year average recurrence interval flood event) occurring within Australia or a Key Plant and Equipment Manufacturing Country;

(f) a fire or explosion resulting from an event referred to in:

(i) paragraphs (a) or (b) above occurring within Australia;

(ii) paragraph (c) above occurring within a Key Plant and Equipment Manufacturing Country; or

(iii) paragraphs (d) or (e) above in each case occurring within Australia or a Key Plant and Equipment Manufacturing Country;

(g) a landslide resulting from an event referred to in paragraphs (d) or (e) above in each case occurring within Australia or a Key Plant and Equipment Manufacturing Country,

which:

(h) is beyond the reasonable control of the Tunnelling Contractor and its Associates; and

(i) prevents or delays the Tunnelling Contractor from performing an obligation under the Tunnelling Contract Documents, where that event or the consequence of that event does not arise from any act or omission of the Tunnelling Contractor (including from any breach by the Tunnelling Contractor of a term of a Tunnelling Contract Document).

[redacted]

Framework Principles has the meaning given in the Master Interface Deed.

General Solid Waste (Non-Putrescible) means Waste which is general solid waste (non-putrescible) as defined in the Waste Classification Guidelines.

General Solid Waste (Putrescible) means Waste which is general solid waste (putrescible) as defined in the Waste Classification Guidelines.

General Specification means the section of the Tunnelling Specification of that name.

Geotechnical Reports means the geotechnical reports listed in section 1 of Schedule A22.

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

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably be expected from time to time of a skilled and experienced person, engaged in the same or similar type of undertaking as that of the Tunnelling Contractor or its Associates in Australia, as the case may be, under the same or similar circumstances as the performance of the Tunnelling Contractor's Activities and which includes compliance with all Laws, including in relation to the Environment and all guidelines made or approved by the EPA.

Government Policies means the NSW Guidelines, WHS Management Systems and Auditing Guidelines, Aboriginal Procurement Policy (January 2021), Environmental Management Systems Guidelines (4th edition) (December 2019), Quality Management Guidelines: Construction Procurement (December 2019), Government Resource Efficiency Policy (GREP), the NSW Government Supplier Code of Conduct, any policies and procedures published on the website "https://www.transport.nsw.gov.au/about-us/access-to-information/policy-documents" (or any replacement website established by the NSW Government to provide the same or similar information regarding approved policies and procedures) and any other NSW Government or Commonwealth Government guidelines, policies and requirements specified or required by this deed or by Law.

GPT Group means the Australian Stock Exchange listed company called "The GPT Group" that holds property interests in the vicinity of Sydney Olympic Park.

GST has the same meaning as "GST" has in the GST Law.

GST Law has the same meaning as "GST law" has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Handover Works means those works referred to as the Handover Works in section 2.2.2 of the Particular Specification (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Harbour Master means a person appointed as the harbour master for Sydney Harbour by the Minister for Roads and Freight (or a person appointed to exercise functions of the harbour master for Sydney Harbour) under section 85 of the *Marine Safety Act 1998* (NSW).

Hazardous Chemical has the meaning given in the WHS Regulation.

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 and which is present in a building, structure or facility that is the subject of the Demolition Works or in any debris created by the Demolition Works, including asbestos, toluene, polychlorinated biphenyls, lead based paints, hydrofluorocarbons and hydrocarbons.

Hazardous Waste means Waste which is classified as hazardous waste in accordance with the Waste Classification Guidelines.

Heavy Vehicle National Law means the *Heavy Vehicle National Law (NSW) No. 42a* and all associated regulations.

Hold Point means a point beyond which a work process must not proceed without the authorisation or release of a designated authority.

IC Project Plans means:

(a) the Systems Engineering Management Plan;

(b) the Assurance and Governance Plan;

(c) the Construction and Site Management Plan;

(d) the Construction Environmental Management Plan and sub-plans, including the Construction Heritage Management Plan and the Construction Traffic Management Plan;

(e) the Digital Engineering Execution Plan; and

(f) the Integration Management Plan,

which are to be provided to the Independent Certifier in accordance with clause 11.3(a).

IDAR Panel means the Independent Dispute Avoidance and Resolution Panel to be constituted under the IDAR Panel Agreement, referred to in clause 25.

IDAR Panel Agreement means the agreement which appears in Schedule A17.

IDAR Panel Agreement Accession Deed Poll means an accession deed poll substantially in the form of Schedule 1 of the IDAR Panel Agreement.

Identified Utilities Register means:

(a) the register of Utility Services referred to in Section A of Schedule D18; and

(b) any investigation reports referred to in Section B of Schedule D18 and listed in Attachment 1 of Schedule D18.

Incident means any of the following incidents or events arising out of or in connection with the Tunnelling Contractor's Activities:

(a) any work health and safety, environmental or security incident including:

(i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW, ONRSR, or other work health and safety regulator;

(ii) an occurrence or set of circumstances as a consequence of which pollution (air, water, noise or land) or an adverse environmental impact has occurred or is likely to occur;

(iii) any fire or dangerous event on the Construction Site or Extra Land;

(iv) a security breach;

(v) any unauthorised removal of trees;

(vi) any incident involving the community;

(vii) any accidents involving damage to persons or property occurring upon or in the vicinity of the Construction Site or any Extra Land or in the supply chain where the Chain of Responsibility Provisions apply;

(viii) a non-compliance with an Approval;

(ix) any public complaint; or

(x) any incident defined in the Sydney Metro Principal Contractor Health and Safety Standard; 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.

Incomplete Portion has the meaning given in clause 10.3(a).

Independent Acoustics Advisor means [redacted] appointed by the Principal under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified to the Tunnelling Contractor.

Independent Certifier means together Systra (387 949 530 R.C.S. Paris) of Level 4, 83 York Street, Sydney NSW 2000 and Kellogg Brown & Root Pty Ltd (ABN 91 007 660 317) of 186 Greenhill Road, Parkside SA 5063 or such other person(s) as may be engaged by the Principal, the Tunnelling Contractor and, if it accedes to the Independent Certifier Deed, OpCo in accordance with the Independent Certifier Deed.

Independent Certifier Deed means the deed entered into between the Tunnelling Contractor, the Principal, and the Independent Certifier and to which OpCo may accede, dated on or about the date of this deed and substantially in the form of Schedule A10.

Independent Property Impact Assessment Panel means the "Independent Property Impact Assessment Panel" established by the Principal for the purpose of Sydney Metro West in accordance with the requirements of the Project Planning Approval.

Information Document means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which is:

(a) referred to in Schedule A21; or

(b) either:

(i) issued or made available by, or on behalf of, the Principal or the NSW Government to the Tunnelling Contractor in connection with the Invitation for Expressions of Interest, Request for Tender, the Early Design Services, the Project Works, the Tunnelling Contractor's Activities or Sydney Metro West (including anything issued or made available through the Principal's website):

(A) which at the time of issue (or being made available) was expressly classified or stated to be an "Information Document"; or

(B) regardless of whether or not it was expressly classified or stated to be an "Information Document";

(ii) referred to, or incorporated by reference, in an Information Document,

unless such information, data, document or material is otherwise expressly stated to form part of this deed; and

whether issued or made available:

(c) on, before or after the date of submission of the Tender (including any such information, data, document or material made available as part of the expression of interest phase); or

(d) on, before or after the date of execution of this deed,

other than any information, data, document or material which the Principal is obliged by the terms of this deed to provide to the Tunnelling Contractor and the Tunnelling Contractor is expressly obliged by the terms of this deed to rely on.

Initial ECI Design means the documents set out in Schedule A28 prepared by the Principal for Sydney Metro West as provided to the Tunnelling Contractor as Information Documents.

[redacted]

Initial Payment means the initial payment of [redacted] to be made by the Principal to the Tunnelling Contractor in accordance with clause 20.13.

Insolvency Event means:

(a) a controller (as defined in section 9 of the Corporations Act), administrator, receiver, receiver and manager, judicial manager or similar officer is appointed in respect of a person or any asset of a person;

(b) a liquidator or provisional liquidator is appointed in respect of a person;

(c) any application or petition (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:

(i) appointing a person referred to in paragraph (a) or (b) of this definition;

(ii) winding up (including voluntary winding up) or deregistering a person; or

(iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Principal under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act or, in relation to a corporation incorporated in Malaysia, section 366 of the Malaysian Companies Act;

(d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:

(i) a moratorium of any debts of a person;

(ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or

(iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;

(e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act) or as a result of the operation of section 466(1)(a) of the Malaysian Companies Act pursuant to the notice of demand issued by the creditor, a person is deemed to be unable to pay its debt due to its failure to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;

(g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or

(h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

Integration Management Plan means the Project Plan referred to as the Integration Management Plan in section 5.1.15 of the General Specification, as updated from time to time in accordance with clause 11.4.

Intellectual Property Right means all present and future rights conferred by law in or in relation to inventions, patents, designs, circuit layouts, copyright, confidential information, trade marks, designs, plant varieties, business and domain names and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

(a) all rights in all applications to register these rights;

(b) all renewals and extensions of these rights; and

(c) all rights in the nature of these rights, excluding Moral Rights.

Interface Contract means a contract between the Principal and an Interface Contractor for Interface Works and includes the OpCo Project Deed, any Station Contract, any Line-wide Contract and the Central Tunnelling Contract.

Interface Contractor means:

(a) any contractor engaged by the Principal or its Associates to do Interface Work on or adjacent to the Construction Site (including their respective subcontractors all the way down the contracting chain) including:

(i) OpCo;

(ii) any Station Contractor;

(iii) any Line-wide Contractor;

(iv) any Alternate Operator;

(v) the Central Tunnelling Contractor; and

(vi) any OSD Developer; and

(b) the Archbold Road Contractor,

but not including the Tunnelling Contractor and its Subcontractors.

[redacted]

Interface Works means any works or design services or the provision of any materials, plant, equipment, machinery, systems or other infrastructure, or the provision of any operation or maintenance activities required for Sydney Metro West, to be performed by an Interface Contractor.

Interim Site Audit Advice means formal, written advice provided by an Accredited Site Auditor confirming that a Detailed Site Investigation, Remediation Action Plan (and any addenda), Validation Report or Remediation activity (as applicable) has been performed in accordance with guidelines made or approved by the EPA and is free from significant errors and omissions.

Investigative Authority means any Authority having a statutory right to investigate:

(a) the Tunnelling Contractor's Activities, the Project Works or Sydney Metro West; or

(b) any activities of the Principal which are affected by the Tunnelling Contractor's Activities, the Project Works or Sydney Metro West,

including ATSB, ONRSR and OTSI.

Jemena means Jemena Limited ABN 95 052 167 405.

KCA Classification and Excavation Map means the document(s) submitted as part of each Remediation Action Plan as described under clause 12.20(d)(ii).

KCA Excavation Quantity Register has the meaning given in clause 12.20(d)(iii).

Key Contaminated Area means:

(a) the area of the Construction Site described in Schedule D15; and

(b) any other areas of the Construction Site immediately surrounding each area described in Schedule D15 which pose unacceptable human health or environmental Contamination risk into the areas of the Construction Site described in Schedule D15, including but not limited to migration of Contamination via groundwater, ground gas, vapour and odour.

Key Plant and Equipment means [redacted]

[redacted]

Key Plant and Equipment Amount means the sum of [redacted]

Key Plant and Equipment Manufacturing Country means [redacted] to the extent that the Tunnelling Contractor or its Associates is manufacturing the Key Plant and Equipment in those countries.

Law means:

(a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;

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

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

Liability includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and whether:

(a) liquidated or not;

(b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);

(c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;

(d) present, prospective or contingent;

(e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others;

(f) under, arising out of, or in any way in connection with, this deed, including any Direction of the Principal's Representative;

(g) arising out of, or in any way in connection with the Project Works or the Tunnelling Contractor's Activities or either party's conduct before or after the date of this deed; and

(h) otherwise at Law including:

(i) by statute;

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

(iii) for restitution (as a result of unjust enrichment or otherwise).

Line-wide Contract means a deed to be entered into between the Principal and a Line-wide Contractor for the design, construction, installation and/or commissioning of any line-wide components of Sydney Metro West which may include track and tunnel services, service facility and cross passage fitout, tunnel ventilation systems, high voltage supply and distribution, traction power supply and overhead conductor rail, drainage, mechanical and fire & life safety systems and the Clyde maintenance and stabling facility including the operations control centre building.

Line-wide Contractor means any entity selected by the Principal to design, construct, install and/or commission any physical works under a Line-wide Contract.

Local Area Works means:

(a) the modification, reinstatement and improvement of Local Areas which the Tunnelling Contractor must design and construct and hand over to the Principal or the relevant Authority in accordance with this deed and the Tunnelling Specification (including section 2.1.3 of the Particular Specification); and

(b) the Roads Interface Agreement Road Works, the Parramatta City Council Handover Works, the TfNSW (Maritime) Construction Licence Handover Works, the TfNSW (Maritime) Construction Licence Interface Works, the Sydney Trains Protection Zone Works and the Sydney Trains Works,

and including, to the extent relevant to such works, Changes directed in accordance with this deed.

Local Areas means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which are adjacent to, connect to, intersect, cross, or are in any way affected by the Project Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

Loss means any cost, expense, loss, damage, Liability, fine, penalty or other amount, whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes Consequential Loss.

LRS means Land Registry Services.

Lump Sum Price Proposal has the meaning given in clause 20.12(d).

Major Australian Bank means Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, National Australia Bank Limited and Commonwealth Bank of Australia.

Making Accessible has the meaning given in clause 19.9(a)(iv).

Malaysian Companies Act means the *Malaysian Companies Act 2016*.

Management Review Group means the group referred to in clause 18.5.

Mandatory Defect means a Defect which has been notified by the Principal's Representative under clause 17.2(a)(i) at any time before the date that is 28 days prior to the estimated:

(a) Date of Milestone Achievement specified in a notice given under clause 19.11A(a)(iii) in respect of any relevant Milestone; or

(b) Date of Substantial Completion specified in a notice given under clause 19.12(a)(iii) in respect of any relevant Portion,

but does not include an Accepted Defect, an Agreed Defect, or a Minor Defect that is not reasonably capable of correction within the 28 day period contemplated by this definition.

Master Interface Deed means a deed to be entered into between the Principal, the Tunnelling Contractor, OpCo and each Interface Contractor nominated by the Principal substantially in the form of Schedule A11.

Material Impact has the meaning given in the Master Interface Deed.

Materials means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods, parts and other items incorporated or to be incorporated into the Project Works or the Temporary Works.

Milestone means a milestone specified in section 3 of Schedule A2.

Milestone Achievement means, in respect of a Milestone, the stage in the execution of the Tunnelling Contractor's Activities when the Project Works and the Temporary Works comprising that Milestone have achieved the level of completion required for that Milestone in section 3 of Schedule A2 except for any:

(a) Minor Defects;

(b) Accepted Defects; or

(c) Agreed Defects.

Milestone Area means, in relation to a Milestone, the area (if any) identified in the column headed "Milestone Area" in the table contained in section 3 of Schedule A2 including all Project Works and Temporary Works (if any) contained in that area.

Milestone Area Handover Date means in respect of a Milestone Area:

(a) the day after the Date of Milestone Achievement of the Milestone to which the Milestone Area relates; or

(b) where the Principal's Representative gives written notice under clause 19.16(a) in respect of the Milestone Area, the date notified in the corresponding notice given under clause 19.16(c) in respect of that Milestone Area.

Minor Defect means a Defect which, at Milestone Achievement or Substantial Completion (as applicable):

(a) is capable of being corrected:

(i) after the relevant part of the Construction Site has been handed over to the Principal; and

(ii) without causing delay or disruption to the activities that are to be performed by an Interface Contractor under an Interface Contract,

within the relevant part of the Construction Site; and

(b) the Independent Certifier determines the Tunnelling Contractor has reasonable grounds for not promptly correcting prior to Milestone Achievement or handover of the relevant Portion to the Principal (as applicable),

but does not include a Mandatory Defect, an Accepted Defect or an Agreed Defect.

Minor Non-Compliance means a minor error, minor omission or minor non-compliance which:

(a) does not:

(i) prevent the Project Works or the Temporary Works from being at all relevant times fit for their intended purposes;

(ii) prevent the achievement of the performance requirements specified in the Tunnelling Specification; or

(iii) affect the safety of the Project Works or Temporary Works;

(b) the Principal's Representative or the Independent Certifier (as applicable) determines (acting reasonably) that the Tunnelling Contractor has reasonable grounds for not promptly correcting prior to the certification required to be obtained under this deed; or

(c) the parties agree is a Minor Non-Compliance.

Moral Rights means:

(a) the right of attribution of authorship or performership;

(b) the right not to have authorship or performership falsely attributed; and

(c) the right of integrity of authorship or performership,

conferred by the *Copyright Act 1968* (Cth) and rights of a similar nature anywhere in the world, that exist now or that may come to exist in the future.

NAC Required Actions has the meaning given in clause 8.2(b) of Schedule A26.

NAC Requirements means the requirements set out in the Tunnelling Specification, including section 5.1.5.3 of the General Specification.

National Remediation Framework means the National Remediation Framework (CRC CARE, 2020).

Native Title Claim means any claim or application for a determination of native title under the *Native Title Act 1993* (Cth) or any similar Law.

NBN Co means the state owned corporation of that name incorporated under the *Corporations Act 2001* (Cth).

Network Assurance Committee or **NAC** means the network assurance committee established by the Principal to manage configuration changes for the Sydney Metro delivery office in accordance with the Configuration Management Framework.

Network Assurance Submission or **NAS** means a package of documentation meeting the requirements set out in the Tunnelling Specification, including section 3.2.4 of the General Specification.

NGER Legislation means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

Nominated Member has the meaning given in clause 25.3(b).

Nominated Subcontract means the form of subcontract referred to in Schedule A16.

Nominated Subcontractor means the nominated subcontractors and suppliers specified in Schedule A16, provided that in respect of the Call-off Services, the Principal's Representative has issued a direction under clause 5.4(aa) in respect of the relevant Call-off Services.

Nominated Subcontract Work means the Tunnelling Contractor's Activities to be performed by a Nominated Subcontractor which are described in Schedule A16, provided that in respect of the Call-off Services, the Principal's Representative has issued a direction under clause 5.4(aa) in respect of the relevant Call-off Services.

Non-Proof Engineered Temporary Works means all Temporary Works that are not Proof Engineered Temporary Works.

Notice of Completion means a notice in the form of Schedule B21 issued by the Independent Certifier pursuant to clause 19.13(b)(i).

Notice of Dispute has the meaning given in clause 25.4(b).

Notice of Dissatisfaction means a notice given under clause 25.6(a).

Notice of Issue has the meaning given in clause 25.3(a).

Notice of Milestone Achievement means a notice in the form of Schedule B28 issued by the Independent Certifier pursuant to clause 19.11A(f)(i).

Notice of Substantial Completion means a notice in the form of Schedule B14 issued by the Independent Certifier pursuant to clause 19.12(f)(i)(A).

NSW Guidelines means the NSW Industrial Relations Guidelines: Building and Construction Procurement (July 2013, updated September 2017), or any substitute for, or update to, such guidelines.

NSW Trains means NSW Trains a body corporate constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

Offsite Overheads means:

[redacted]

On-Site Overheads means:

[redacted]

[redacted]

ONRSR means the Office of the National Rail Safety Regulator constituted under the Rail Safety National Law.

OpCo means any entity that enters into the OpCo Project Deed with the Principal.

Open Book Basis means [redacted]

[redacted]

OpCo Project Deed means a deed between the Principal and OpCo for the provision of the OpCo Project Works and the performance of various services, including in particular the operation and maintenance of Sydney Metro West.

OpCo Project Works means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that OpCo must, in accordance with the OpCo Project Deed, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro West, which may include rolling stock, CBTC signalling and train control systems, central control system, radio systems, platform screen doors, communication systems, line-wide works and systems integration.

OSD Developer means each contractor appointed (by either the Principal or by an entity purchasing development rights from the Principal) to design and construct any over station development that is intended, once completed, to fully integrate with Sydney Metro West.

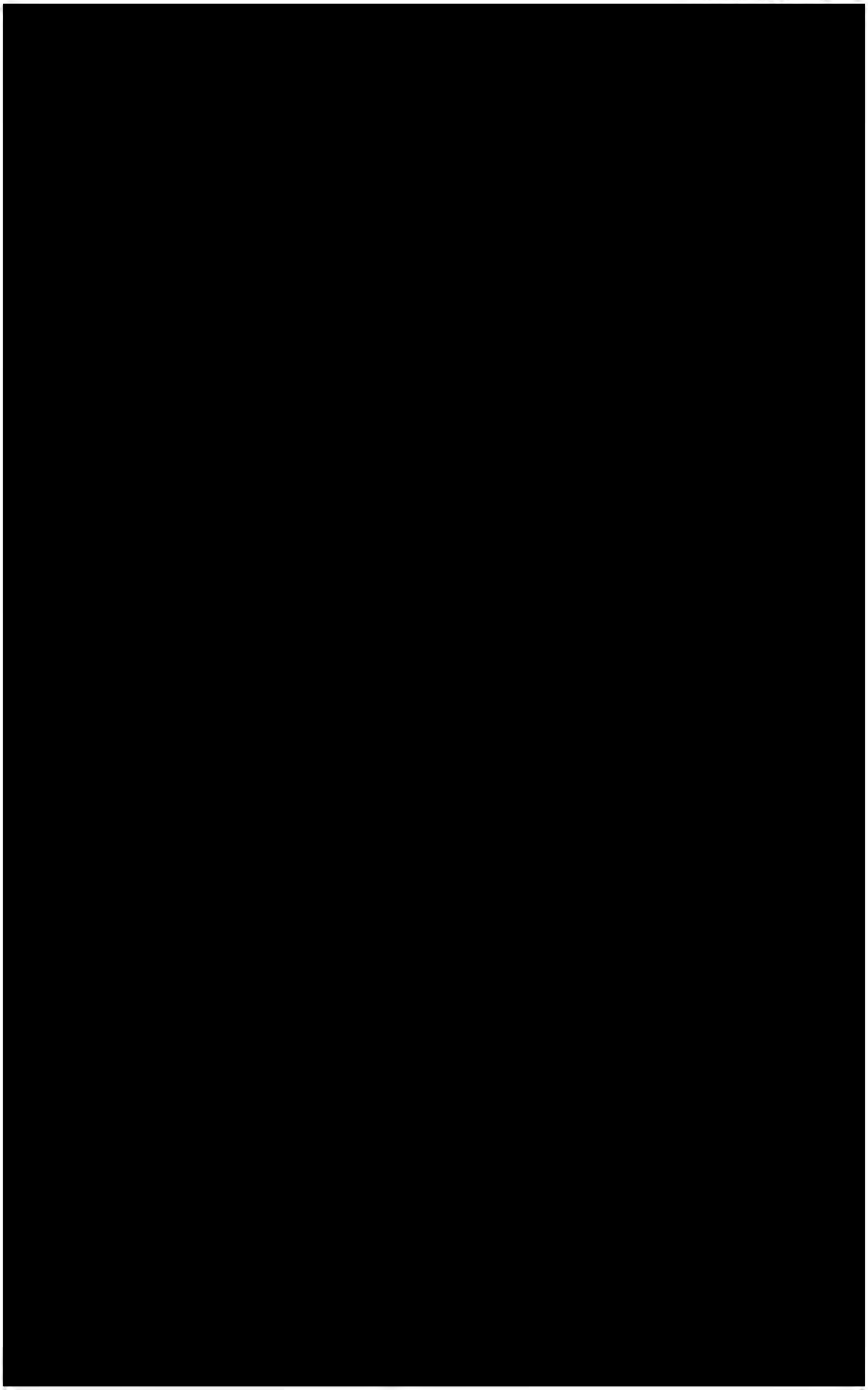
Other Remediation Components means the Remediation activities which do not form part of the Agreed Remediation Scope (Solid Waste) to be performed by the Tunnelling Contractor in accordance with the Agreed Remediation Scope (Other Remediation Components).

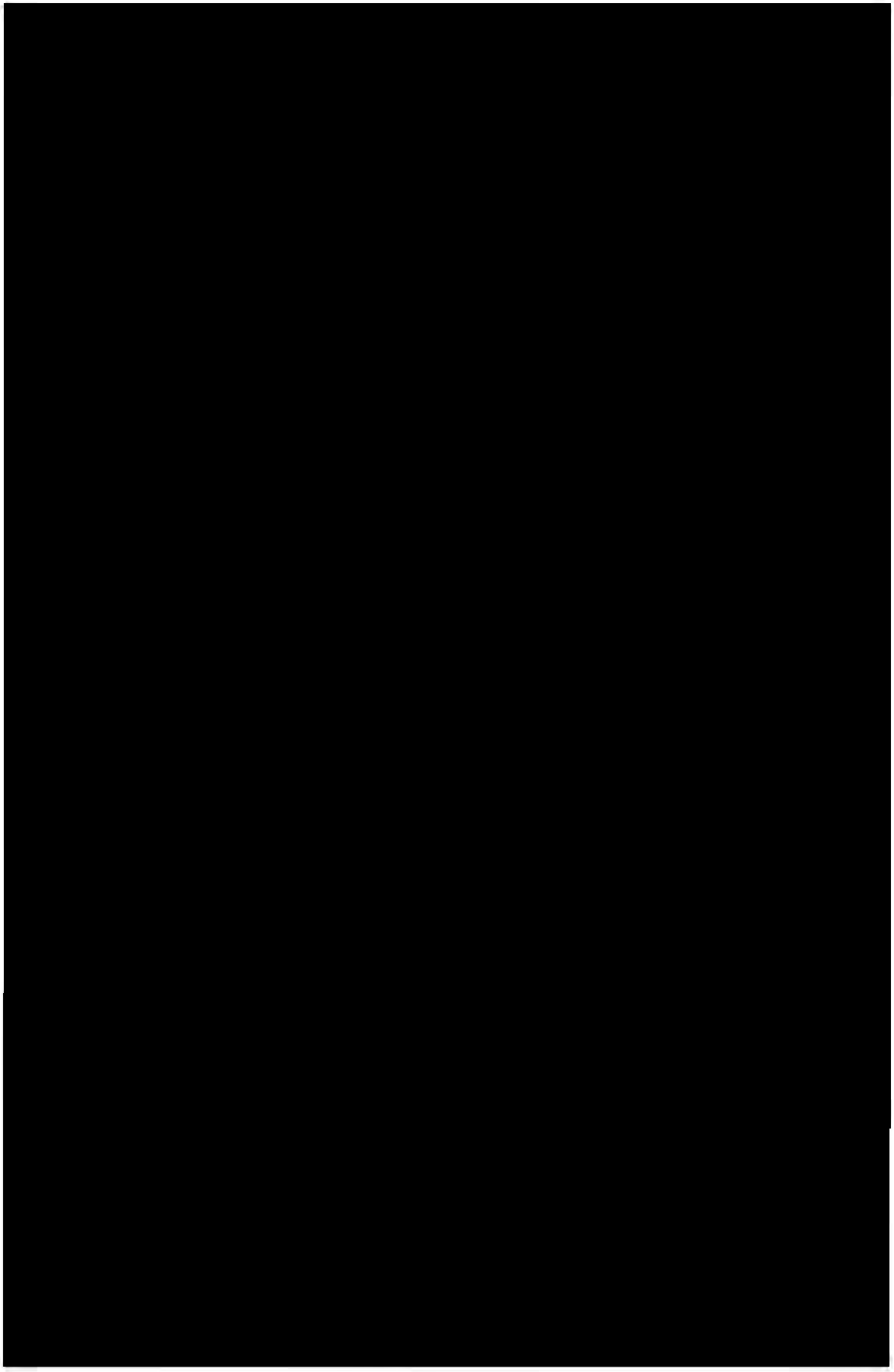
OTSI means the Office of Transport Safety Investigations constituted under the *Transport Administration Act 1988* (NSW).

Overall D&C Program means the overall program for design and construction activities which is contained in Schedule A23, as updated in accordance with clause 19.2.

Overheads means [redacted]

[redacted]





[redacted]

Parramatta City Council Interface Agreement means the Draft Third Party Agreement titled "Sydney Metro West Council Interface Agreement (Parramatta City Council) – WTP Scope" between the Principal and Parramatta City Council (as may be updated or replaced in accordance with clause 12.24).

Parramatta City Council Handover Works has the meaning given to the term "Handover Works" in the Parramatta City Council Interface Agreement.

Parramatta Light Rail Contractor means Great River City Light Rail Pty Ltd (ACN 622 239 605).

[redacted]

Particular Specification means the section of the Tunnelling Specification of that name.

Party A has the meaning given in clause 25.3(a).

Party B has the meaning given in clause 25.3(a).

PDCS means the Principal's web based TeamBinder project document and control system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 32.1(b).

Performance Amount has the meaning given in the Performance Incentive Regime Schedule.

Performance Incentive Regime Schedule means Schedule E10.

Permitted Use means the investigation, design, construction, testing, commissioning and completion of the Project Works and the Temporary Works, the carrying out of the Tunnelling Contractor's Activities and the performance by the Tunnelling Contractor of its other obligations under this deed.

[redacted]

Planning Approvals means:

(a) the Project Planning Approval;

(b) the REF Approval; and

(c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Project Planning Approval or the REF Approval from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

Planning Ministerial Corporation means the Planning Ministerial Corporation established under the EP&A Act and administered by the Office of Strategic Lands within the Department of Planning, Industry and Environment.

Portion means a part of the Project Works and Handover Works described in the columns headed "Portion" and "Description of Infrastructure" in section 2 of Schedule A2 or as directed by the Principal's Representative under clause 10.1.

Portion Handover Date means, in respect of a Portion, the later of:

(a) the day after the Date of Substantial Completion of the Portion; or

(b) where the Principal's Representative gives written notice under clause 19.16(a) in respect of the Portion, the date notified in the corresponding notice given under clause 19.16(c) in respect of that Portion.

Potential Matter has the meaning given in clause 25.14A(b).

PPS Act means the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act.

PPS Register has the meaning given to the term "register" in the PPS Act.

Practical Completion (Council Handover Works) has the meaning given to the term "Practical Completion" in the Parramatta City Council Interface Agreement.

Practical Completion (Roads Interface Agreement Road Works) has the meaning given to the term "Practical Completion" in the Roads Interface Agreement.

Practical Completion (Sydney Trains Works) has the meaning given to the term "Practical Completion" in the Sydney Trains Interface Agreement.

Pre-Agreed Change means any of the Changes listed in Schedule A3.

Preliminary Works means works required for the initial establishment of the Construction Site including site clearance works, installation of services, devegetation, erection of work compounds and site offices, fencing to site boundaries and any Archaeological Clearance Works.

Principal Hazardous Material Report means a document listed in Schedule D20.

Principal Insurance Policy means a policy of insurance required under clause 23.4.

Principal's Accreditation means the Principal's accreditation under Part 3 of the Rail Safety National Law as a Rail Infrastructure Manager or such other accreditation obtained under any regime replacing Part 3 of the Rail Safety National Law.

Principal's Design Review Period means:

[redacted]

Principal's Design Re-Review Period means [redacted]

[redacted]

Principal's Representative means:

(a) the person appointed by the Principal under clause 18.1(a)(i); or

(b) any other person appointed from time to time by the Principal under clause 18.1(a)(ii),

and includes any appointee under clause 18.1(b) or 18.1(d).

Profit Margin means:

[redacted]

[redacted]

Pro-forma Adjoining Property Owner Agreement means the pro-forma adjoining property owner agreement set out in Schedule D9 (*Pro-forma Adjoining Property Owner Agreement*).

Pro-forma Easement means the pro-forma easement for crane access, rock anchors, scaffolding or safety structure (as appropriate) set out in Schedule D10.

Progress Claim Forecast has the meaning given in clause 20.1A(a).

Project Contract Sum means the sum of the following components:

(a) the Design Contract Sum; and

(b) the Construction Contract Sum.

Project Contract Sum Adjustment Event means [redacted]

Project Director means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

Project Health & Safety Risk Governance Plan means the Project Plan of that name referred to in clause 8.4 and section 5.1.8 of the General Specification, an initial version of which is included in Attachment B of the General Specification, as updated from time to time in accordance with clause 11.4.

Project Plan means any plan of the kind referred to in clause 11.1 as that plan may be updated, amended and further developed under clause 11.4.

Project Planning Approval means the approval granted by the Minister for Planning under section 5.19 of the EP&A Act dated 11 March 2021, a copy of which (as at the date of this deed) appears in Schedule D3, and includes all:

(a) conditions to such approval; and

(b) documents incorporated by reference,

as the approval may be modified from time to time.

Project Site means the land described as the Project Site in section 2 of the Site Access Schedule.

Project Values means the values that will guide the delivery of Sydney Metro West, being:

(a) safety and wellbeing;

(b) collaboration;

(c) integrity;

(d) innovation;

(e) excellence; and

(f) achievement.

Project Works means the physical works which the Tunnelling Contractor must design, construct, complete and hand over under this deed (including, to the extent relevant to such works, Changes directed in accordance with this deed), including the Works and Third Party Works, but excluding Temporary Works.

Proof Engineer means the person or persons engaged from time to time by the Tunnelling Contractor in accordance with clause 13.3 to perform the role of the Proof Engineer.

Proof Engineered Temporary Works means "Category 1" and "Category 2" Temporary Works described in section 3.2.2 of the Particular Specification.

Property Works means all works required to existing buildings and infrastructure or to and within properties arising out of the Tunnelling Contractor's Activities as described or specified in section 2.1.3.4 of the Particular Specification (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Provisional Sum Work means those parts of the Tunnelling Contractor's Activities for which a provisional sum has been specified in the Design Payment Schedule or the Construction Payment Schedule.

Public Transport Agency means the Principal, TfNSW (and each of its divisions), Transport Asset Holding Entity, Sydney Trains and NSW Trains.

Quality and Systems Manager means the person appointed to that position under clause 18.2(b) as at the date of this deed and any person appointed as a replacement under clause 18.2(b).

Quality Management System means a corporate system that details the organisational structure, policies, procedures, practices, recourses and responsibilities for quality management.

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

Rail Safety National Law means the *Rail Safety National Law 2012 No. 82a* (NSW).

Rail Safety Regulations means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012 No. 82a* (NSW).

Rail Transport Operator has the meaning given in the Rail Safety National Law.

Railway Operations has the meaning given in the Rail Safety National Law.

RCTI has the meaning given in clause 21.6(a)(i).

Recommendation has the meaning given in clause 25.4(a).

REF Approval means the terms of the Principal's determination to proceed with the activity which is the subject of the environmental assessment titled "Sydney Metro Review of Environmental Factors" in respect of the project titled "Sydney Metro West Precast Facility" and dated 11 March 2021.

Reference Flood Model means the scenario based computer model prepared by the Principal and included in Schedule F1 as an electronic file to predict the height, flow and

duration of flood events [redacted], as amended and reissued by the Principal from time to time in accordance with clause 14A.3(b) [redacted]

Related Body Corporate has the meaning given to that term in the Corporations Act.

Reliance Letters means the reliance letters contained in Schedule D13.

[redacted]

Remediation or **Remediate** has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

Remediation Action Plan means a plan for the Remediation of Contamination which satisfies the requirements of clause 12.20 and is prepared in accordance with the Contaminated Land Guidelines: Consultants Reporting on Contaminated Land (NSW EPA, 2020).

Remediation Activities (Other Remediation Components) means the Remediation of Other Remediation Components by the Tunnelling Contractor in a Key Contaminated Area in accordance with the Agreed Remediation Scope (Other Remediation Components).

Remediation Activities (Solid Waste) means the Remediation of Solid Waste by the Tunnelling Contractor in a Key Contaminated Area in accordance with the Agreed Remediation Scope (Solid Waste).

Remediation Cost Estimate means the Remediation Cost Estimate (Other Remediation Components) and/or the Remediation Cost Estimate (Solid Waste).

Remediation Cost Estimate (Other Remediation Components) has the meaning given in clause 12.20(f).

Remediation Cost Estimate (Solid Waste) has the meaning given in clause 12.20(e).

Remediation Practical Completion means the stage where the physical Remediation of any area has reached practical completion as described in the applicable Remediation Action Plan.

Request for Tender means the document titled "Request for Tender for the design and construction of the Western Tunnelling Works" dated 9 April 2021, being a request for tenders for the "Western Tunnelling Works" component of Sydney Metro West.

Required Rating means a credit rating of at least A by Standard and Poor's (Australia) Pty Limited or A2 by Moody's Investors Service, Inc (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

Resequencing has the meaning given in clause 19.9(a)(i).

Resolution Institute means the Resolution Institute, Australia.

Restricted Solid Waste means Waste which is classified as restricted solid waste in accordance with the Waste Classification Guidelines.

Restructure Event means where there is one or more asset transfer or corporate restructure that:

(a) results in the Tunnelling Contractor having a materially diminished financial capacity; or

(b) adversely affects the ability of the Tunnelling Contractor to meet its obligations under the Tunnelling Contract Documents.

Revised Allocation has the meaning given in clause 12.24(c)(ii).

Risk Register means a register of risks which the parties have notified in accordance with clause 18.19.

Roads Interface Agreement means the Draft Third Party Agreement titled "Roads Interface Agreement - Sydney Metro West Western Tunnelling Package" between the Principal and TfNSW (as may be updated or replaced in accordance with clause 12.24).

Roads Interface Agreement Project Works has the meaning given to the term "Project Works" in the Roads Interface Agreement.

Roads Interface Agreement Road Works has the meaning given to the term "Road Works" in the Roads Interface Agreement.

Rosehill Network means Rosehill Network Pty Ltd ABN 11 131 213 691.

[redacted]

Security Interest has the meaning given to that term in section 12 of the PPS Act.

Segment Manufacturing Facility has the meaning given in section 1 of the Particular Specification.

Sensitive Land Use(s) has the meaning given in the Project Planning Approval.

Significant Subcontract means:

(a) each contract for the provision of any Significant Subcontract Work;

(b) each contract entered into by the Tunnelling Contractor in connection with the Tunnelling Contractor's Activities with a contract value of greater than [redacted]; and

(c) any other contract that the parties agree in writing from time to time is a Significant Subcontract.

Significant Subcontract Work means any part of the Tunnelling Contractor's Activities that is identified in Schedule A6.

Significant Subcontractor means a party (other than the Tunnelling Contractor) to a Significant Subcontract.

Site Access Expiry Date means, in respect of a Temporary Area identified in Table 4a of the Site Access Schedule, the date specified as the "Site Access Expiry Date" for that Temporary Area.

Site Access Schedule means Schedule D1.

Site Audit Report has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

Site Audit Statement has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

Site Audit Statement – Section A1 means a Site Audit Statement that indicates the Agreed Remediation Scope [redacted] has been completed and the site is suitable for its intended use.

Site Audit Statement – Section A2 means a Site Audit Statement that indicates the Agreed Remediation Scope [redacted] has been completed and the site is suitable for its intended use subject to compliance with either an active or passive environmental management plan.

Site Audit Statement – Section B5 means a Site Audit Statement that indicates the Agreed Remediation Scope [redacted] has been completed and the site can be made suitable for its intended use if the site is subject to further Remediation in accordance with the Remediation Action Plan.

Site Conditions means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Construction Site and any Extra Land or their surroundings including:

(a) Artefacts and any other natural and artificial conditions;

(b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;

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

(d) surface water, ground water, ground water hydrology and the effects of any dewatering;

(e) any Contamination, Hazardous Chemical, Hazardous Material or other spoil or Waste;

(f) topography of the Construction Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site or Extra Land;

(g) geological, geotechnical and subsurface conditions or characteristics;

(h) any underground strata;

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

(j) the Environment, water and weather or climatic conditions, or the effects of the Environment, water and weather or climatic conditions, including rain, surface water runoff and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions; and

(k) any latent conditions.

Site Investigation Location Difference means a material difference between:

(a) the actual location on the ground surface (including the seabed surface), at the time of collection, from which ground data included in the Geotechnical Report was collected; and

(b) the location on the ground surface (including the seabed surface) reported in the Geotechnical Report as being the location, at the time of collection, from which ground data included in the Geotechnical Report was collected.

Solid Waste means soils and rock excavated from a Key Contaminated Area for the purpose of Remediation, comprising General Solid Waste (Putrescible), General Solid Waste (Non-Putrescible), Special Waste (Asbestos), Restricted Solid Waste, Hazardous Waste, Virgin Excavated Natural Material (VENM) and/or Excavated Natural Material (ENM).

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

Special Event means:

(a) an event listed in Schedule A25 which recurs on an annual basis;

(b) a Sydney Olympic Park Public Event; and

(c) any other major public event adjacent to or in the vicinity of any part of the Construction Site or any Extra Land that is:

(i) published on the website "http://www.sydney.com/events" (or any replacement website established by the NSW Government to provide the same or similar information regarding events in Sydney); or

(ii) notified to the Tunnelling Contractor in writing by the Principal's Representative.

Special Waste (Asbestos) means Waste which is classified as special waste (asbestos) in accordance with the Waste Classification Guidelines.

Specific Contaminant Concentration (SCC) has the meaning described in *Test Methods for Evaluating Solid Waste, Physical / Chemical Methods* (USEPA 2007) as amended from time to time, as applied in accordance with the Waste Classification Guidelines.

Stakeholder and Community Engagement Manager means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

State Indemnified Party means:

(a) the Principal; and

(b) each other Public Transport Agency.

State Significant Artefact means an Artefact that meets any one or more of the requirements for "State Heritage Significance" under the *Heritage Act 1977* (NSW).

Station Contract means a deed to be entered into between the Principal and a Station Contractor to design and/or construct any physical works (including any mechanical, electrical or systems works component thereof) for any station forming part of Sydney Metro

West, including excavation of any remaining station shafts (to the extent not forming part of the Works), station structure and station fitout.

Station Contractor means any entity selected by the Principal to design and/or construct any physical works under a Station Contract.

Subcontract means a contract between the Tunnelling Contractor and a Subcontractor and includes an agreement for supply of goods or services (including professional services and Construction Plant hire) or both.

Subcontractor means any person who enters into a contract in connection with the Tunnelling Contractor's Activities with the Tunnelling Contractor or whose subcontract is in connection with the Tunnelling Contractor's Activities and is in a chain of contracts where the ultimate contract is with the Tunnelling Contractor.

Substantial Completion means the stage in the execution of the Tunnelling Contractor's Activities in respect of a Portion when:

(a) the Portion is complete in accordance with this deed except for any:

(i) Minor Defects;

(ii) Accepted Defects; and

(iii) Agreed Defects;

(b) the Tunnelling Contractor has rectified all Mandatory Defects;

(c) the Tunnelling Contractor has:

(i) carried out and passed all tests which:

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

(B) must necessarily be carried out and passed before the Portion can be used for its intended purpose and to verify that the Portion is in the condition this deed requires it to be in at Substantial Completion;

(ii) obtained all Approvals that it is required under this deed to obtain before Substantial Completion of the Portion and provided such Approvals to the Principal's Representative;

(iii) given to the Principal's Representative (with a copy to any of OpCo, an Alternate Operator or any Interface Contractor as required by the Principal) all documents or other information in respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of the Portion which:

(A) are required by this deed to be given to the Principal's Representative before Substantial Completion of the Portion; or

(B) must necessarily be handed over before the Portion can be used for its intended purpose,

including copies of all documentation in accordance with the requirements of the Tunnelling Specification, but excluding all Work as Executed Design Documentation and Asset Management Information in respect of the Project Works;

(iv) executed a certificate in the form of Schedule B1 for the Portion and provided it to the Principal's Representative and the Independent Certifier;

(v) provided the training referred to in clause 16.15(a) to the reasonable satisfaction of the Principal's Representative;

(vi) removed all Construction Plant from the parts of the Construction Site that relate to the Portion, other than:

(A) where the Principal's Representative has given a notice under clause 19.16(a) to carry out Transitional Handover Services in respect of the Portion, any Construction Plant required to carry out the Transitional Handover Services; and

(B) any Construction Plant necessary to facilitate the handover of the Portion to the Principal or retained on the Construction Site in accordance with clause 16.11(c) (where approved by the Principal's Representative in accordance with clause 16.11(c)); and

(vii) in respect of the first Portion to achieve Substantial Completion only, executed the Collateral Warranty Deed Poll and provided it to the Principal's Representative;

(d) the Quality and Systems Manager has executed a certificate in the form of Schedule B11 for the Portion and provided it to the Principal's Representative;

(e) the Tunnelling Contractor has, in respect of any Extra Land occupied or used in connection with the Portion, provided the Principal's Representative with:

(i) properly executed releases on terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or

(ii) statements under clause 12.6(a)(ii)(B)(bb);

(f) the Tunnelling Contractor has given the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all Asset Management Information in respect of the Handover Works certified by the Independent Certifier under clause 16.13(j)(ii)(B)(bb); and

(g) the Tunnelling Contractor has done everything else which is stated to be a condition precedent to Substantial Completion of the Portion or which the Tunnelling Contractor is otherwise expressly required by this deed to do before Substantial Completion of the Portion, including any additional conditions precedent to Substantial Completion specified in Schedule A2.

Sustainability Manager means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

Sustainability Management Plan means the Project Plan referred to as the Sustainability Management Plan in section 5.1.7 of the General Specification, as updated from time to time in accordance with clause 11.4.

Sydney Metro Australian Industry Participation Plan means the "Australian Industry Participation Plan" (as defined in the *Australian Jobs Act 2013* (Cth)) developed by the Principal for Sydney Metro West, as amended from time to time.

Sydney Metro Principal Contractor Health and Safety Standard means the document referred to as the "Sydney Metro Principal Contractor Health and Safety Standard (SM-20-00100838)", as amended from time to time.

Sydney Metro Unexpected Heritage Finds Procedure means the document referred to as the "Sydney Metro Unexpected Heritage Finds Procedure" (SM-18-00105232), as amended from time to time.

Sydney Metro West means the railway line from Westmead to Sydney CBD, stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure.

Sydney Metro Works means the Project Works excluding the Third Party Works.

Sydney Olympic Park Authority means the statutory corporation of that name established under the *Sydney Olympic Park Authority Act 2001* (NSW).

Sydney Olympic Park Public Event means a public event other than a Special Event already listed in Schedule A25 which is to be held at Sydney Olympic Park.

Sydney Trains means Sydney Trains (ABN 38 284 779 682), a NSW Government agency constituted under the *Transport Administration Act 1988 (NSW)*.

Sydney Trains Interface Agreement means the Third Party Agreement titled "Sydney Metro West Tunnelling Packages - Sydney Trains Tunnelling Interface Agreement" between the Principal, Transport Asset Holding Entity and Sydney Trains dated 27 September 2021.

Sydney Trains Protection Zone Works has the meaning given to the term "Protection Zone Works" in the Sydney Trains Interface Agreement.

Sydney Trains Works has the meaning given to that term in the Sydney Trains Interface Agreement.

Sydney Water means Sydney Water Corporation (ABN 49 776 225 038).

Sydney Water Interface Deed means the Third Party Agreement titled "Sydney Metro Program SWC Interface Deed (000-TPA-SWC)" between the Principal and Sydney Water dated 2 January 2018, as amended from time to time.

Sydney Water Interface Works has the meaning given to the term "Project Works" in the Sydney Water Interface Deed.

Systems Engineering Management Plan means the Project Plan referred to as the Systems Engineering Management Plan in section 5.1.4 of the General Specification, as updated from time to time in accordance with clause 11.4.

Target Remediation Cost (Other Remediation Components) has the meaning given in Schedule E7.

Target Remediation Cost (Solid Waste) has the meaning given in Schedule E7.

Transport Asset Holding Entity or **TAHE** means Transport Asset Holding Entity of New South Wales as constituted by Part 2 of the Transport Administration Act 1988 (NSW).

Taxes means income, stamp, indirect or other taxes (including payroll tax), levies, imposts, deductions, charges (including any superannuation guarantee charge), duties (including import duty), workers compensation insurance premiums, 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.

TBM means a tunnel boring machine which forms part of the Key Plant and Equipment.

Telstra means Telstra Corporation Limited ABN 33 051 775 556.

Temporary Areas means the land described as the Temporary Areas in clause 3 of the Site Access Schedule.

Temporary Works means any temporary physical works required for the purpose of the carrying out of the Tunnelling Contractor's Activities but which does not form part of the Project Works including:

(a) any such works specified in section 2.2 of the Particular Specification; and

(b) the Handover Works,

and including, to the extent relevant to such works, Changes directed in accordance with this deed.

Tender means the response provided by a Tenderer to undertake the Tunnelling Contractor's Activities.

Tender Form means the document entitled Tender Form executed by the Tunnelling Contractor as part of its Tender.

Tenderer means an entity which submits a Tender for the Tunnelling Contractor's Activities in response to the Request for Tender.

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

TfNSW (Maritime) Construction Licence means the Draft Third Party Agreement titled "Deed of Agreement to Grant a Non-Exclusive Construction Licence" between the Principal and TfNSW (as may be updated or replaced in accordance with clause 12.24).

TfNSW (Maritime) Construction Licence Handover Works has the meaning given to the term "Handover Works" in the TfNSW (Maritime) Construction Licence.

TfNSW (Maritime) Construction Licence Interface Works has the meaning given to the term "Interface Works" in the TfNSW (Maritime) Construction Licence

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

Third Party Agreement means:

(a) an agreement referred to in Schedule D8 and any Adjoining Property Owner Agreement which has been, or will be, entered into by the Principal; and

(b) any Draft Third Party Agreement or Additional Third Party Agreement which the Tunnelling Contractor must comply with pursuant to clause 12.24.

Third Party Agreement Design Documentation means any Design Documentation that is required to be submitted under or in connection with any Third Party Agreement.

Third Party Works means the Local Area Works, Property Works and Utility Service Works.

Toxicity Characteristic Leaching Procedure (TCLP) has the meaning described in *Test Methods for Evaluating Solid Waste, Physical / Chemical Methods* (USEPA 2007) as amended from time to time, as applied in accordance with the Waste Classification Guidelines.

TPA Extra Land has the meaning given in clause 12.6(c)(iii).

Transitional Handover Services means, in respect of any:

(a) Milestone Area for which the Principal's Representative gives a notice under clause 19.16(a); or

(b) Portion for which the Principal's Representative gives a notice under clause 19.16(a),

the relevant activities set out in Schedule A4 required to be performed after Milestone Achievement of the Milestone associated with the Milestone Area or Substantial Completion of the Portion.

Transitional Handover Services Payment Schedule means Schedule E3.

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

Tunnelling Contract Documents means:

(a) this deed;

(b) the Independent Certifier Deed;

(c) the Master Interface Deed;

(d) the Collateral Warranty Deed Poll;

(e) the IDAR Panel Agreement;

(f) the Deeds of Disclaimer;

[redacted]

(h) any side deed entered into between the Principal, the Tunnelling Contractor and a Significant Subcontractor under this deed; and

(i) any document which the Principal and the Tunnelling Contractor acknowledge in writing to be a Tunnelling Contract Document.

Tunnelling Contractor Insurance Policy means a policy of insurance required under clause 23.5.

Tunnelling Contractor's Activities means all things and tasks which the Tunnelling Contractor is, or may be, required to carry out or do under this deed to comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by the Tunnelling Contractor to another person, including designing and constructing the Project Works and Temporary Works and carrying out any required Transitional Handover Services.

Tunnelling Contractor's Controlling Corporation means the Tunnelling Contractor in its capacity as a "controlling corporation" within the meaning of the NGER Legislation.

Tunnelling Contractor's Emissions and Energy Data means any Emissions and Energy Data relating to any aspect of the Tunnelling Contractor's Activities, or the activities of any

Subcontractors engaged by the Tunnelling Contractor, in connection with the Tunnelling Contractor's Activities under this deed, including any such Emissions and Energy Data that:

(a) the Tunnelling Contractor is required at any time to keep or to provide to the Principal or to any Authority (or both) pursuant to an obligation under this deed;

(b) the Tunnelling Contractor or the Tunnelling Contractor's Controlling Corporation is required at any time to keep or to provide to the Principal or to any Authority (or both) pursuant to an obligation at Law (including an obligation under the NGER Legislation); or

(c) the Tunnelling Contractor or the Tunnelling Contractor's Controlling Corporation is entitled at any time to provide to the Clean Energy Regulator under the NGER Legislation concerning any greenhouse gas project.

Tunnelling Contractor's Tender Design means the tender design prepared by the Tunnelling Contractor and included at Attachment B of the Particular Specification.

Tunnelling Specification means the specification for the Tunnelling Contractor's Activities set out in Schedule C1, comprising:

(a) the General Specification; and

(b) the Particular Specification.

Unowned Parcel means a parcel of land and property of which the Principal is not the registered proprietor and in relation to which, or upon which, Property Works are to be undertaken.

Urgent Defect means a Defect, which:

[redacted]

Utility Service means any utility, service, facility or item of public (State or Federal) or private infrastructure, including railway systems, above ground and below ground utilities, services or facilities in a rail, pedestrian or vehicular corridor, water, electricity, gas, ethane, fuel, telephone, drainage, stormwater, sewerage, industrial waste disposal and electronic communications service.

Utility Service Works means the construction, modification, relocation or protection of Utility Services all of which are to be designed and/or constructed by the Tunnelling Contractor and handed over to the Principal, an Authority or any other person in accordance with this deed including any such works specified in section 2.1.3.3 of the Particular Specification (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Validation Report has the meaning given in the Contaminated Land Guidelines: Consultants Reporting on Contaminated Land (NSW EPA, 2020).

Virgin Excavated Natural Material (VENM) means Waste which is virgin excavated natural material as defined in the *Protection of the Environment Operations Act 1997* (NSW).

Waste has the meaning given in the *Protection of the Environment Operations Act 1997* (NSW).

Waste Classification Guidelines means the NSW EPA *Waste Classification Guidelines (2014)* as revised from time to time.

Waste Management Plan means the waste management plan that is detailed under Chapter 14 of the Metro Construction Environmental Management Framework (CEMF).

WHS Accreditation Scheme means the Australian Government Building and Construction WHS Accreditation Scheme established by the BCIIP Act, or any scheme replacing it.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Codes of Practice means the codes of practice published by SafeWork NSW on the website "https://www.safework.nsw.gov.au/resource-library/list-of-all-codes-of-practice/pre-whs-codes-accordion/whs-codes-of-practice" (or any replacement website established by SafeWork NSW to provide the same or similar information regarding approved codes of practice).

WHS Legislation means:

(a) the WHS Act and the WHS Regulation; and

(b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Project Works, the Temporary Works or the Tunnelling Contractor's Activities.

WHS Management Systems and Auditing Guidelines means the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (5th edition) September 2013 (updated May 2014), or any document issued from time to time which amends or replaces this document.

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW).

Wilful Misconduct means any malicious conduct or any breach of this deed which results from a conscious and intentional indifference and disregard to the relevant provisions of this deed and the risk of causing the Loss claimed by the relevant party in respect of the breach but does not include errors of judgement, mistakes, errors or acts or omissions made in good faith.

Witness Point means a point in a work process for which the Tunnelling Contractor must give prior notice to the Principal's Representative to allow the Principal's Representative to attend and witness the point in the work process should it choose to do so.

Work as Executed Design Documentation has the meaning given in section 9.2 of the General Specification.

Workforce Development and Industry Participation Plan means the Project Plan referred to as the Workforce Development and Industry Participation Plan in section 5.1.16 of the General Specification, as updated from time to time in accordance with clause 11.4.

Workplace Relations Management Plan means the Project Plan of that name referred to in clause 29.6 and section 5.1.17 of the General Specification, an initial version of which is included in Attachment B of the General Specification, as updated from time to time in accordance with clause 11.4.

Works means the physical works which the Tunnelling Contractor must design, construct, complete and hand over to the Principal in accordance with this deed (including, to the

extent relevant to such works, Changes directed in accordance with this deed) but excluding the Third Party Works and the Temporary Works.

WUA means Water Utilities Australia Pty Ltd ABN 49 129 876 213.

1.2 **Interpretation**

In this deed:

(a) headings are for convenience only and do not affect the interpretation of this deed,

and unless the context indicates a contrary intention:

(b) "person" includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(c) a reference to a party is a reference to a party to this deed and includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(d) "includes" in any form is not a word of limitation;

(e) 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 object as that Authority, institute, association or body;

(f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or Code and Standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;

(g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

(h) a reference to a part, clause, schedule, exhibit, attachment or annexure is a reference to a part, clause, schedule, exhibit, attachment or annexure to or of this deed;

(i) a reference to:

(i) this deed includes all schedules, exhibits (subject to clause 12.9(b)(ii)), attachments and annexures to it, including the Tunnelling Specification; and

(ii) a reference to the Tunnelling Specification includes all Appendices to the Tunnelling Specification;

(j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;

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

(l) for the purposes of clauses 19.6 and 19.10:

(i) any extension of time stated in days; or

(ii) any reference to "day",

will exclude days which are public holidays in Sydney and include only those days which are stated in the most recent Overall D&C Program submitted under clause 19.2(a) as working days;

(m) for all purposes other than as set out in clause 1.2(l), "day" means calendar day;

(n) a reference to a court or tribunal is to an Australian court or tribunal;

(o) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;

(p) a reference to a "month" is a reference to a calendar month;

(q) a reference to "$" or "dollar" is to Australian currency;

(r) the Environmental Representative will perform the functions of the Environmental Representative or the ER under the Planning Approvals and this deed;

(s) subject to clause 14.3(c), any reference to:

(i) the Project Works (including the Third Party Works);

(ii) the Temporary Works;

(iii) the Project Plans or the Asset Management Information;

(iv) the Tunnelling Specification;

(v) the General Specification;

(vi) the Particular Specification;

(vii) the Design Documentation; or

(viii) any other document or thing,

or any part of any of them:

(ix) being fit for its purpose or for its intended purpose; or

(x) as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to:

(xi) the Principal's intention that the Project Works will be used as an integral part of an operating rail system intended to provide frequent high speed mass transit services between Westmead and Sydney CBD and which may:

(A) be required to accommodate and utilise various rolling stock, railway track, rail systems and related equipment;

(B) be subject to continuous operation;

(C) be operated by either the State of New South Wales or by private operator(s) on its behalf;

(D) involve further development of rail stations, including station structures and fitout to the extent referred to in this deed;

(E) be upgraded, augmented, extended and expanded to the extent referred to in this deed;

(F) be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed; and

(G) involve future construction and development of buildings and/or other infrastructure on, over or adjacent to railway stations to the extent referred to in this deed; and

(xii) any purpose, intended purpose or intended use stated in, contemplated by or ascertainable:

(A) in respect of the Works and the Temporary Works, on or prior to the Date of Substantial Completion of the relevant Portion; and

(B) in respect of Third Party Works, on or prior to the date of handover to the relevant Authority or Owner,

from:

(C) this deed, including:

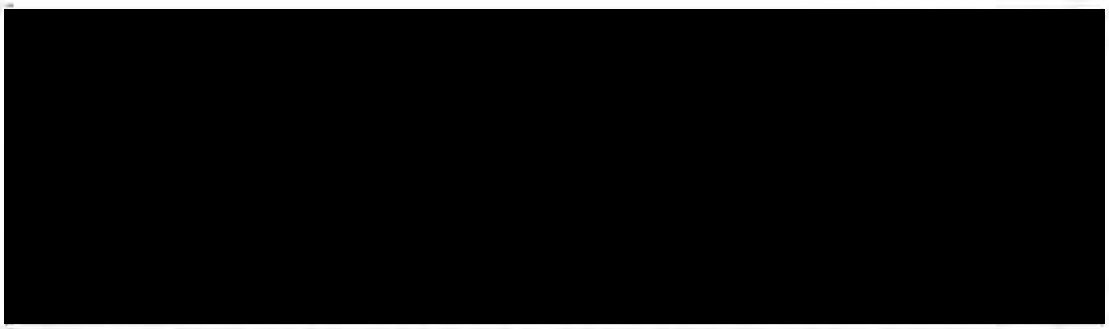
(aa) the objectives referred to in clause 3.2; and

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

(D) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change) any document provided by the Principal to the Tunnelling Contractor specifically in connection with the Change (excluding any information, data, document or material which is referred to in Schedule A21);

(t) subject to clause 14.3(c), any reference to the Project Works or any part of any of them being capable of remaining at all relevant times fit for their purpose or for their intended purpose will be read as being subject to the Principal, OpCo (or, if applicable, any Alternate Operator) and their respective Associates operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information (as described in section 7 of the General Specification);

[redacted]



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

(w) any obligation of the Tunnelling Contractor under this deed with respect to:

(i) a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by the Tunnelling Contractor to the Principal's Representative and the Independent Certifier under clause 11.3 in respect of which the Principal's Representative (or, when applicable, the Independent Certifier) has not given a notice under clause 11.3(b)(ii); or

(ii) the Asset Management Information will be read as an obligation with respect to the version of the relevant Asset Management Information last submitted by the Tunnelling Contractor to the Principal's Representative under clause 16.13:

(A) which has not been rejected by the Independent Certifier under clause 16.13(j)(ii)(A); and

(B) in respect of which the Principal's Representative has not given a direction under clause 16.13(j)(iii);

(x) if a Project Plan seeks to impose any obligation on the Principal, the Tunnelling Contractor will not be entitled to make any Claim against the Principal in respect of that obligation (unless that same obligation is expressly imposed on the Principal in a clause or schedule);

(y) words and terms defined in the GST Law have the same meaning in clauses concerning GST;

(z) on the basis that the Principal is notionally liable to pay GST under the GST Law, a reference in this deed to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement; and

(aa) if a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled.

1.3 **Contra proferentem**

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party (or its representative) put forward or drafted this deed or any provision in it.

1.4 **Ambiguous terms**

(a) If the Principal's Representative considers, or if the Tunnelling Contractor notifies the Principal's Representative in writing that it considers, that there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed (including in any schedules and exhibits), the Principal's Representative must, subject to clause 1.5, direct the interpretation of this deed which the Tunnelling Contractor must follow.

(b) The Principal's Representative, in giving a direction in accordance with clause 1.4(a), is not required to determine whether or not there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed.

(c) Any direction which the Principal's Representative gives in accordance with clause 1.4(a):

(i) will not relieve the Tunnelling Contractor from or alter its liabilities or obligations under this deed or otherwise according to Law;

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

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

(iv) must, in respect of a notice given by the Tunnelling Contractor under clause 1.4(a), be given within 20 Business Days of receipt of that notice.

1.5 **Order of precedence**

The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:

(a) subject to clauses 1.5(b) to 1.5(d), to the extent the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:

(i) this deed excluding the schedules and exhibits; and

(ii) the schedules and exhibits;

(b) where there is an ambiguity, discrepancy or inconsistency in or between different codes, standards, specifications or guidelines with which the Tunnelling Contractor must comply, the order of precedence set out in section 9.1 of the General Specification will apply;

(c) to the extent paragraph (b) does not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between different parts of the Tunnelling Specification and the Planning Approval, the part of the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will prevail (unless directed otherwise by the Principal's Representative);

(d) to the extent paragraphs (b) and (c) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required scope, quantum, quality, standard, safety or other requirement of the Project Works or the Temporary Works, the highest scope, quantum, quality,

standard or other requirement on the Tunnelling Contractor or the more onerous obligation specified will prevail; and

(e) to the extent paragraphs (a) to (d) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured will prevail over the scaled dimensions.

The documents comprising this deed (including the Tunnelling Specification) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.

1.6 **Severability**

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the law of any jurisdiction (including the SOP Act), then:

(a) that will not affect or impair:

(i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or

(ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed; and

(b) the provision will be construed in a manner which:

(i) avoids the provision being void, illegal, invalid or unenforceable; and

(ii) subject to clause 1.6(b)(i), preserves to the maximum possible extent:

(A) the enforceability of the provision and the provisions of this deed; and

(B) the original effect and intent of this deed.

1.7 **Authorities**

(a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:

(i) the Principal to exercise any of its functions and powers pursuant to any Law; or

(ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter.

(b) The Tunnelling Contractor acknowledges and agrees that, without limiting clause 1.7(a), anything which the Principal or the ASA does, fails to do or purports to do pursuant to their respective functions and powers either as an AEO or under any Law or under the ASA Charter will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with this deed and will not entitle the Tunnelling Contractor to make any Claim against the Principal.

(c) The parties agree that clauses 1.7(a) and 1.7(b) are taken not to limit any liability which the Principal would have had to the Tunnelling Contractor under this deed as a result of a breach by the Principal of a term of this deed but for clauses 1.7(a) and 1.7(b) of this deed.

(d) The Tunnelling Contractor acknowledges and agrees that:

(i) there are many Authorities (other than the Principal) with jurisdiction over aspects of the Tunnelling Contractor's Activities, parts of the Construction Site and other areas affected by the Tunnelling Contractor's Activities (including Extra Land);

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

(iii) except to the extent expressly stated otherwise in this deed, the Tunnelling Contractor bears the full risk of all occurrences of the kind referred to in clause 1.7(d)(ii) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.8 Electronic files

Where this deed (including the Tunnelling Specification) refers to an electronic file on a separate disc which forms part of this deed, such electronic files are contained in the disc or discs included in Schedule F1.

1.9 Sydney Metro West Delivery Strategy

(a) The parties acknowledge that as at the date of this deed the Principal is still finalising the procurement and delivery strategy for Sydney Metro West. This includes the possibility that the Principal will enter into an OpCo Project Deed under which OpCo would undertake the OpCo Project Works and subsequently operate and maintain Sydney Metro West.

(b) The Principal will notify the Tunnelling Contractor in writing of the approved procurement and delivery strategy for Sydney Metro West following its finalisation and on any material changes to this strategy over time.

(c) If OpCo is not selected as part of the approved procurement and delivery strategy for Sydney Metro West the Principal may procure the delivery of the OpCo Project Works by alternative means and engage an Alternate Operator to operate Sydney Metro West. This deed therefore contemplates that:

(i) the OpCo Project Works may be carried out by OpCo and/or one or more Interface Contractors; and

(ii) the operation and maintenance of Sydney Metro West may be carried out by OpCo or an Alternate Operator and/or an Interface Contractor.

2. CONDITIONS PRECEDENT

2.1 Commencement of obligations

The rights and obligations of the parties under this deed will not commence unless and until each of the Conditions Precedent have been satisfied (or waived under clause 2.3), except for those under the Day 1 Clauses which will commence on the date of this deed.

2.2 **Satisfaction of Conditions Precedent**

(a) The parties must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be for the benefit of the other party (or for the benefit of both parties) by the relevant Condition Precedent Deadline Date.

(b) When a party is of the opinion that a Condition Precedent has been satisfied it must give the other party notice of its opinion.

(c) The party receiving a notice given under clause 2.2(b) must promptly notify the other party whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.

(d) If the party receiving a notice given under clause 2.2(b) fails to give the other party a notice under clause 2.2(c) within 5 Business Days, the Condition Precedent will be deemed to have been satisfied.

(e) Upon the satisfaction (or waiver under clause 2.3) of all Conditions Precedent, the parties must promptly acknowledge in writing that all Conditions Precedent have been satisfied (or waived).

2.3 **Waiver of Conditions Precedent**

A Condition Precedent is waived if, and only if:

(a) where the Condition Precedent is included for the benefit of a particular party, that party gives notice of the waiver of the Condition Precedent to the other party; and

(b) where the Condition Precedent is included for the benefit of both parties, both parties agree in writing to waive the Condition Precedent.

2.4 **Condition Precedent Deadline Date**

(a) If a Condition Precedent has not been satisfied (or waived under clause 2.3) by 5.00 pm on the relevant Condition Precedent Deadline Date, then the party listed as the "Benefiting Party" in Schedule A1 in respect of that Condition Precedent (or, if both parties are the "Benefiting Party" in respect of that Condition Precedent, either party) may give notice in writing to the other party that it is terminating this deed if the Condition Precedent in question is not satisfied (or waived under clause 2.3) within the period specified in its notice (which must not be less than 2 Business Days).

(b) If a party gives notice under clause 2.4(a) and the Condition Precedent in question is not satisfied (or waived under clause 2.3) within the period specified in that notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.

(c) If this deed is terminated pursuant to this clause 2.4:

(i) each of the other Tunnelling Contract Documents will be taken to have terminated at the time this deed is terminated;

(ii) the Principal must return all unconditional undertakings provided by the Tunnelling Contractor within 10 Business Days after the date of termination of this deed; and

(iii) no party will have any Claim against any other party under or in respect of the Tunnelling Contract Documents or in respect of the reimbursement of costs or expenses or otherwise in connection with Sydney Metro West, except for any Claim in relation to a breach of any Day 1 Clause.

3. OBJECTIVES AND PROJECT VALUES

3.1 Objectives for Sydney Metro West

The Principal's objectives for Sydney Metro West are to:

(a) deliver outcomes that align with and support key strategic land use and transport frameworks including the *Smart Cities Plan, Greater Sydney Region Plan and the District Plans*;

(b) boost Sydney's international competitiveness, productivity and employment growth by supporting new and existing centres;

(c) unlock employment growth opportunities;

(d) support future housing needs by increasing housing supply, choice and affordability;

(e) unlock additional housing supply;

(f) improve liveability and provide a catalyst for positive change by unlocking urban renewal opportunities, enhancing housing supply and supporting productivity centres;

(g) support urban renewal initiatives in the Greater Parramatta to Sydney CBD corridor, including key government precincts such as GPOP and The Bays precinct;

(h) ensure transport services are meeting the needs of customers;

(i) reduce travel times between key destinations, providing new access to mass transit rail;

(j) improve access to and resilience of the transport network through integrated land use and transport planning, including the integration of Sydney Metro West with other modes;

(k) relieve congestion on the busy T1 Western Line and T2 Inner West Line, increasing rail patronage and mode shift and relieving bus and road congestion in the study area; and

(l) ensure value for money and a sustainable and deliverable solution.

3.2 Objectives for the Project Works, the Temporary Works and the Tunnelling Contractor's Activities

The Principal's objectives for the Project Works, the Temporary Works and the Tunnelling Contractor's Activities are to:

(a) ensure the Project Works and the Temporary Works are safe and de-risked through innovation and expertise in planning, design and delivery methodologies;

(b) provide the tunnel infrastructure required for conveying passenger rolling stock over a 120-year Design Life between Westmead and Sydney Olympic Park;

(c) deliver the Project Works and the Temporary Works and perform the Tunnelling Contractor's Activities in a collaborative and cooperative manner to ensure the timely and effective delivery of Sydney Metro West;

(d) minimise impacts on the environment, including but not limited to noise and vibration, air quality, traffic and transport, heritage, waste, water and energy management and embodied environmental impacts;

(e) maximise opportunities in relation to social sustainability, including workforce development and local procurement;

(f) minimise disruption, delay and inconvenience to the affected public, road and public transport users, adjacent businesses, stakeholders and the community during the construction of the Project Works and the Temporary Works and the performance of the Tunnelling Contractor's Activities;

(g) achieve a value-for-money outcome when viewed on the basis of effective risk management, certainty of delivery and whole-of-life cost; and

(h) commence tunnelling in Q2 2023 and progressively:

(i) achieve each Milestone by the applicable Date for Milestone Achievement; and

(ii) hand over the completed Portions of the Project Works by the applicable Dates for Substantial Completion,

and in accordance with the requirements of this deed (including the Tunnelling Specification).

3.3 Achievement of the Project Values

The parties:

(a) acknowledge that adherence to and upholding of the Project Values is of fundamental importance to the Principal; and

(b) agree to:

(i) adhere to and uphold the Project Values; and

(ii) work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this deed.

4. GENERAL OBLIGATIONS

4.1 General

The Tunnelling Contractor:

(a) must carry out the Tunnelling Contractor's Activities (including any Transitional Handover Services (if applicable)), including investigating, designing, constructing, commissioning and handing over the Project Works and the Handover Works, in accordance with this deed;

(b) must comply with all Directions of the Principal's Representative given under the Tunnelling Contract Documents;

(c) warrants that the Project Works and the Handover Works will, upon Substantial Completion:

(i) be fit for their intended purposes; and

(ii) be capable of remaining at all relevant times fit for their intended purpose; and

(d) warrants that the Temporary Works (other than the Handover Works, which are subject to clause 4.1(c)) will at all relevant times be fit for their intended purposes.

4.2 **Acceptance of risk**

Subject to the express provisions of the Tunnelling Contract Documents, the Tunnelling Contractor:

(a) accepts responsibility for and the risk of any Loss, delays or disruptions which it incurs or suffers arising out of or in any way in connection with, the performance of its obligations under this deed, including the following risks:

(i) the performance and cost of all Subcontractors;

(ii) the impact and interface with Interface Contractors under clause 4.10;

(iii) obtaining access to all areas other than the Construction Site under clause 12.6 and clause 12.25(h);

(iv) the Site Conditions encountered including under clause 12.8;

(v) all information provided or not provided by the Principal about the Project Works, the Temporary Works, Sydney Metro West and the Construction Site;

(vi) Artefacts, State Significant Artefacts and Aboriginal Objects under clause 12.13;

(vii) Hazardous Material under clauses 12.15 and 12.16;

(viii) Contamination under clauses 12.17 and 12.22;

(ix) complying with Schedule D5, Schedule D6 and clause 12.24;

(x) complying with Schedule D7 and clause 12.25;

(xi) congestion on approach roads to the Construction Site or any waterways used to access the Construction Site and any other difficulties with obtaining access to and from the Construction Site;

(xii) complying with all Laws, Approvals and requirements of Authorities;

(xiii) the existence, location, condition and availability of Utility Services in respect of the Tunnelling Contractor's Activities;

(xiv) reliance upon or the use of the Initial ECI Design or the Tunnelling Contractor's Tender Design;

(xv) providing all Materials, Construction Plant, Utility Services and labour necessary for the Tunnelling Contractor's Activities under clause 16.6;

(xvi) industrial relations issues;

(xvii) foreign exchange movements in any currencies adverse to the Tunnelling Contractor;

(xviii) increases in the costs of Materials, Construction Plant, Utility Services and labour required for the performance of the Tunnelling Contractor's Activities;

(xix) damage to the Tunnelling Contractor's Activities, Project Works, Temporary Works, Construction Site or any Extra Land under clause 23.1; and

(xx) third party claims under clause 23.2; and

(b) accepts responsibility for and the risk of all:

(i) delay, disruption or additional cost; and

(ii) constructability issues or challenges,

which may arise out of or in connection with the alignment, location, position, level or dimensions of the Project Works and notwithstanding that any of these may have been specified in whole or in part by the Principal in the Tunnelling Specification.

4.3 **Environmental requirements**

(a) The Tunnelling Contractor must not use the Construction Site or any Extra Land, or allow its Associates to use the Construction Site or any Extra Land, so that:

(i) any Hazardous Chemical is abandoned or dumped on the Construction Site or any Extra Land;

(ii) any Hazardous Chemical or Hazardous Material is handled in a manner which is likely to cause a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics; or

(iii) any other substance is released from, deposited to, or emanates from, the Construction Site or any Extra Land as a result of the Tunnelling Contractor's Activities such that a state of Contamination occurs, except to the extent such release, deposit, or emanation was an unavoidable consequence of performing the Tunnelling Contractor's Activities in accordance with Good Industry Practice and otherwise in accordance with the requirements of this deed.

(b) The Tunnelling Contractor must at all times carry out, and ensure that its Associates carry out, the Tunnelling Contractor's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment.

(c) The Tunnelling Contractor must, without limiting clause 7.1 or clause 7.2 but subject to clause 7.2(a)(ii):

(i) comply with, and ensure that its Associates in performing the Tunnelling Contractor's Activities comply with:

(A) all Laws relating to the Environment;

(B) all Environmental Notices; and

(C) the Construction Environmental Management Plan and the Sustainability Management Plan; and

(ii) obtain and comply with all requirements of, and ensure that its Associates in performing the Tunnelling Contractor's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Construction Site or any Extra Land into the air or water or onto the ground or otherwise into the Environment, including to emit any substantial noise or vibrations.

(d) The Tunnelling Contractor must carry out all parts of the Tunnelling Contractor's Activities that may impact upon Sensitive Land Use(s):

(i) in accordance with:

(A) Good Industry Practice;

(B) Law and all guidelines made or approved by the EPA;

(C) the 'Detailed Noise and Vibration Impact Statements' prepared and updated in accordance with conditions D43 and D44 of the Project Planning Approval; and

(D) the 'Blast Management Strategy' prepared and updated in accordance with conditions D54 to D57 of the Project Planning Approval; and

(ii) in a manner that adopts all reasonable and feasible measures to minimise the impact of construction noise and vibration on Sensitive Land Use(s).

(e) Unless otherwise specified in Schedule D4 and without limiting the Tunnelling Contractor's other obligations or express entitlements under this deed, and insofar as they apply to the Project Works, Temporary Works or Tunnelling Contractor's Activities, the Tunnelling Contractor must comply with, carry out and fulfil the conditions and requirements of the Planning Approvals, including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Planning Approvals to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, Temporary Works and Tunnelling Contractor's Activities.

(f) The Tunnelling Contractor must immediately notify the Principal in writing as soon as the Tunnelling Contractor:

(i) becomes aware of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any Law or Approval regarding the Environment in the performance of the Tunnelling Contractor's Activities;

(ii) becomes aware of any information, fact or circumstance where, if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of the Tunnelling Contractor in relation to the information, fact or circumstances); or

(iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case the Tunnelling Contractor must provide to the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification.

(g) Any notice given by the Tunnelling Contractor under clause 4.3(f)(ii) must include such details and other information as the Principal would be required to provide to

any relevant Authority pursuant to any Law relating to the Environment and must be in a format reasonably capable of provision to any such Authority.

4.4 **Utility Services**

(a) The Tunnelling Contractor:

(i) must obtain and pay for any Utility Services and all connections for all Utility Services it needs to perform its obligations under this deed;

(ii) must investigate, protect, relocate, remove, modify, support, reinstate and provide for Utility Services necessary for the Tunnelling Contractor to comply with its obligations under this deed;

(iii) must not, without the Principal's Representative's prior written consent, obtain any Utility Services or connect any Utility Services to the Project Works that are not necessary to allow the Tunnelling Contractor to carry out the Tunnelling Contractor's Activities;

(iv) must obtain the Principal's Representative's prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any new connections for Utility Services or changes or modifications to existing connections for Utility Services;

(v) must consult with and keep the Principal fully informed as to dealings with the Authorities and owners of Utility Services and comply fully with their requirements;

(vi) must ensure there are no unplanned disruptions to the Utility Services in carrying out the Tunnelling Contractor's Activities and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of the Tunnelling Contractor's Activities;

(vii) must ensure that maintenance points for Utility Services are located within the Project Site in a location approved by the Principal's Representative in writing (such approval not to be unreasonably withheld or delayed);

(viii) except to the extent expressly provided otherwise by this deed, must contract for the provision of, acquire or otherwise procure or provide all Materials, Construction Plant and Utility Services (including electricity) required for the performance of its obligations under this deed; and

(ix) must, to the extent not prohibited by Law, indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in connection with:

(A) any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with:

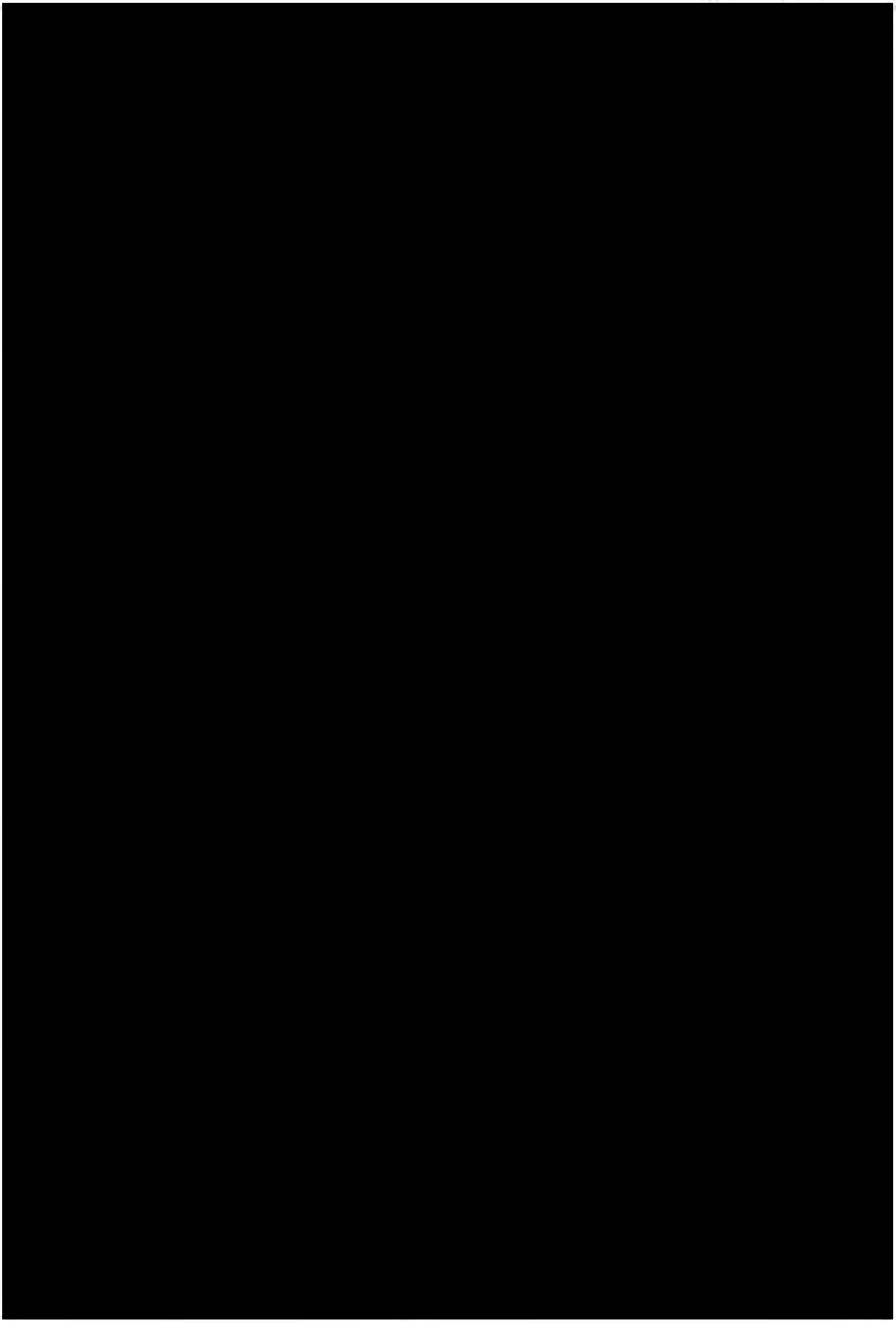
(aa) a failure by the Tunnelling Contractor to comply with any obligations under this deed; or

(bb) any act or omission of the Tunnelling Contractor or its Associates; or

(B) a failure by the Tunnelling Contractor to comply with any obligation under this deed with respect to Utility Services or the Utility Service Works including the Tunnelling Contractor's obligations under the Tunnelling Specification (including sections 2.1.3.3 and 3.1 of the Particular Specification).

(b) [redacted] the Tunnelling Contractor is responsible for, and assumes the risk of all additional work, increased costs and any other Loss, Liability, claim, delay or disruption (including any delay in achieving Milestone Achievement, Substantial Completion and Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of the Tunnelling Contractor's Activities.

[redacted]



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4.5 **Control of traffic**

The Tunnelling Contractor:

(a) is responsible for the control, direction and protection of all road, waterborne and pedestrian traffic, in any way affected by the carrying out of the Tunnelling Contractor's Activities;

(b) must, without limiting clauses 4.5(c) and 4.5(d), manage all such traffic to ensure:

(i) its continuous, safe and efficient movement;

(ii) the traffic carrying capacity of Local Areas is maintained; and

(iii) that any delays and disruptions to:

(A) road traffic and the movement of road traffic; and

(B) waterborne traffic and the movement of waterborne traffic,

are minimised;

(c) must at all times comply with the Construction Traffic Management Plan; and

(d) must comply with the directions of any relevant Authority and the Principal's Representative with respect to such management.

4.6 **Collusive arrangements**

(a) The Tunnelling Contractor:

(i) warrants that, prior to the close of Tenders, the Tunnelling Contractor had no knowledge of the Tender price of any other Tenderer and had not directly or indirectly communicated the Tunnelling Contractor's Tender price to any other Tenderer;

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

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

(aa) the Tunnelling Contractor will pay money to or confer any benefit upon any of the unsuccessful Tenderers; or

(bb) the Tunnelling Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard fee) in respect of this deed;

(B) has not made any allowance in the Tunnelling Contractor's Tender price on account of a contract, arrangement or understanding of a kind referred to in clause 4.6(a)(ii)(A); and

(C) will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 4.6(a)(ii)(A); and

(iii) acknowledges that it is aware that the Principal entered this deed in reliance upon the warranties in clause 4.6(a)(i) and clause 4.6(a)(ii).

(b) The Principal and the Tunnelling Contractor agree that if any matter warranted in clause 4.6(a)(i) or 4.6(a)(ii) is found not to be true or not to be correct, in addition to any other rights that the Principal may have, the Tunnelling Contractor:

(i) will be in fundamental breach of this deed; and

(ii) without limiting the Principal's rights under clause 24.3, must pay to the Principal as liquidated damages the sum equivalent to that paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 4.6(a)(ii).

4.7 **Community relations**

The Tunnelling Contractor:

(a) acknowledges that the areas where the Tunnelling Contractor's Activities are being carried out are of great importance to many people, including stakeholders, local residents and businesses; and

(b) must manage and participate in all community relations and involvement programs and activities as:

(i) required by the Tunnelling Specification (including section 6 of the General Specification);

(ii) contained in the Sydney Metro Overarching Community Communications Strategy;

(iii) contained in the Community Communications Strategy; or

(iv) reasonably required by the Principal from time to time.

4.8 **Media events**

(a) The Tunnelling Contractor must:

(i) permit the Principal and the NSW Government to hold media events on the Construction Site:

(A) on or about the occurrence of each of the milestones specified in section 6.16.2 of the General Specification; and

(B) at such other times as may be reasonably requested by the Principal; and

(ii) co-operate with the Principal and provide all reasonable assistance that the Principal may request in connection with any such media event.

(b) Where the Principal holds a media event:

(i) on or about the occurrence of a milestone specified in section 6.16.2 of the General Specification, the Tunnelling Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with such media event; or

(ii) at any other time, the Tunnelling Contractor may claim the additional Direct Costs, Overheads plus Profit Margin that it incurs in connection with any such media event but otherwise the Tunnelling Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any such media event.

4.9 **Special events**

(a) The Tunnelling Contractor:

(i) acknowledges that Special Events may be held in areas that are adjacent to or in the vicinity of parts of the Construction Site and Extra Land;

(ii) must:

(A) perform the Tunnelling Contractor's Activities so as to minimise any interference with or disruption to any Special Event (or the planning and preparation for any Special Event);

(B) co-operate with the Principal and all relevant Authorities and emergency services in relation to any Special Event (and the planning and preparation for any Special Event);

(C) coordinate the Tunnelling Contractor's Activities with any Special Event (and the planning and preparation for any Special Event); and

(D) if requested by the Principal's Representative, attend any meeting relating to any Special Event (or the planning and preparation for any Special Event),

which is adjacent to or in the vicinity of any part of the Construction Site or any Extra Land.

(b) The Tunnelling Contractor:

(i) acknowledges and agrees that the Principal will not be liable upon any Claim by the Tunnelling Contractor arising out of or in any way in connection with any Special Event (or the planning and preparation for any Special Event); and

(ii) warrants that the original Project Contract Sum (as at the date of this deed) and that the Overall D&C Program contains sufficient allowances for the assumption by the Tunnelling Contractor of the obligations and risks under this clause 4.9.

4.10 **Cooperation and coordination with Interface Contractors**

Without limiting the Tunnelling Contractor's obligations under the Master Interface Deed, the Tunnelling Contractor:

(a) acknowledges that:

(i) the Interface Work forms part of Sydney Metro West;

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

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

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

(v) Interface Contractors may require the Tunnelling Contractor to provide information to them to coordinate the design of the Interface Work with the Project Works and the Temporary Works, and this must be provided in a timely manner by the Tunnelling Contractor; and

(vi) any delay in the performance of the Tunnelling Contractor's Activities or in the Tunnelling Contractor providing information to, or cooperating and coordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the Tunnelling Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages,

(b) must at all times on a 24 hour per day, 7 day per week basis:

(i) permit Interface Contractors to execute the Interface Work on the applicable parts of the Construction Site or on any adjacent property to the Construction Site and for this purpose ensure they have safe, clean and clear access to those parts of the Construction Site, or property adjacent to the Construction

Site, required by them for the purpose of carrying out their work (subject to, where the relevant Interface Contractor is carrying out Construction Site Interface Work, the Interface Contractor executing a deed poll in favour of the Tunnelling Contractor in the form set out in Schedule 4 of the Master Interface Deed);

(ii) protect the Project Works, Temporary Works and other improvements on the Construction Site or Extra Land from accidental damage by Interface Contractors and allow goods and equipment supplied by Interface Contractors to be received and stored by the Interface Contractors on the Construction Site;

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

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

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

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

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

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

(C) monitor the progress or conduct of the Interface Work;

(D) notify the Principal's Representative of any interface or sequence of activities of which the Tunnelling Contractor is aware that may affect the commencement, progress or Milestone Achievement of any Milestone or Substantial Completion of any Portion; and

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

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

(vi) be responsible for coordinating the Tunnelling Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work;

(vii) without limiting clause 4.18(b), attend coordination meetings chaired by the Principal's Representative with Interface Contractors and others at such times as may be reasonably required by the Principal's Representative, to review current and future issues; and

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

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

(B) ensure and warrant that the information provided is accurate as at the date it is provided;

(c) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may have an adverse effect upon the Tunnelling Contractor's Activities; and

(d) must, prior to performing any construction work on an Interface Contractor's site, execute a deed poll in favour of the relevant Interface Contractor and the relevant appointed principal contractor in the form set out in Schedule 4 of the Master Interface Deed.

4.11 **No Claims arising out of Interface Work**

The Tunnelling Contractor:

(a) acknowledges and agrees that:

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

(ii) except as expressly provided in this deed, the Principal will not be liable upon any Claim by the Tunnelling Contractor arising out of or in any way in connection with:

(A) the Interface Contractors carrying out Interface Work; or

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

(b) warrants that the original Project Contract Sum (as at the date of this deed) and that the Overall D&C Program contains sufficient allowances for the assumption by the Tunnelling Contractor of the obligations and risks under clause 4.10 and this clause 4.11, including the cost of all the design iterations required to accommodate Interface Work.

4.12 **Liability under the NGER Legislation**

(a) Without limiting any other clause in this deed, the Tunnelling Contractor acknowledges and agrees that, if the Tunnelling Contractor's Activities constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and the Tunnelling Contractor will comply with any obligations arising in respect of the Tunnelling Contractor's Activities under the NGER Legislation.

(b) If, for the purpose of the NGER Legislation, the Tunnelling Contractor is not taken to have operational control of the facility or facilities referred to in clause 4.12(a):

(i) the Tunnelling Contractor must comply with any obligations arising under the NGER Legislation in respect of the Tunnelling Contractor's Activities as if it was the person with operational control of such facility or facilities; and

(ii) where section 11B(1) of the *National Greenhouse and Energy Reporting Act 2007* (Cth) applies, the Tunnelling Contractor agrees that upon written request by the Principal the parties will, for the purposes of the NGER Legislation, jointly nominate the Tunnelling Contractor as the person with operational control of such facility or facilities (with such nomination continuing until the completion of the Tunnelling Contractor's Activities) and will do all things reasonably necessary to give effect to such nomination (including providing all relevant information and completing and executing all relevant documents and forms).

(c) If, despite the operation of clauses 4.12(a) and 4.12(b), the Principal incurs, or but for this clause 4.12 would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with the Tunnelling Contractor's Activities, and the NGER Legislation provides:

(i) that such liability can be transferred by the Principal to the Tunnelling Contractor; or

(ii) for a declaration or other mechanism by which the Tunnelling Contractor can become the person with such liability under the NGER Legislation,

the Tunnelling Contractor must, upon written request by the Principal, do all things reasonably necessary to achieve such outcome (including providing all relevant information and completing and executing all relevant documents and forms).

4.13 **Provision of Emissions and Energy Data to the Principal**

(a) The Tunnelling Contractor must provide the Tunnelling Contractor's Emissions and Energy Data to the Principal's Representative:

(i) at such times as may be agreed by the Principal and the Tunnelling Contractor, or, if no such agreement is reached within 10 Business Days of receiving written notice from the Principal indicating that it requires the Tunnelling Contractor's Emissions and Energy Data to be provided; and

(ii) on each occasion that the Tunnelling Contractor is required to provide the Tunnelling Contractor's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable Law.

(b) The Tunnelling Contractor acknowledges and agrees that the Principal may use the Tunnelling Contractor's Emissions and Energy Data for any purpose as it sees fit.

4.14 **Reporting Emissions and Energy Data**

(a) This clause 4.14 applies if, despite the operation of clause 4.12, the Principal incurs a liability under or in connection with the NGER Legislation as a result of or in connection with the Tunnelling Contractor's Activities.

(b) If the Principal notifies the Tunnelling Contractor in writing that the Tunnelling Contractor is required to provide Tunnelling Contractor's Emissions and Energy Data to the Principal, then the Tunnelling Contractor must:

(i) provide the Tunnelling Contractor's Emissions and Energy Data to the Principal's Representative in the same manner, form and level of detail, based on the same methods and at the same times:

(A) as if the Tunnelling Contractor was obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and the Principal was that Authority;

(B) in accordance with the requirements or approvals of any Authority and any directions by the Principal's Representative; and

(C) without limiting clauses 4.14(b)(i)(A) or 4.14(b)(i)(B), as may be required to enable the Principal:

(aa) to discharge, as and when they fall due, any obligations that it may have to provide the Tunnelling Contractor's Emissions and Energy Data to any Authority; and

(bb) to provide to the Clean Energy Regulator, any Tunnelling Contractor's Emissions and Energy Data concerning any greenhouse gas project;

(ii) keep all such Tunnelling Contractor's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 4.14(b)(i);

(iii) retain records of its activities that are the basis of its Tunnelling Contractor's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and

(iv) permit the Tunnelling Contractor's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the Principal or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 4.14(b)(ii) and 4.14(b)(iii)) and answering questions.

(c) Without limiting clause 4.14(b), the Tunnelling Contractor must assist the Principal to comply with the NGER Legislation in relation to any aspect of the Tunnelling Contractor's Activities.

(d) The Tunnelling Contractor acknowledges and agrees that:

(i) the Tunnelling Contractor's Emissions and Energy Data is provided to the Principal:

(A) to discharge any obligations that the Principal may have to provide such Data to an Authority; and

(B) so that the Principal may provide to the Clean Energy Regulator any Tunnelling Contractor's Emissions and Energy Data concerning any greenhouse gas project;

(ii) the Principal may provide or otherwise disclose the Tunnelling Contractor's Emissions and Energy Data to any applicable Authority; and

(iii) nothing in this clause 4.14 is to be taken as meaning that the Principal has agreed to perform on behalf of the Tunnelling Contractor, any obligation that the Tunnelling Contractor itself may have under any Law regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

4.15 **Indemnity**

The Tunnelling Contractor must at all times indemnify the Principal and its Associates from and against any claims against the Principal, or Loss suffered or incurred by the Principal or its Associates, arising out of or in connection with:

(a) the Tunnelling Contractor's breach of its obligations; and

(b) any inaccuracy or omission in information provided to the Principal,

under clauses 4.12, 4.13 and 4.14.

4.16 **Sustainability**

(a) The Tunnelling Contractor must comply with the requirements of and achieve the sustainability ratings set out in section 2.8 of the General Specification.

(b) Without limiting clause 4.16(a), in order to achieve the ratings referred to in section 2.8 of the General Specification the Tunnelling Contractor must:

(i) register with the Infrastructure Sustainability Council of Australia for the purposes of obtaining the ratings;

(ii) cooperate and liaise with the Infrastructure Sustainability Council of Australia as required; and

(iii) provide any documentation required by the Infrastructure Sustainability Council of Australia.

4.17 **Environmental Management System**

The Tunnelling Contractor must implement an Environmental Management System in accordance with the applicable requirements of the Tunnelling Specification, including section 2.5.4 of the General Specification.

4.18 **Master Interface Deed**

(a) The Tunnelling Contractor must:

(i) on or before the Condition Precedent Deadline Date, provide to the Principal the Master Interface Deed, duly executed by the Tunnelling Contractor in the number of counterparts required by the Principal;

(ii) at all relevant times comply with the terms of the Master Interface Deed; and

(iii) update the Integration Management Plan as required to reflect the interface between the Tunnelling Contractor's Activities and the activities to be performed by each relevant Interface Contractor.

(b) The Tunnelling Contractor must ensure that the Interface and Integration Manager (as referred to in Schedule A9) attends and participates in all relevant Governance Forums (as that term is defined in the Master Interface Deed) established in accordance with the Master Interface Deed.

(c) The Principal will procure that OpCo and each Interface Contractor which is a member of a Delivery Site Integration Group to which the Tunnelling Contractor is also a member under the terms of the Master Interface Deed accedes to the Master Interface Deed in accordance with its terms.

(d) If:

(i) the Framework Principles are amended or replaced in accordance with clause 10.5(b) of the Master Interface Deed; and

(ii) compliance with the amended or replacement Framework Principles will have a Material Impact on the Tunnelling Contractor,

then such amendment will be treated as a Change.

4.19 **Collateral Warranty Deed Poll**

Without prejudice to the Tunnelling Contractor's obligations to execute a Collateral Warranty Deed Poll as a condition precedent to Substantial Completion of the first Portion, the Tunnelling Contractor must, within 5 Business Days of receipt of a request from the Principal, give the Principal's Representative an executed Collateral Warranty Deed Poll.

4.20 **Australian Jobs Act**

The Tunnelling Contractor must:

(a) take reasonable steps to ensure that Australian companies have full, fair and reasonable opportunities to bid for the supply of key goods and services that the Tunnelling Contractor requires in order to perform the Tunnelling Contractor's Activities; and

(b) without limiting clause 7.1, cooperate with the Principal in relation to:

(i) compliance with the requirements of the *Australian Jobs Act 2013* (Cth); and

(ii) the implementation of the Sydney Metro Australian Industry Participation Plan.

4.21 **Workforce development and industry participation**

(a) The Tunnelling Contractor together with its Subcontractors must:

(i) comply with the requirements of sections 2.9, 5.1.16 and 5.2.2.10 of the General Specification;

(ii) achieve the "Workforce Development and Industry Participation Outputs" required by section 2.9.3 of the General Specification; and

(iii) at all times comply with the requirements of the Aboriginal Participation Plan and the Workforce Development and Industry Participation Plan that the Tunnelling Contractor is permitted to use in accordance with clause 11.5.

(b) Without limiting clause 4.21(a), the Tunnelling Contractor must, and must procure that its Subcontractors (but only in respect of the Subcontractor's works):

(i) cooperate with the Principal and provide any assistance or documentation that the Principal may reasonably require in relation to the implementation of its workforce development and industry participation initiatives for Sydney Metro West;

(ii) attend and participate in working groups and forums established by the Principal in relation to its workforce development and industry participation initiatives for Sydney Metro West;

(iii) maintain records evidencing the Tunnelling Contractor's compliance with the requirements of section 2.9 of the General Specification; and

(iv) make available all records maintained in accordance with clause 4.21(b)(iii) to the Principal or its nominees.

(c) Without limiting its other obligations under this clause 4.21, the Tunnelling Contractor must maximise opportunities for its Subcontractors to contribute to the Tunnelling Contractor's achievement of the "Workforce Development and Industry Participation Outputs" required by section 2.9.3 of the General Specification.

5. SUBCONTRACTING

5.1 Subcontracting by the Tunnelling Contractor

(a) Subject to this clause 5, the Tunnelling Contractor may enter into Subcontracts for the performance of the Tunnelling Contractor's Activities or any part of them.

(b) The Tunnelling Contractor will be liable to the Principal for the acts and omissions of Subcontractors in connection with the Tunnelling Contractor's Activities as if such acts or omissions were acts or omissions of the Tunnelling Contractor.

(c) The Tunnelling Contractor must, in respect of the Designated Significant Subcontractors only, procure that the Subcontractor execute a deed in the form of Schedule A14 and provide this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor.

(d) Subcontracting by the Tunnelling Contractor of any obligation under the Tunnelling Contract Documents will not relieve the Tunnelling Contractor of, or otherwise affect, any obligation or Liability it has to the Principal under the Tunnelling Contract Documents.

5.2 Significant Subcontracts

(a) The Tunnelling Contractor must not:

(i) other than with a Subcontractor named in Schedule A6 (with respect to the corresponding Significant Subcontract Work for that Subcontractor) or unless otherwise approved in writing by the Principal's Representative (which approval must not be unreasonably withheld or delayed), enter into; or

(ii) unless the Principal's Representative otherwise approves in writing (which approval must not be unreasonably withheld or delayed):

(A) terminate, surrender, rescind or accept repudiation of (or give the relevant Significant Subcontractor an entitlement to terminate, surrender, rescind or accept repudiation of);

(B) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in, or

(C) where it may impact the rights or increase the liabilities or obligations of the Principal:

(aa) make or permit any amendment to, or replacement of or waiver of a provision of, or

(bb) enter into any agreement or arrangement which affects the operation or interpretation of,

a Significant Subcontract.

(b) The Tunnelling Contractor must:

(i) use its best endeavours to ensure that each Significant Subcontractor:

(A) is solvent and reputable;

(B) does not have any interest or duty which conflicts in a material way with the interests of the Principal and is not involved in any business or activity which is incompatible with, or inappropriate in relation to, the Tunnelling Contractor's Activities; and

(C) has sufficient expertise and ability, and is of sufficiently high financial and commercial standing, to properly carry out the obligations of the Tunnelling Contractor which are being subcontracted to it; and

(ii) immediately upon becoming aware that a Significant Subcontractor does not satisfy the requirements of clause 5.2(b)(i), use its best endeavours to cause the Significant Subcontractor to do whatever is necessary to promptly satisfy the requirements of clause 5.2(b)(i).

(c) The Tunnelling Contractor must:

(i) use its best endeavours to ensure that each Significant Subcontractor complies with the terms of its Significant Subcontract; and

(ii) immediately notify and thereafter keep the Principal informed of:

(A) any material breach of a Significant Subcontract; or

(B) any dispute which is notified as such under a Significant Subcontract.

(d) The Tunnelling Contractor must provide the Principal with:

(i) details of each Subcontract which has a contract value of [redacted] or more, including the name of the Subcontractor and the goods or services being provided under the Subcontract; and

(ii) a copy of each Significant Subcontract (subject to removal, exclusion or redaction of any "commercial-in-confidence provisions" as that term is defined in the GIPA Act).

(e) If required by the Principal, the Tunnelling Contractor must procure that a Significant Subcontractor and if a parent company guarantee is provided to the Tunnelling Contractor by the Significant Subcontractor in respect of the relevant Significant Subcontract, its parent company, enters into a side deed with the Principal in the form of Schedule A15 (or such other form reasonably required by the Principal).

(f) The Tunnelling Contractor must at all relevant times comply with the terms of any side deed entered into in accordance with clause 5.2(e).

5.3 **Provisions to be included in Subcontracts**

The Tunnelling Contractor must (unless otherwise approved in writing by the Principal's Representative having regard to the nature and location of the Subcontractor) ensure that:

(a) except where a form of Nominated Subcontract is set out in Schedule A16, each Subcontract that it enters into in connection with the Tunnelling Contractor's

Activities, regardless of its value, includes the provisions required by section 1 of Schedule A5; and

(b) without limiting clause 5.3(a), each Significant Subcontract that it enters into in connection with the Tunnelling Contractor's Activities includes the provisions required by sections 1 and 2 of Schedule A5.

5.4 **Nominated Subcontractors**

(a) Subject to clause 5.4(aa), the Tunnelling Contractor must:

(i) enter into the Nominated Subcontracts with the Nominated Subcontractors; and

(ii) ensure that Nominated Subcontract Work is carried out by the Nominated Subcontractors pursuant to the relevant Nominated Subcontract.

(aa) In the case of Nominated Subcontract Works that are also Call-off Services, the Tunnelling Contractor will only be required to enter into the applicable Nominated Subcontract with the relevant Nominated Subcontractor if it is directed to do so by the Principal's Representative, within the time period specified by the Principal's Representative (acting reasonably).

(b) The Tunnelling Contractor will be liable to the Principal for the acts and omissions of the Nominated Subcontractors in connection with the Tunnelling Contractor's Activities as if such acts or omissions were acts or omissions of the Tunnelling Contractor.

(c) The Principal will have no Liability to the Tunnelling Contractor and the Tunnelling Contractor will not be entitled to make any Claim, arising out of or in connection with any Nominated Subcontractor or Nominated Subcontract Work including the management and interface with Nominated Subcontractors other than any adjustment to the Project Contract Sum for Provisional Sum Work and/or Call-off Services.

(d) The provisions of clause 5.2(a), clause 5.2(b)(i), clause 5.2(c) and clause 5.2(d) apply as if each Nominated Subcontract is a Significant Subcontract.

5.5 **Delivery Partner**

(a) The Tunnelling Contractor must:

(i) on or before the Condition Precedent Deadline Date, provide to the Principal the Delivery Partner Deed duly executed by the Tunnelling Contractor and the Delivery Partner and all conditions precedents precedent to the Delivery Partner Deed's effectiveness must have been satisfied or waived by the relevant parties; and

(ii) at all relevant times comply with the terms of the Delivery Partner Deed and use its best endeavours to ensure that the Delivery Partner complies with the terms of the Delivery Partner Deed.

(b) In respect of the Tunnelling Contractor's rights and obligations under the Delivery Partner Deed, the Tunnelling Contractor must notify the Principal within 5 Business Days of providing approval under clause 2.9(1) of the Delivery Partner Deed (to the extent applicable).

6. SECURITY

6.1 Unconditional undertakings

(a) On or before the Condition Precedent Deadline Date the Tunnelling Contractor must give the Principal:

(i) an unconditional undertaking for [redacted]% of the Project Contract Sum;

(ii) an unconditional undertaking for [redacted]% of the Project Contract Sum; and

(iii) an unconditional undertaking for [redacted]% of the Project Contract Sum.

(b) The unconditional undertakings provided under clause 6.1(a) are provided for the purposes of ensuring the due and proper performance by the Tunnelling Contractor of its obligations under this deed and to provide for the bearing of risk of financial burden during the time of any unresolved dispute or different to be borne by the Tunnelling Contractor.

6.2 Requirements for unconditional undertakings

Each unconditional undertaking provided under clause 6.1(a), 20.6 or 20.7 (and any replacement unconditional undertaking provided under clause 6.4 or 6.5) must be:

(a) in the form of Schedule E4 (or such other form approved by the Principal);

(b) in favour of the Principal;

(c) provided by an Acceptable Banking Institution; and

(d) payable at an office of the issuer in Sydney (or such other place approved by the Principal).

6.3 Recourse to unconditional undertakings

The Principal may have recourse to any unconditional undertaking provided under clause 6.1(a), 20.6 or 20.7 (and any replacement unconditional undertaking provided under clause 6.4, 6.5 or 6.5A) at any time.

6.4 Release of unconditional undertakings

(a) Subject to clause 6.4(d) and to the Principal's rights to have recourse to the unconditional undertakings and to the cash proceeds if one or more of the unconditional undertakings are converted into cash, the Principal must:

(i) within 20 Business Days after the Date of Substantial Completion of the last Portion to achieve Substantial Completion, release the unconditional undertaking provided by the Tunnelling Contractor under clause 6.1(a)(i) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash);

(ii) subject to clause 6.4(b), within 20 Business Days of the date which is 18 months after the Date of Substantial Completion of the last Portion to achieve Substantial Completion, release the unconditional undertaking provided by the Tunnelling Contractor under clause 6.1(a)(ii) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash); and

(iii) subject to clause 6.4(b), within 20 Business Days after the issuance of the Final Certificate by the Principal's Representative, release the unconditional

undertaking provided by the Tunnelling Contractor under clause 6.1(a)(iii) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash).

(b) If, prior to the date that is:

(i) 18 months after the Date of Substantial Completion of the last Portion to achieve Substantial Completion; or

(ii) [redacted],

the Principal has required the Tunnelling Contractor:

(iii) to correct one or more Defects pursuant to clause 17.2(a)(i); or

(iv) to carry out one or more Changes to overcome one or more Defects pursuant to clause 17.2(a)(ii),

and the Tunnelling Contractor has not corrected such Defects or carried out such Changes by:

(v) the date specified in clause 6.4(a)(ii) for release of the unconditional undertaking referred to in clause 6.1(a)(ii); or

(vi) the date specified in clause 6.4(a)(iii) for release of the unconditional undertaking referred to in clause 6.1(a)(iii),

as applicable, the Principal's entitlement to such unconditional undertaking will, from the date specified in clause 6.4(a)(ii) or 6.4(a)(iii) (as applicable), be reduced to an amount which represents [redacted] of the reasonable cost of completing the rectification of the relevant Defects and carrying out the relevant Changes (as determined by the Principal's Representative) (**Outstanding Defect Cost Amount**). The Principal's entitlement to the unconditional undertaking referred to in clause 6.1(a)(ii) or 6.1(a)(iii) (as applicable) will cease 20 Business Days after all the relevant Defects have been corrected and all the relevant Changes have been carried out (as applicable) after which the Principal must release the unconditional undertaking to the Tunnelling Contractor.

(c) Where clause 6.4(b) applies:

(i) the Tunnelling Contractor may by written notice to the Principal elect to exchange the unconditional undertaking referred to in clause 6.1(a)(ii) or clause 6.1(a)(iii) (as applicable) for an unconditional undertaking equal to the Outstanding Defect Cost Amount that satisfies the requirements of clause 6.2 (**Outstanding Defect Undertaking**);

(ii) within 20 Business Days of the Tunnelling Contractor giving notice under clause 6.4(c)(i), the Principal must surrender the unconditional undertaking referred to in clause 6.1(a)(ii) or clause 6.1(a)(iii) (as applicable) to the Tunnelling Contractor in exchange for the issue of an Outstanding Defect Undertaking; and

(iii) the Principal must release the relevant Outstanding Defect Undertaking (or the remaining proceeds of such unconditional undertaking if it has been converted into cash) within 20 Business Days after all relevant Defects have been corrected and all relevant Changes have been carried out (as applicable).

(d) Despite any other provision of this deed to the contrary, where this deed is terminated by the Principal either pursuant to clause 24 or by reason of the

Tunnelling Contractor repudiating this deed otherwise at law, the Principal may continue to hold any unconditional undertakings after the termination of this deed to the extent of any claim which the Principal may have against the Tunnelling Contractor arising out of, or in any way in connection with, this deed or the Tunnelling Contractor's Activities whether for damages (including liquidated damages) or otherwise. [redacted]

(e) The Tunnelling Contractor acknowledges and agrees that, where the Principal is required to 'return', 'release' or 'surrender' any unconditional undertaking held by it under this deed, it may do so, in its absolute discretion, by:

(i) providing a written notice in the form set out in Schedule E4A to the relevant Acceptable Banking Institution (with a copy to the Tunnelling Contractor) stating that the unconditional undertaking is no longer required and is thereby released; or

(ii) returning the original copy of the unconditional undertaking to the Tunnelling Contractor.

6.5 **Replacement of unconditional undertakings where the issuer ceases to have the Required Rating**

(a) If the issuer of any unconditional undertaking provided under this deed ceases to have the Required Rating and, at that time, another Acceptable Banking Institution acceptable to the Principal maintains the Required Rating, then the Tunnelling Contractor must:

(i) promptly notify the Principal of that circumstance; and

(ii) within 20 Business Days of being requested to do so, procure the issue to the Principal of a replacement unconditional undertaking which must have a face value equal to that of the unconditional undertaking being replaced and must satisfy the requirements of clause 6.2,

and the Principal must surrender the original unconditional undertaking to the Tunnelling Contractor in exchange for the issue of the replacement unconditional undertaking.

(b) If the issuer of any unconditional undertaking ceases to have the Required Rating and, at that time, no Major Australian Bank has the Required Rating, then:

(i) if the current issuer of the unconditional undertaking has a rating of less than the second highest rated Major Australian Bank, the Tunnelling Contractor must procure the issue to the Principal of a replacement unconditional undertaking from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank which otherwise satisfies the requirements of clause 6.2;

(ii) the Tunnelling Contractor must monitor the credit rating of the issuer of the replacement unconditional undertaking and the credit rating of the Major Australian Banks and procure a replacement unconditional undertaking from an issuer which has the Required Rating within 20 Business Days after any Major Australian Bank regains a rating equal to or greater than the Required Rating; and

(iii) the Principal must surrender the original unconditional undertaking to the Tunnelling Contractor in exchange for the replacement unconditional undertaking.

6.5A **Replacement of expiring unconditional undertaking**

(a) If any unconditional undertaking provided under this deed has an expiry date:

(i) the Tunnelling Contractor must, if the Principal has not returned the relevant unconditional undertaking in accordance with this clause 6:

(A) give the Principal's Representative at least 30 Business Days' prior written notice of the date on which it intends to provide a replacement unconditional undertaking under clause 6.5A(a)(i)(B); and

(B) no later than 20 Business Days prior to the relevant expiry date, provide the Principal with a replacement unconditional undertaking for the same amount as the unconditional undertaking that it is to replace and which satisfies the requirements of clause 6.2; and

(ii) promptly following receipt of such replacement unconditional undertaking, the Principal must deliver to the Tunnelling Contractor the unconditional undertaking that has been replaced.

(b) If the Tunnelling Contractor fails to provide the Principal with a replacement unconditional undertaking as required by clause 6.5A(a)(i)(B), the Principal:

(i) may call on the full amount of the relevant unconditional undertaking which was required to be replaced without notice to the Tunnelling Contractor;

(ii) must hold the amount of that unconditional undertaking as a cash deposit (**Cash Deposit**) in a separate bank account in the name of the Principal (**Cash Deposit Account**);

(iii) may withdraw money (including accrued interest) from the Cash Deposit Account and use that money:

(A) in accordance with clause 6.3 as if the Cash Deposit were the amount secured by the relevant unconditional undertaking; and

(B) to pay all costs, charges, expenses and Taxes payable in connection with that Cash Deposit Account; and

(iv) must return the amount held in the relevant Cash Deposit Account (including accrued interest but less any amounts payable to or by the Principal under clause 6.5(b)(iii)) to the Tunnelling Contractor:

(A) following receipt of a replacement unconditional undertaking subsequently provided by the Tunnelling Contractor (if any) which satisfies the requirements of clause 6.2; or

(B) if the Tunnelling Contractor does not provide a replacement unconditional undertaking, in accordance with clause 6.4 as if the amount in that Cash Deposit Account were the relevant unconditional undertaking.

(c) The Tunnelling Contractor must repeat compliance with this clause 6.5A at all times and in respect of each unconditional undertaking provided under clause 6.1(a), 20.6 or 20.7 (and any replacement unconditional undertaking provided under clause 6.4,

6.5 or this clause 6.5A) until such time as each relevant unconditional undertaking is released in accordance with this deed.

6.6 **No injunction**

The Tunnelling Contractor must not take any steps to injunct or otherwise restrain:

(a) any issuer of any unconditional undertaking provided under this deed from paying the Principal pursuant to the unconditional undertaking;

(b) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this deed or receiving payment under any such unconditional undertaking; or

(c) the Principal using the money received under any unconditional undertaking provided under this deed.

6.7 **No interest**

The Principal is not obliged to pay the Tunnelling Contractor interest on any unconditional undertaking or the proceeds of any unconditional undertaking.

6.8 **No trust**

The Principal does not hold the proceeds of any unconditional undertaking on trust for the Tunnelling Contractor.

7. LAW AND APPROVALS

7.1 Compliance with Law

Subject to clause 7.2(a)(i), the Tunnelling Contractor must in carrying out the Tunnelling Contractor's Activities:

(a) comply with, and ensure that the Project Works and Temporary Works comply with, all applicable Law;

(b) comply with and provide the Principal's Representative copies of any requirement, notice, order or direction, received from or given by any Authority including any infringement notice, fine or penalty given or made in respect of the Tunnelling Contractor's Activities;

(c) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this deed;

(d) give the Principal's Representative at least 10 Business Days' prior written notice of any date on which the Tunnelling Contractor will submit an application for an Approval (or for any change to an Approval), which notice must include details of the information the Tunnelling Contractor will provide to the Authority and the date it will be provided;

(e) give the Principal's Representative notices, reports and submissions it gives to Authorities in respect of the Tunnelling Contractor's Activities at the time it submits such notices, reports and submissions together with responses from, and details of any consultations or other communications with, Authorities;

(f) give the Principal's Representative copies of all documents (including Approvals and other notices) that Authorities issue to it in respect of the Tunnelling Contractor's Activities as soon as possible;

(g) give the Principal's Representative copies of any other material communications between the Tunnelling Contractor (or its Associates) and an Authority promptly following the giving or receiving of such communications;

(h) subject to clause 7.4(a)(ii)(A), at all times conform and comply with all Codes and Standards; and

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

7.2 **Approvals**

(a) The Tunnelling Contractor must:

(i) obtain all Approvals except for those specified in Schedule D2 which either:

(A) were obtained by the Principal prior to the date of this deed; or

(B) will be obtained by the Principal after the date of this deed if required;

(ii) unless otherwise expressly specified in Schedule D4, comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Tunnelling Contractor or the Principal) including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Approvals specified in Schedule D4 to comply with, satisfy, carry out and fulfil;

(iii) as a condition precedent to Substantial Completion of any Portion, ensure that it has (as applicable to the relevant Portion):

(A) obtained all Approvals it is required to obtain under this deed including those which are required for the purposes set out in paragraph (c) of the definition of Approval in clause 1.1;

(B) complied with, satisfied, carried out and fulfilled all conditions and requirements of all Approvals it is required to comply with, carry out, satisfy and fulfil under this deed including those which must be satisfied for the purposes set out in paragraph (c) of the definition of Approval in clause 1.1 (unless the condition or requirement requires the performance of activities which can only be performed after the Date of Substantial Completion); and

(C) without limiting clauses 7.2(a)(iii)(A) and 7.2(a)(iii)(B), complied with, carried out, satisfied and fulfilled all conditions and requirements of the Planning Approvals which it is required to comply with, satisfy, carry out and fulfil (including the obtaining of the approval of any person for anything) under this deed insofar as this is necessary including for the purposes set out in paragraph (c) of the definition of Approval in clause 1.1 (unless the condition or requirement requires the performance of activities which can only be performed after the Date of Substantial Completion); and

(iv) in respect of any:

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

(B) conditions and requirements of Approvals which pursuant to Schedule D4 are to be satisfied or fulfilled by the Principal,

without limiting the requirements of Schedule D4, provide the Principal with such reasonable assistance as may be required by the Principal to enable the Principal to obtain the Approvals or satisfy or fulfil the conditions and requirements.

(b) The Principal must comply with, satisfy, carry out and fulfil the conditions and requirements of those Approvals for which the Principal is stated to have responsibility to the extent specified in Schedule D4.

(c) Without limiting clause 7.8 and Schedule D4, in respect of any submissions, surveys, investigations, reports, studies or other documents:

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

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

the Tunnelling Contractor:

(iii) must prepare, carry out and provide to the Principal any submissions, surveys, investigations, reports, studies or other documents:

(A) requested by the Principal's Representative;

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

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

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

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

7.3 **Change in Law**

(a) Where there is a Change in Law, the Tunnelling Contractor must:

(i) within 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the Change in Law:

(A) give a written notice to the Principal and the Principal's Representative:

(aa) containing details of the Change in Law; and

(bb) where it believes that the Change in Law will cause a delay to the Tunnelling Contractor's Activities that will entitle it to an extension of time pursuant to clause 19.6 (and without limiting its obligation to give any notices required by clause 19.6), such notice must be given within the time, and must contain the details, required by clause 19.6(b); and

[redacted]

to take to mitigate and/or resolve the effects of the Pandemic Change in Law; and

(ii) subject to clause 7.3(b), comply with the Change in Law at its cost.

(b) Where there is:

(i) a Change in Law comprising any amendment, repeal or change to any legislation or introduction of new legislation imposing an effective carbon price on liquid and gaseous fuels;

[redacted]

(iii) any other Change in Law which:

(A) results in a change to, an addition to or omission from the Project Works, the Temporary Works or the Transitional Handover Services or a direct change to the Tunnelling Contractor's work methodology; and

(B) directly results in an increase or decrease in the Tunnelling Contractor's costs of carrying out the Tunnelling Contractor's Activities; or

[redacted]

and either the Principal or the Tunnelling Contractor wishes to claim an increase or decrease to the Project Contract Sum on account of the Change in Law:

(v) the party wishing to claim the increase or decrease must:

(A) if the party is the Tunnelling Contractor, give a written notice to the Principal's Representative within 15 Business Days of the notice provided under clause 7.3(a)(i); or

(B) if the party claiming the increase or decrease is the Principal, give a written notice to the Tunnelling Contractor,

which:

(C) states that the party is claiming an increase or decrease to the Project Contract Sum on account of a Change in Law;

(D) contains details of the Change in Law; and

(E) sets out that party's estimate of the increase or decrease (as the case may be) in the Tunnelling Contractor's Direct Costs, Overheads and Delay Costs that are directly attributable to it complying with the Change in Law, including sufficient information to support the estimate.

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(c) The Tunnelling Contractor must provide the Principal with copies of and access to all pricing, costing and other financial information which in any way relates to a claim under clause 7.3(b) on an Open Book Basis.

(d) If a party serves a notice under clause 7.3(b)(v):

(i) the Principal and the Tunnelling Contractor must meet within 20 Business Days of a notice being given under clause 7.3(b)(v) and will negotiate and endeavour to agree to any increase or decrease to the Project Contract Sum (as the case may be) on account of the increase or decrease in the Tunnelling Contractor's Direct Costs plus the Overheads and Profit Margin that are directly attributable to the Tunnelling Contractor complying with the Change in Law; and

(ii) where agreement is reached under clause 7.3(d)(i), the relevant component or components of the Project Contract Sum will be so increased or decreased (as appropriate); and

(iii) if the Principal and the Tunnelling Contractor cannot reach agreement under clause 7.3(d)(i) within 20 Business Days (or such other period as may be approved by the Principal or Principal's Representative) of a notice being given under clause 7.3(b)(v):

(A) the Project Contract Sum will be increased or decreased (as appropriate) by a reasonable amount:

(aa) in the case of a Change of Law under clause 7.3(b)(i) or 7.3(b)(iii), on account of the increase or decrease in the Tunnelling Contractor's Direct Costs and Overheads and Profit Margin that are directly attributable to the Tunnelling Contractor complying with the Change in Law; or

[redacted]

[redacted]

as stated by the Principal's Representative.

[redacted]

(f) The Tunnelling Contractor must comply with all Changes in Law.

7.4 **Change in Codes and Standards**

(a) Subject to clause 8.5(d), where there is a Change in Codes and Standards:

(i) the Tunnelling Contractor must give a written notice to the Principal's Representative within 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the Change in Codes and Standards containing:

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

(B) an estimate of the increase or decrease (as the case may be) in the Tunnelling Contractor's Direct Costs, Overheads and Delay Costs that are directly attributable to it complying with that Change in Codes and Standards, including sufficient information to support the estimate; and

(ii) if a notice is given by the Tunnelling Contractor which complies with clause 7.4(a), then within 10 Business Days of the notice being given, the Principal's Representative will either:

(A) to the extent compliance with the relevant Codes and Standards is not required by Law, direct the Tunnelling Contractor to disregard the Change in Codes and Standards; or

(B) direct a Change under clause 15.3(a) in respect of the Change in Codes and Standards after which, subject to clause 7.4(c), the relevant adjustments will be made under clause 15.5.

(b) If the Principal's Representative gives a notice under clause 7.4(a)(ii)(A), the Tunnelling Contractor will not be regarded as being in breach of this deed to the extent that it disregarded the relevant Change in Codes and Standards.

(c) Subject to clauses 7.4(d) and 14.3(c), if the Principal gives a notice under clause 7.4(a)(ii)(B), the Tunnelling Contractor will not be entitled to any increase in the Project Contract Sum:

(i) except to the extent that the relevant Design Documentation, before such notice under clause 7.4(a)(ii)(B), complied, or would have complied, with the requirements of this deed at such time; or

(ii) to the extent that, notwithstanding the Change in Codes and Standards, the Tunnelling Contractor would have had to make a change to the Project Works or the Temporary Works or a change to the methods of construction used in carrying out the Project Works or the Temporary Works, in order that the Project Works and the Temporary Works comply with the relevant requirements of the deed at such time.

(d) Clause 7.4(c)(i) will not disentitle the Tunnelling Contractor to an increase in the Project Contract Sum where the relevant non-compliance in the Design Documentation is a Minor Non-Compliance that is capable of correction without the need for any significant redesign of the relevant part of the Project Works or the Temporary Works.

7.5 Changes to Planning Approvals

(a) Where a change in the Planning Approvals occurs after the date of this deed (other than a change arising from or in connection with a breach of this deed by the Tunnelling Contractor or a wrongful act or omission of the Tunnelling Contractor or its Associates or a change made in response to a request by the Tunnelling Contractor) which necessitates a Change to the Project Works or the Temporary Works or a reduction in the working hours, working days or noise or vibration limits permitted for the Tunnelling Contractor's Activities as at the date of this deed, the Tunnelling Contractor must, within 10 Business Days of the earlier of the date on which the Tunnelling Contractor becomes aware or ought reasonably to have first become aware of the change taking effect, notify the Principal's Representative in writing with detailed particulars of the reason why the change necessitates a Change to the Project Works or the Temporary Works or a reduction in the permissible working hours, working days or noise or vibration limits for the Tunnelling Contractor's Activities.

(b) If the Tunnelling Contractor gives a notice under clause 7.5(a) and the change necessitates a Change to the Project Works or the Temporary Works or a reduction in the permissible working hours, working days or noise or vibration limits for the Tunnelling Contractor's Activities:

(i) in the case where the change necessitates a Change to the Project Works or the Temporary Works, the Principal's Representative will direct a Change under clause 15.3(a) after which relevant adjustments will be made under clause 15.5; and

(ii) in the case where the change necessitates a reduction in the permissible working hours, working days or noise or vibration limits for the Tunnelling Contractor's Activities, the Tunnelling Contractor will be entitled to an increase in the Project Contract Sum for the amount of the additional Direct Costs incurred by the Tunnelling Contractor plus Overheads and Profit Margin arising out of the reduction in the permissible working hours, working days or noise or vibration limits for the Tunnelling Contractor's Activities.

(c) Except to the extent expressly stated otherwise in this clause 7.5, the Tunnelling Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with a change in the Planning Approvals.

(d) The Tunnelling Contractor:

(i) acknowledges that:

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

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

(C) the Principal need not apply for any modification to the Planning Approvals on behalf of the Tunnelling Contractor unless the Tunnelling Contractor first submits its proposal for modification to the Principal's Representative for its review and the Principal's Representative consents to the modification, which consent it may give or withhold in its absolute discretion;

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

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

7.6 **Legal challenge**

If there is a legal challenge in relation to the assessment or determination of, or otherwise in relation to, Sydney Metro West under the:

(a) EP&A Act;

(b) *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or

(c) any other Law,

the Tunnelling Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, it is otherwise:

(d) ordered by a court or tribunal; or

(e) directed by the Principal's Representative.

7.7 **Environment Protection Licence**

The Tunnelling Contractor must:

(a) obtain an Environment Protection Licence in respect of the Tunnelling Contractor's Activities to cover each Portion from the date on which the Tunnelling Contractor is given access to that part of the Construction Site to which the Portion relates (or any part thereof) pursuant to clauses 12.1 and 12.2;

(b) hold an Environment Protection Licence in respect of the Tunnelling Contractor's Activities to cover each Portion until the Portion Handover Date for that Portion; and

(c) ensure that:

(i) from each Portion Handover Date, the Tunnelling Contractor's Environment Protection Licence is varied so as to exclude that part of the Construction Site to which the Portion relates; and

(ii) the Tunnelling Contractor's Environment Protection Licence is surrendered on and from the Portion Handover Date for the last Portion to be handed over by the Tunnelling Contractor,

so as to allow OpCo, an Alternate Operator and/or any applicable Interface Contractor to obtain an Environment Protection Licence for the relevant part of the Construction Site.

7.8 **Crown Building Work**

(a) The Tunnelling Contractor must, in relation to any part of the Project Works or Temporary Works that is Crown Building Work, certify (on behalf of the Principal) as required by section 6.28 of the EP&A Act.

(b) Any certification under clause 7.8(a) will not lessen or otherwise affect:

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

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

7.9 **Long service levy**

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

(a) pay (or procure payment) to the Long Service Corporation or that body's agent all amounts due and payable for the long service levy in respect of the Tunnelling 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 7.9(a).

7.10 **Environmental Representative**

(a) The Tunnelling Contractor acknowledges that:

(i) the Environmental Representative is required to discharge certain functions as identified in the Planning Approvals;

(ii) the Principal has appointed the Environmental Representative as required by the Planning Approvals; and

(iii) the Environmental Representative:

(A) is independent of the parties;

(B) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approvals and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approvals; and

(C) shall advise the Principal and the Principal's Representative on the Tunnelling Contractor's compliance with the Planning Approvals.

(b) The Tunnelling Contractor must provide the Environmental Representative with all information and documents and allow the Environmental Representative:

(i) to attend meetings;

(ii) access to such premises; and

(iii) to insert Hold Points or Witness Points in the Project Plans and designate the nominated authority to release the Hold Points,

all as may be:

(iv) necessary or reasonably required by the Environmental Representative or the Principal's Representative to allow the Environmental Representative to perform its functions in connection with this deed; or

(v) lawfully requested by the Environmental Representative or directed by the Principal's Representative.

(c) The Tunnelling Contractor must comply with the lawful requirements of the Environmental Representative, including so as to allow the Environmental Representative to discharge any functions of the Environmental Representative provided for in the Planning Approvals.

(d) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions in connection with this deed will entitle the Tunnelling Contractor to make any Claim against the Principal.

7.11 **Independent Acoustics Advisor**

(a) The Tunnelling Contractor acknowledges that:

(i) the Principal has appointed the Independent Acoustics Advisor as required by the Planning Approvals; and

(ii) the Independent Acoustics Advisor:

(A) is independent of the parties;

(B) shall oversee the implementation of all noise and vibration management plans and monitoring programs required under the Planning Approvals and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approvals;

(C) shall advise the Principal and the Principal's Representative on the Tunnelling Contractor's compliance with the Planning Approvals; and

(b) The Tunnelling Contractor must provide the Independent Acoustics Advisor with all information and documents and allow the Independent Acoustics Advisor:

(i) to attend meetings; and

(ii) access to such premises;

all as may be:

(iii) necessary or reasonably required by the Independent Acoustics Advisor or the Principal's Representative to allow the Independent Acoustics Advisor to perform its functions in connection with this deed; or

(iv) lawfully requested by the Independent Acoustics Advisor or directed by the Principal's Representative.

(c) The Tunnelling Contractor must comply with the lawful requirements of the Independent Acoustics Advisor, including so as to allow the Independent Acoustics Advisor to discharge any functions of the Independent Acoustics Advisor provided for in the Planning Approvals.

(d) Nothing that the Independent Acoustics Advisor does or fails to do pursuant to the purported exercise of its functions in connection with this deed will entitle the Tunnelling Contractor to make any Claim against the Principal.

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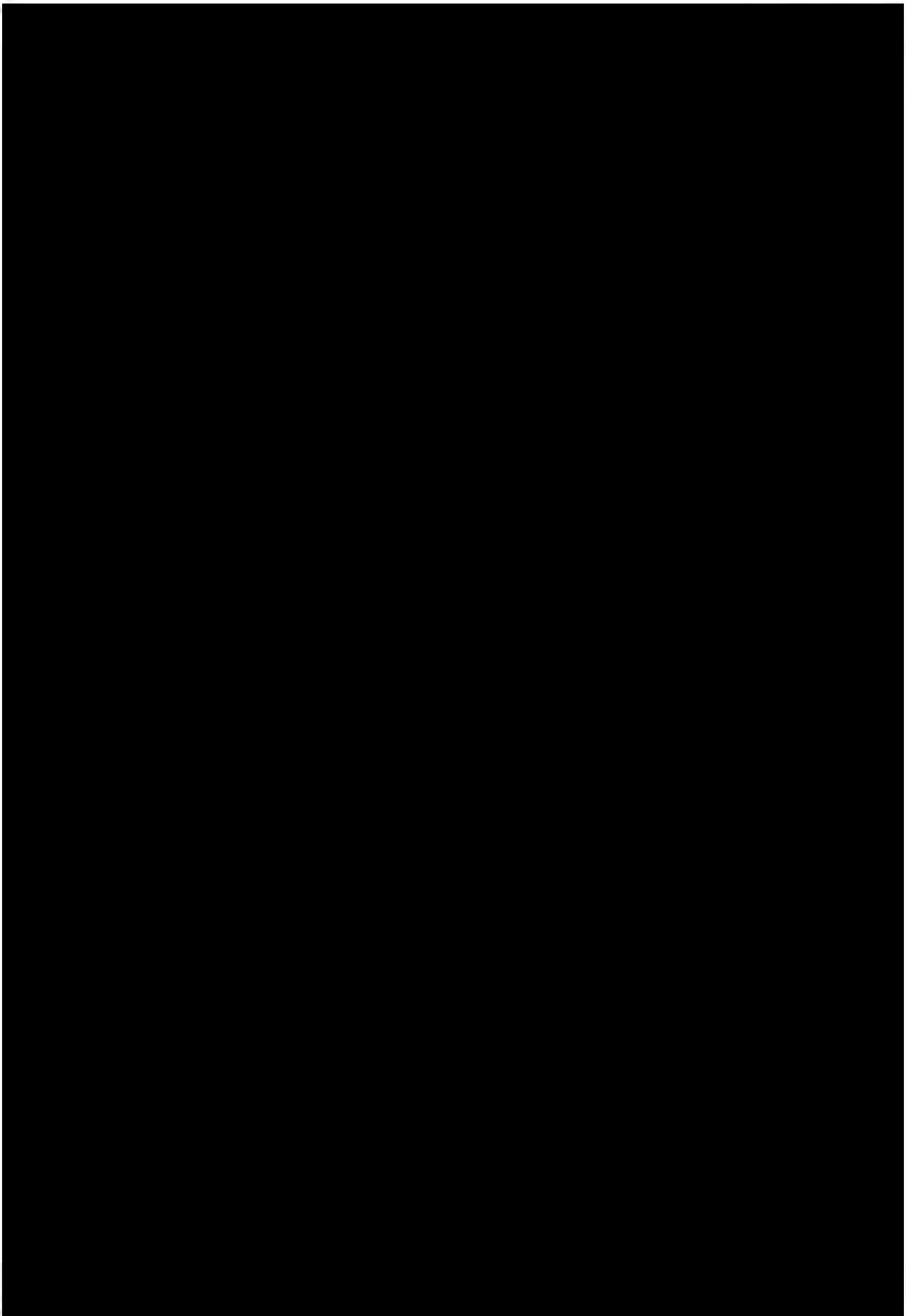


8. WORK HEALTH AND SAFETY

8.1 Care of people, property and Environment

(a) The Tunnelling Contractor must carry out the Tunnelling Contractor's Activities in a manner that:

(i) does not put the health or safety of persons at risk and prevents injury or death;

(ii) protects and prevents damage to property and the Environment; and

(iii) protects and prevents damage to:

(A) the Project Works, the Temporary Works and the Tunnelling Contractor's Activities; and

(B) any Interface Work on or in the vicinity of the Construction Site.

(b) If the Principal's Representative considers there is a risk to the health or safety of people or damage to property arising from the Tunnelling Contractor's Activities:

(i) the Principal's Representative may direct the Tunnelling Contractor to change its manner of working or to cease working; and

(ii) the Tunnelling Contractor must, at its cost, comply with any direction by the Principal's Representative under clause 8.1(b)(i).

8.2 Work health and safety

(a) The Tunnelling Contractor must:

(i) ensure that in carrying out the Tunnelling Contractor's Activities under this deed:

(A) it complies with all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), WHS Codes of Practice, Australian standards and other requirements of this deed for work health, safety and rehabilitation management;

(B) all Subcontractors, contractors or consultants engaged by the Tunnelling Contractor, comply with their respective obligations under all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management; and

(C) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

(ii) have a Corporate WHS Management System which complies with the Law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and the WHS Management Systems and Auditing Guidelines;

(iii) notify the Principal's Representative in accordance with the Sydney Metro Principal Contractor Health and Safety Standard of all work health and safety Incidents and notify the Principal's Representative within 12 hours of any other work health and safety matter arising out of, or in any way in connection with, the Tunnelling Contractor's Activities;

(iv) following commencement of construction on the Construction Site and at the end of March, June, September and December of each year, provide the Principal's Representative with written assurances from:

(A) the Tunnelling Contractor about the Tunnelling Contractor's ongoing compliance; and

(B) all Subcontractors about each Subcontractor's ongoing compliance,

with all applicable Laws, Codes and Standards and Australian Standards and other requirements of this deed for work health and safety and rehabilitation management;

(v) provide the Principal's Representative with written reports on any work health and safety and rehabilitation matters connected with the Tunnelling Contractor's Activities as the Principal's Representative may require from time to time;

(vi) consult, cooperate and coordinate its activities with all Interface Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;

(vii) carry out the Tunnelling Contractor's duties under the WHS Legislation to enable the Principal to discharge its duties under the WHS Legislation and other applicable Laws; and

(viii) at the Principal's request, attend, and ensure all relevant Subcontractors, contractors or consultants (as requested by the Principal) attend, each work health and safety related meeting convened by the Principal.

(b) The Tunnelling Contractor must provide strong safety leadership and continuously promote safety as a core value.

(c) The Tunnelling Contractor must comply with the Sydney Metro Principal Contractor Health and Safety Standard.

(d) The Tunnelling Contractor:

(i) warrants that it is accredited under the WHS Accreditation Scheme; and

(ii) must comply with all requirements of, and maintain accreditation under, the WHS Accreditation Scheme while building work (as defined in section 6 of the BCIIP Act) is carried out.

8.3 **Principal contractor**

(a) In this clause 8.3, the terms "principal contractor", "workplace", "construction project" and "construction work" have the meaning given to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed, subject to clause 8.3(c)(ii):

(i) the construction work involved in the Tunnelling Contractor's Activities; and

(ii) any construction work carried out on the Construction Site by an Interface Contractor, the Principal or any other person which is performed during any period in which the Tunnelling Contractor has been engaged as principal contractor (**Construction Site Interface Work**),

are taken to be part of the same "construction project".

(b) Subject to clause 12.1(g), the parties acknowledge and agree that from the date on which the Tunnelling Contractor is given access to a part of the Construction Site in accordance with this deed:

(i) to the extent that the Tunnelling Contractor's Activities or any Construction Site Interface Work includes construction work, the Principal:

(A) engages the Tunnelling Contractor as the principal contractor in respect of the Tunnelling Contractor's Activities and the Construction Site Interface Work;

(B) authorises the Tunnelling Contractor to have management and control of each workplace at which the Tunnelling Contractor's Activities and the Construction Site Interface Work are to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;

(C) must give the Tunnelling Contractor prior notice of any Interface Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences; and

(D) must provide the Tunnelling Contractor and the Tunnelling Contractor with executed deed polls in favour of the Tunnelling Contractor in the form set out in Schedule 4 to the Master Interface Deed from each

Interface Contractor engaged by the Principal undertaking Construction Site Interface Work; and

(ii) the Tunnelling Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation and this deed.

(c) The Tunnelling Contractor's engagement and authorisation as a principal contractor will continue:

(i) subject to clauses 8.3(c)(ii) and 8.3(c)(ii), until the earlier of:

(A) the termination of this deed; and

(B) in respect of each Portion, the Portion Handover Date;

(C) in respect of each milestone, the Milestone Area Handover Date; and

(D) in respect of a Temporary Area for which a Site Access Expiry Date is specified in Table 4a of the Site Access Schedule, the date on which the Tunnelling Contractor vacates that Temporary Area; and

(E) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been completed; and

(ii) during the period that any rectification work which is construction work carried out under clause 17.1 unless an Interface Contractor has possession of the relevant part of the Construction Site at the time the rectification work is carried out, in which case:

(A) the Tunnelling Contractor's engagement and authorisation as principal contractor under clause 8.3(b) will end immediately before any such construction work commences;

(B) the relevant Interface Contractor or its nominated entity will be the principal contractor for any construction project that the construction work comprises; and

(C) clause 17.3(a)(i)(G) and the relevant provisions of the Master Interface Deed will apply to such a construction project.

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

(e) If the engagement of the Tunnelling Contractor as principal contractor under this clause 8.3 is not effective for any reason, the Tunnelling Contractor agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged and authorised as principal contractor under clause 8.3(b).

(f) To the extent not prohibited by Law, the Tunnelling Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure of:

(i) the Tunnelling Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation; or

(ii) the Tunnelling Contractor to otherwise comply with all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and Heavy Vehicle National Law), WHS Codes of Practice, Australian standards and other requirements of this deed for work health, safety and rehabilitation management or clauses 8.1, 8.2 and 8.3.

8.4 **Project Health & Safety Risk Governance Plan**

(a) The Tunnelling Contractor acknowledges that preparation of the Project Health & Safety Risk Governance Plan in accordance with clause 11 is a condition precedent to the Principal's obligations under clause 12.1 and 12.2.

(b) Without limiting any requirement of the WHS Legislation or this deed, the Project Health & Safety Risk Governance Plan must:

(i) set out in adequate detail the policies and procedures the Tunnelling Contractor will implement to manage the Tunnelling Contractor's Activities from a work health and safety perspective;

(ii) describe how the Tunnelling Contractor proposes to ensure that the Tunnelling Contractor's Activities are performed consistently with:

(A) all Laws concerning work health and safety (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and Heavy Vehicle National Law); and

(B) the WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management;

(iii) address the matters specified in:

(A) the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and any other Law concerning work health and safety; and

(B) the WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management;

(iv) comply with the requirements applicable to a "Safety Management Plan set out in the Sydney Metro Principal Contractor Health and Safety Standard; and

(v) comply with the requirements applicable to a "Project Safety Plan" or "Project WHS Management Plan" set out in the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and the WHS Management Systems and Auditing Guidelines.

(c) Without limiting clause 11, the Tunnelling Contractor must:

(i) continue to correct any defects in or omissions from the Project Health & Safety Risk Governance Plan (whether identified by the Principal's Representative or the Tunnelling Contractor); and

(ii) regularly review and, as necessary, revise the Project Health & Safety Risk Governance Plan in accordance with:

(A) the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and any other Law concerning work health and safety;

(B) the WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management; and

(C) the Sydney Metro Principal Contractor Health and Safety Standard,

and submit an amended draft of its Project Health & Safety Risk Governance Plan to the Principal's Representative and the Independent Certifier, after which clause 11 will reapply (to the extent applicable).

(d) The Tunnelling Contractor must document and maintain detailed records of inspections or audits undertaken as part of the Project Health & Safety Risk Governance Plan.

(e) The Tunnelling Contractor must carry out the Tunnelling Contractor's Activities in accordance with, and otherwise implement, the latest Project Health & Safety Risk Governance Plan.

8.5 **Sydney Metro Principal Contractor Health and Safety Standard**

(a) The Tunnelling Contractor must comply with the Sydney Metro Principal Contractor Health and Safety Standard, as amended from time to time, as if it was a principal contractor for the purposes of that standard.

(b) The Principal may update and amend the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to the Tunnelling Contractor's Activities and Sydney Metro West.

(c) Subject to clause 8.5(d), the Principal will have no Liability to the Tunnelling Contractor and the Tunnelling Contractor will not be entitled to make any Claim, arising out of or in any way in connection with any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard as the obligation of the Principal or an Associate of the Principal).

(d) If the Principal updates the Sydney Metro Principal Contractor Health and Safety Standard this will be treated as a Change in Codes and Standards to which clause 7.4 applies, except to the extent that such update is made by the Principal because of a:

(i) without limiting clause 7.3, change to the WHS Legislation or any other Law, code of practice or Australian Standard relating to work health or safety; or

(ii) breach of this deed by the Tunnelling Contractor or a wrongful act or omission of the Tunnelling Contractor or its Associates.

8.6 **Rail safety**

(a) Without limiting clause 7.1, the Tunnelling Contractor must comply with the Rail Safety National Law and Rail Safety Regulations.

(b) The Tunnelling Contractor must ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the Rail Safety National Law or the Rail Safety Regulations.

(c) The Tunnelling Contractor acknowledges that:

(i) the Tunnelling Contractor's Activities and the Project Works are being undertaken for the purpose of constructing a railway;

(ii) to the extent that the Tunnelling Contractor's Activities comprise Railway Operations, for the purposes of the Rail Safety National Law it carries out those Tunnelling Contractor's Activities for and on behalf of the Principal under the Principal's Accreditation.

(d) The Tunnelling Contractor must:

(i) carry out the Tunnelling Contractor's Activities so as not to put the Principal in breach of its obligations as a Rail Infrastructure Manager under the Rail Safety National Law and Rail Safety Regulations;

(ii) comply with all reasonable requirements of the Principal in relation to compliance with the Principal's Accreditation; and

(iii) not do anything (or fail to do anything) which jeopardises the Principal's Accreditation.

(e) The Tunnelling Contractor must ensure that its Associates engaged in or in connection with the Tunnelling Contractor's Activities comply with the same obligations as are imposed upon the Tunnelling Contractor under clauses 8.6(a) to 8.6(c) as if they had been imposed upon the Associate.

(f) The Tunnelling Contractor acknowledges that:

(i) the Principal holds accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and

(ii) to the extent that, in carrying out the Tunnelling Contractor's Activities, the Tunnelling Contractor carries out any Railway Operations for which accreditation is required under the Rail Safety National Law and which are not permitted by the Principal's Accreditation, the Tunnelling Contractor must obtain any necessary accreditation or other Approval required to enable it to comply with all applicable Law.

(g) The Tunnelling Contractor acknowledges that OpCo or an Alternate Operator will be reliant upon information and documentation received from the Tunnelling Contractor to obtain or extend its accreditation under the Rail Safety National Law.

(h) The Tunnelling Contractor must liaise and cooperate with the Principal, OpCo, any Alternate Operator and any other Rail Transport Operator and provide any reasonable assistance and documentation the Principal, OpCo, any Alternate Operator or any other Rail Transport Operator may require in relation to safety matters, including in relation to OpCo or any Alternate Operator obtaining or extending its accreditation under the Rail Safety National Law.

(i) Without limiting clause 8.6(h), the Tunnelling Contractor must provide the Principal with copies of all notices, reports and other correspondence given or received by the Tunnelling Contractor or its Associates under or in connection with the Rail Safety National Law and the Rail Safety Regulations:

(i) relating to the Tunnelling Contractor's Activities or the Project Works; or

(ii) which may adversely affect the ability of the Tunnelling Contractor or its Associates to perform the Tunnelling Contractor's Activities,

promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given or received by the Tunnelling Contractor or its Associates).

(j) Without limiting clause 7.1, the Tunnelling Contractor must ensure that all persons engaged by the Tunnelling Contractor (or by any Associate of the Tunnelling Contractor) in or in connection with the Tunnelling Contractor's Activities:

(i) are competent to carry out the work for which they are engaged for the purposes of section 52 of the Rail Safety National Law; and

(ii) comply with their obligations under the Rail Safety National Law (including under section 56 of the Rail Safety National Law).

(k) The Tunnelling Contractor must and must ensure that its Associates:

(i) promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;

(ii) cooperate with and respond to any lawful requests made by any Investigative Authority, within the time requested; and

(iii) not hinder or delay any Investigative Authority in carrying out its duties.

(l) Compliance by the Tunnelling Contractor with its obligations under this clause 8.6:

(i) does not discharge or excuse the Tunnelling Contractor from complying with its other obligations under this deed; and

(ii) is not evidence of compliance by the Tunnelling Contractor with its other obligations under this deed.

9. ENGINEERING AUTHORISATION AND ASA COMPLIANCE

(a) The Tunnelling Contractor represents and warrants that the Tunnelling Contractor is an AEO and has obtained ASA Authorisation to carry out the Asset Lifecycle Services.

(b) Without limiting or otherwise restricting clauses 9(c) and 9(d), the Tunnelling Contractor must:

(i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the Tunnelling Contractor's Activities are carried out; and

(ii) comply (and must ensure that its Subcontractors and all personnel for which the Tunnelling Contractor is responsible comply) with the conditions of the ASA Authorisation held by the Tunnelling Contractor.

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

(i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;

(ii) immediately notify the Principal's Representative in writing of any non-compliance with this clause 9;

(iii) cooperate fully with the ASA in the performance of the ASA's functions;

(iv) provide access to premises and resources as required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;

(v) comply with the directions, instructions and requirements issued by the ASA;

(vi) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;

(vii) provide the ASA with any information relating to its activities or any documents or other things required by the ASA 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 ASA and to implement and comply with ASA Requirements.

(d) The Tunnelling Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the performance of any of its obligations under this clause 9.

10. PORTIONS

10.1 Principal's Representative may direct Portions

(a) In addition to the Portions identified in Schedule A2, the Principal's Representative may at any time by written notice to the Tunnelling Contractor direct additional Portions by way of a Change Order under clause 15.3(a).

(b) Any Change Order given by the Principal's Representative pursuant to clause 10.1(a) must, for each Portion, include details of:

(i) the Project Works and Temporary Works;

(ii) the Date for Substantial Completion; and

(iii) respective amounts of liquidated damages,

all as determined by the Principal's Representative (acting reasonably), provided that the sum of the daily rates of liquidated damages applicable to each Portion created pursuant to clause 10.1(a) is equal to the daily rate of liquidated damages that:

(iv) previously applied to the Portion; or

(v) in aggregate previously applied to the Portions,

affected by the Principal's Representative direction under clause 10.1(a).

10.2 Interpretation of Portions

The interpretations of:

(a) Tunnelling Contractor's Activities;

(b) Project Works;

(c) Temporary Works;

(d) Works;

(e) Handover Works;

(f) Third Party Works;

(g) Local Area Works;

(h) Property Works;

(i) Utility Service Works;

(j) Project Site;

(k) Construction Site;

(l) Temporary Areas;

(m) Substantial Completion;

(n) Date for Substantial Completion;

(o) Date of Substantial Completion;

(p) Completion;

(q) Date for Completion;

(r) Date of Completion; and

(s) Defects Correction Period,

and clauses 12.1 to 12.6, 12.25(h), 14.3(a)(x), 15.2(a)(ii), 16.8, 16.11, 16.13, 16.14, 17, 19, 20.2, 23.1, 23.5, 23.6, and 23.20, and the Tunnelling Specification (including its appendices) will apply separately to each Portion (including any Portion determined under clause 10.1 or clause 10.3) and references therein to any of the terms in paragraphs (a) - (s) above will mean so much of the Tunnelling Contractor's Activities, Project Works, Temporary Works, Works, Handover Works, Third Party Works, Local Area Works, Property Works, Utility Service Works, Project Site, Construction Site, Temporary Areas, Substantial Completion, Date for Substantial Completion, Date of Substantial Completion, Completion, Date for Completion, Date of Completion and Defects Correction Period as is comprised in, or associated with, the relevant Portion.

10.3 **Occupation and use of partially completed Project Works**

(a) Without limiting the generality of clause 10.1, if a part of a Portion has reached a stage equivalent to Substantial Completion (**Completed Portion**) but another part of a Portion has not yet reached such stage (**Incomplete Portion**), the Principal's Representative may by giving written notice to the Tunnelling Contractor direct by way of a Change Order under clause 15.3(a):

[redacted]

[redacted]

10.4 **Reduction in entitlement**

The Tunnelling Contractor's entitlement to an extension of time or to an adjustment to the Design Contract Sum and/or Construction Contract Sum as a result of a Change Order issued by the Principal's Representative pursuant to clause 10.1 or 10.3 will be reduced to the extent that:

(a) the need for the Change Order arises out of or in connection with any breach of this deed by the Tunnelling Contractor (for example, a failure to reach Substantial Completion of a Portion by the Date for Substantial Completion of that Portion); or

(b) the Change Order is:

(i) in effect:

(A) a direction to the Tunnelling Contractor to perform the Tunnelling Contractor's Activities in accordance with this deed (other than clause 10) or consistently with this deed; or

(B) a direction to the Tunnelling Contractor to take corrective action to rectify any non-compliance with the requirements of this deed; or

(ii) related to the rectification of a Defect [redacted]

11. PROJECT PLANS

11.1 General

(a) The Tunnelling Contractor must prepare the Project Plans including as specified in section 5 of the General Specification.

(b) Each Project Plan must:

(i) where an initial plan exists for the relevant Project Plan and is contained in Attachment B of the General Specification, be based upon that initial plan;

(ii) whether or not an initial plan exists for the relevant Project Plan, be prepared and further developed in accordance with this clause 11 and section 5 of the General Specification; and

(iii) contain any relevant contents required under this deed, including as specified in section 5 of the General Specification.

11.2 Warranties in relation to Project Plans

The Tunnelling Contractor:

(a) acknowledges and agrees that an intended purpose of each Project Plan is for the Tunnelling Contractor to provide a detailed description of how the Tunnelling Contractor intends to carry out the Tunnelling Contractor's Activities in accordance with the requirements of this deed with respect to the subject matter of each Project Plan; and

(b) warrants that each Project Plan will be fit for its intended purpose and that compliance by it with the Project Plans will enable it to fulfil its various obligations under this deed.

11.3 Review of Project Plans

(a) Each Project Plan must be initially submitted to the Principal's Representative and the Independent Certifier within any relevant time period specified in this deed (including as specified in section 5 of the General Specification).

(b) The Principal's Representative (and the Independent Certifier with respect to any IC Project Plan) may:

(i) review any Project Plan submitted under this clause 11.3; and

(ii) if the Project Plan submitted does not comply with this deed, notify the Tunnelling Contractor within 15 Business Days of the initial submission of the Project Plan providing reasons for the non-compliance.

(c) If the Tunnelling Contractor receives a notice under clause 11.3(b)(ii), the Tunnelling Contractor must promptly submit an amended Project Plan, or relevant part or component of it, to the Principal's Representative and the Independent Certifier and the process in this clause 11.3 will reapply.

(d) The Principal's Representative or the Independent Certifier owes no duty to the Tunnelling Contractor to review any Project Plan submitted by the Tunnelling Contractor for errors, omissions or compliance with this deed.

(e) No review of, comments upon, notice in respect of any Project Plan or any other act or omission of the Principal's Representative or the Independent Certifier (including

a direction under clause 11.4(b)) about any Project Plan will lessen or otherwise affect:

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

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

11.4 **Update of Project Plans**

(a) The Tunnelling Contractor:

(i) acknowledges and agrees that the Project Plans will require ongoing development, amendment and updating throughout the duration of the Tunnelling Contractor's Activities to take into account:

(A) Changes;

(B) Changes in Law;

(C) the commencement of new phases or stages of design and construction as shown in the Overall D&C Program;

(D) those events or circumstances expressly identified for each Project Plan including as specified in section 5 of the General Specification;

(E) any direction given by the Principal's Representative under clause 10.1(a); and

(F) any other events or circumstances which occur or come into existence and which have, or may have, any effect on the manner in which the Tunnelling Contractor carries out the Tunnelling Contractor's Activities; and

(ii) must continue to develop and promptly amend or update the Project Plans:

(A) to take into account:

(aa) the circumstances and events referred to in clause 11.4(a)(i) as those circumstances and events occur or come into existence; and

(bb) any breach or potential breach of the warranties referred to in clause 11.2(b); and

(B) as otherwise specified in the Tunnelling Specification, including section 5 of the General Specification,

and promptly submit each further Project Plan to the Principal's Representative and to the Independent Certifier as it is further developed, amended or updated.

(b) Without limiting clause 17, if the Principal's Representative (or the Independent Certifier with respect to any IC Project Plan) believes that:

(i) any Project Plan does not comply with the requirements of this deed; or

(ii) the Tunnelling Contractor has not further developed, updated or amended any Project Plan in accordance with the requirements of clause 11.4(a)(ii),

the Principal's Representative or the Independent Certifier with respect to any IC Project Plan may by written notice direct the Tunnelling Contractor to further develop, update or amend the Project Plan so that the Project Plan will comply with the requirements of this deed, specifying:

(iii) the reasons why such development, updating or amending is required; and

(iv) the time within which such development, updating or amending must occur,

and the Tunnelling Contractor must:

(v) further develop, update or amend the Project Plan as directed by the Principal's Representative and/or the Independent Certifier so that it complies with the requirements of this deed; and

(vi) submit the further developed, updated or amended Project Plan to the Principal's Representative and to the Independent Certifier within the time specified under clause 11.4(b)(iv).

11.5 **Implementation and compliance**

(a) The Tunnelling Contractor:

(i) must comply with each Project Plan which has been submitted to the Principal's Representative and to the Independent Certifier under clause 11.3 and in respect of which the Principal's Representative and, if applicable, the Independent Certifier, has not given a notice under clause 11.3(b)(ii); and

(ii) agrees that compliance by it with any Project Plan will not in any way lessen or affect:

(A) its liabilities or responsibilities under this deed or otherwise according to Law; or

(B) the Principal's rights against it, whether under this deed or otherwise according to Law.

(b) The Tunnelling Contractor must comply with the restrictions upon the carrying out of the Tunnelling Contractor's Activities specified in section 5 of the General Specification.

(c) The Tunnelling Contractor must not decrease or otherwise reduce the scope of any Project Plan, or the scope of work or level of effort or expertise required by a Project Plan, or the number of personnel or extent of surveillance required, including any initial Project Plan and any revision of a Project Plan, without the prior written approval of the Principal's Representative (which must not be unreasonably withheld).

(d) To the extent they are relevant to the operation or maintenance of the Project Works or the Handover Works, all relevant components of the Project Plans must be incorporated into the Asset Management Information.

12. LOCATION OF THE PROJECT WORKS

12.1 Early access to the Construction Site

(a) The Principal may, but is not obliged to, grant the Tunnelling Contractor access prior to the relevant Site Access Dates set out in the Site Access Schedule to the whole or part of the Construction Site in accordance with this clause 12.1.

(b) The purpose of granting early access to the Construction Site under this clause 12.1 is to allow the Tunnelling Contractor to commence the Tunnelling Contractor's Activities early so as to mitigate any delays the Tunnelling Contractor may incur in achieving a Milestone or reaching Substantial Completion or Completion of a Portion and, subject to clauses 12.1(f) and 12.1(g), the Tunnelling Contractor must use that access to the Construction Site to commence the Tunnelling Contractor's Activities and optimise the additional time.

(c) Grant of early access given under clause 12.1(a) or deemed to be given under clause 12.1(f):

(i) subject to clause 19.6(h)(iii), will be taken into account when making an assessment under clause 19.6 of claims by the Tunnelling Contractor for extensions of time; and

(ii) except to the extent set out in clause 12.1(c)(i), will not affect any Dates for Milestone Achievement, Dates for Substantial Completion or Dates for Completion.

(d) To the extent the Principal intends to grant early access under this clause 12.1, the Principal must give the Tunnelling Contractor one or more written notices specifying a date or dates ("**Construction Site Access Date**") on which a part of the Construction Site will be Accessible that is prior to the relevant Site Access Date set out in the Site Access Schedule. Any such notice must:

(i) specify the date or dates on which early access will be granted; and

(ii) be given at least 10 Business Days prior to the date on which the relevant part of the Construction Site will be Accessible.

(e) If the Principal gives the Tunnelling Contractor a notice under clause 12.1(d) with respect to a part of the Construction Site, and the Tunnelling Contractor is not given access to that part of the Construction Site, or access is granted but that part of the Construction Site is not Accessible, on the date specified in the notice, the Tunnelling Contractor will be entitled to the additional costs properly and reasonably incurred directly as a result of not being given access to that part of the Construction Site or that part of the Construction Site not being Accessible, as stated by the Principal's Representative and provided that the Tunnelling Contractor will have no entitlement for any such costs incurred prior to the date on which the Tunnelling Contractor is deemed to have accepted early access in accordance with clause 12.1(f).

(f) If a Construction Site Access Date is:

(i) after the Early Site Access Date, the Tunnelling Contractor will be deemed to have accepted early access to that part of the Construction Site on the Construction Site Access Date; or

(ii) prior to the Early Site Access Date, the Tunnelling Contractor will be deemed to have accepted early access to that part of the Construction Site on the earlier to occur of:

(A) the date on which the Tunnelling Contractor (by notice in writing to the Principal) accepts early access to the Construction Site; and

(B) the Early Site Access Date,

in which case the Tunnelling Contractor acknowledges and agrees that its access to the relevant part of the Construction Site will be subject to the requirements set out under clause 12.2, as applicable in the circumstances.

(g) Where the Principal gives the Tunnelling Contractor a notice under clause 12.1(d) stating that a part of the Construction Site will be Accessible from a specified date, the Tunnelling Contractor will not be required to accept, or be deemed to have accepted, early access in respect of that part of the Construction Site where the date specified in the notice is prior to the Early Site Access Date.

(h) The Tunnelling Contractor will be entitled to claim the applicable Early Site Access Payment in respect of each day during the period:

(i) commencing on the date on which the Tunnelling Contractor is granted early access for each relevant Portion in accordance with clause 12.1(f); and

(ii) ending on the Site Access Date for the relevant part of the Construction Site for each relevant Portion,

such Early Site Access Payment being in full satisfaction for the Direct Costs and Overheads and profit in respect of the Tunnelling Contractor having to comply with its obligations under clauses 12.2 and 12.5 in respect of the relevant part of the Construction Site.

12.2 **Access**

(a) Subject to clauses 12.2(b) to 12.2(h) and any other provision of this deed affecting access, the Principal must:

(i) give, or ensure the Tunnelling Contractor has, access to each area of the Construction Site specified in the Site Access Schedule by the relevant dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Construction Site, then by the last day of that period); and

(ii) thereafter continue to allow, or ensure that the Tunnelling Contractor is continued to be allowed, access to each such area of the Construction Site.

(b) The Tunnelling Contractor acknowledges that its access to the Construction Site is subject to:

(i) any conditions to access set out in the Site Access Schedule;

(ii) this clause 12.2; and

(iii) any other provision of this deed relating to access.

(c) Without prejudice to the generality of clause 12.2(b), the Tunnelling Contractor acknowledges and agrees that the Tunnelling Contractor's access to the Construction Site is also subject to:

(i) the terms of the Master Interface Deed;

(ii) the requirements of the Third Party Agreements for which the Tunnelling Contractor is responsible under Schedule D5; and

(iii) the appointment and obligations of the Tunnelling Contractor under clause 8.3.

(d) The Tunnelling Contractor acknowledges and agrees that access to the Construction Site or any part thereof will confer on the Tunnelling Contractor a right to such management and control as is necessary to enable:

(i) the Tunnelling Contractor to execute the Tunnelling Contractor's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation; and

(ii) the Tunnelling Contractor to discharge its responsibilities as principal contractor.

(e) The Principal is not obliged to give the Tunnelling Contractor access to any area of the Construction Site in accordance with clause 12.2(a), until the Tunnelling Contractor has:

(i) complied with clauses 6.1(a);

(ii) submitted the Project Health & Safety Risk Governance Plan to the Principal's Representative and the Independent Certifier and the Principal's Representative has had 15 Business Days to review the Project Health & Safety Risk Governance Plan and has not rejected the Project Health & Safety Risk Governance Plan;

(iii) effected the insurance policies required by clause 23.5 (other than the insurances referred to in clauses 23.7 (unless required under clause 23.7), 23.12 and 23.13 of this deed); and

(iv) complied with clause 23.15(a) with respect to each insurance.

(f) The Tunnelling Contractor acknowledges and agrees that:

(i) it will be given non-exclusive access to the Construction Site;

(ii) the Principal may, without limiting its obligations under clause 4.10, engage Interface Contractors to perform Construction Site Interface Work on the Construction Site;

(iii) it will cooperate with the Interface Contractors and coordinate the Tunnelling Contractor's Activities with the Construction Site Interface Work in accordance with clause 4.10; and

(iv) access to the Construction Site or any part thereof will be subject to the Tunnelling Contractor's compliance with clause 12.2(j).

(g) The Principal's obligation to give access under this clause 12.2 in respect of:

(i) the parts of the Construction Site identified in Schedule A2 in the column headed "Part of Construction Site" will cease upon the relevant Portion Handover Date; or

(ii) any Temporary Area for which a Site Access Expiry Date is specified in Table 4a of the Site Access Schedule, will cease upon the relevant Site Access Expiry Date.

(h) Failure by the Principal to give access as required by clause 12.2(a) will not be a breach of this deed but will entitle the Tunnelling Contractor to:

(i) an extension of time to any relevant Date for Milestone Achievement, Date for Substantial Completion or Date for Completion under clause 19 if the requirements of that clause are satisfied; and

(ii) be paid by the Principal any Delay Costs arising from the Principal's failure to give the Tunnelling Contractor access as required by clause 12.2(a), in accordance with clause 19.10.

(i) The Tunnelling Contractor's entitlement under clause 12.2(h)(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 clause 12.2(a).

(j) The Tunnelling Contractor must:

(i) not use the Construction Site for any purpose other than the Permitted Use without the prior written consent of the Principal's Representative; and

(ii) comply with:

(A) any access conditions that apply to an area of the Construction Site as specified in the Site Access Schedule;

(B) the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Construction Site as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW).

(k) The Tunnelling Contractor must ensure that at all times on a 24 hour per day, 7 day a week basis the Principal's Representative, any person authorised by the Principal (including OpCo, any Alternate Operator, any Interface Contractor, visitors invited by the Principal and other contractors and consultants who are to perform work on the Construction Site) and the Independent Certifier have safe, convenient and unimpeded access to:

(i) the Construction Site and any other areas affected by the Tunnelling Contractor's Activities (with such access rights to commence immediately after the Tunnelling Contractor is given access under clause 12.1 or 12.2(a));

(ii) the Project Works and the Temporary Works;

(iii) any other place where any part of the Tunnelling Contractor's Activities is being carried out (including Extra Land);

(iv) the Tunnelling Contractor's Activities;

(v) the Design Documentation; and

(vi) any other documentation created for the purposes of the Tunnelling Contractor's Activities.

(l) The Tunnelling Contractor must provide the Principal, the Principal's Representative and the Independent Certifier with every reasonable facility necessary for the inspection of the Tunnelling Contractor's Activities.

(m) When accessing any area or thing referred to in clause 12.2(k), the Principal must:

(i) comply with; and

(ii) use best endeavours to ensure that any persons authorised by it to access that area or thing comply with,

the Tunnelling Contractor's reasonable occupational, health, environmental and safety requirements.

(n) The Tunnelling Contractor acknowledges that:

(i) the Site Access Expiry Dates in respect of the Temporary Areas identified in Table 4a of the Site Access Schedule are fixed and will not be extended for any reason; and

(ii) the Tunnelling Contractor must vacate those Temporary Areas on the relevant Site Access Expiry Dates.

The Tunnelling Contractor must arrange the sequence of work so that the Tunnelling Contractor's Activities which must be performed on the Temporary Areas referred to in clause 12.2(n)(i) are completed prior to the relevant Site Access Expiry Dates.

12.3 **Access to the harbour**

(a) The Tunnelling Contractor must:

(i) obtain all rights of access to Sydney Harbour necessary to carry out the Tunnelling Contractor's Activities from the Harbour Master, TfNSW and any other relevant Authority;

(ii) comply with any direction which may be given by the Harbour Master, TfNSW and any other relevant Authority; and

(iii) navigate in accordance with:

(A) the *Marine Safety Act 1998* (NSW); and

(B) the *Marine Safety Regulation 2016* (NSW).

(b) The Tunnelling Contractor acknowledges and agrees that:

(i) it will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with any act or omission of the Harbour Master, TfNSW or any other relevant Authority; and

(ii) no act or omission of the Harbour Master, TfNSW or any other relevant Authority will in any way lessen or otherwise affect:

(A) the Tunnelling Contractor's obligations under this deed or otherwise according to law; or

(B) the Principal's rights against the Tunnelling Contractor whether under this deed or otherwise according to law.

12.4 **Property Works**

(a) The Tunnelling Contractor must:

(i) carry out the Property Works:

(A) in accordance with the Tunnelling Specification (including section 2.1.3.4 of the Particular Specification); and

(B) so that they are fit for their intended purpose;

(ii) after completion of the Property Works with respect to an Unowned Parcel, including the work described in clause 12.4(f), provide to the Principal's Representative:

(A) a certificate in the form of Schedule B16, duly executed by the owner or owners of any part of the Unowned Parcel; or

(B) a statement signed by the Tunnelling Contractor to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule B16 within 15 Business Days of it being provided by the Tunnelling Contractor to the owner or owners following completion of the Property Works including the work described in clause 12.4(f); and

(iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or owners of any part of an Unowned Parcel where:

(A) such owner or owners have not duly signed a certificate in the form of Schedule B16; and

(B) the claim or Loss arises out of or in any way in connection with a wrongful act or omission of the Tunnelling Contractor or its Associates in connection with the Property Works or a failure by the Tunnelling Contractor to comply with its obligations under this deed relating to the Property Works.

(b) The acceptance of a certificate or statement provided by the Tunnelling Contractor under clause 12.4(a)(ii) by the Principal's Representative is not approval by the Principal or the Principal's Representative of the Tunnelling Contractor's performance of its obligations under this clause 12.4.

(c) Where any Property Works are required to be carried out on an Unowned Parcel, the Tunnelling Contractor must give a written notice to the owner or owners of the property (with a copy to the Principal's Representative) which:

(i) describes the Property Works to be carried out;

(ii) requests access for the purpose of carrying out the Property Works; and

(iii) specifies the intended date for commencement of the Property Works,

not less than 10 Business Days prior to the day which the Tunnelling Contractor intends to commence the Property Works.

(d) If the owner or owners of a property do not provide the Tunnelling Contractor with sufficient access to carry out the Property Works from either:

(i) the date notified in the notice under clause 12.4(c); or

(ii) such other date as may be agreed between the Tunnelling Contractor and the owner or owners,

the Tunnelling Contractor must:

(iii) give the Principal's Representative a notice stating this; and

(iv) not carry out the Property Works until the Principal's Representative gives the Tunnelling Contractor a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 12.4(c) will reapply.

(e) Upon being given access to any property for the purpose of carrying out any Property Works, the Tunnelling Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Unowned Parcel.

(f) The Tunnelling Contractor must:

(i) rehabilitate any part of an Unowned Parcel to the state agreed with the owner of such Unowned Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the Tunnelling Contractor obtaining access; and

(ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 12.4.

(g) Subject to clause 12.4(h) and clause 12.4(i), the following are conditions precedent to Substantial Completion of a Portion:

(i) completion of all Property Works under this clause 12.4 that form part of the Portion, including all relevant work under clause 12.4(f); and

(ii) provision of all certificates or statements (as the case may be) to the Principal's Representative as required under clause 12.4(a)(ii) in respect of Property Works that form part of the Portion.

(h) If:

(i) the Tunnelling Contractor is not required to carry out any specific Property Works that form part of a Portion in accordance with clause 12.4(d);

(ii) the Tunnelling Contractor has otherwise complied with its obligations under this clause 12.4; and

(iii) the Tunnelling Contractor has otherwise achieved the requirements for Substantial Completion of the relevant Portion,

the Tunnelling Contractor will not be required to complete those specific Property Works as a condition precedent to Substantial Completion of the relevant Portion, and the Principal may specify a reasonable period after Substantial Completion within which those specific Property Works must be completed.

(ha) If:

(i) the Tunnelling Contractor is not required to carry out any specific Property Works that form part of a Portion in accordance with clause 12.4(d);

(ii) the Tunnelling Contractor has otherwise complied with its obligations under this clause 12.4; and

(iii) the Tunnelling Contractor has otherwise achieved the requirements for Completion of the relevant Portion,

the Tunnelling Contractor will not be required to complete those specific Property Works as a condition precedent to Completion of the relevant Portion, and the Principal may specify a reasonable period after Completion within which those specific Property Works must be completed.

(i) If clause 12.4(h) or clause 12.4(ha) applies but the owner or owners of the relevant Unowned Parcel do not provide the Tunnelling Contractor with sufficient access to carry out the relevant Property Works prior to the date which is 12 months after the Date of Substantial Completion of the relevant Portion, the Principal must direct a Change under clause 15.3(a) to omit those Property Works and there will be a reduction to the Project Contract Sum.

12.5 **Control of Construction Site**

(a) At all times after being given access to the Construction Site or a part of the Construction Site under clause 12.1 or clause 12.2 until the relevant Portion Handover Date, the Tunnelling Contractor must:

(i) without limiting any right of the Principal or the Principal's Representative under this deed, be responsible for the management and control of the Construction Site;

(ii) control access to, and the security and maintenance of, and must ensure public safety on, and, to the extent required by Law for the performance of the Tunnelling Contractor's Activities, adjacent to, the Construction Site or that part;

(iii) provide for the continuous safe passage of the public and road users on existing public spaces, parks, footpaths, pedestrian ways, pedal cycle paths, roads and other access ways affected by the Tunnelling Contractor's Activities in accordance with this deed;

(iv) minimise delay or disruption to the movement of the public and all road users; and

(v) subject to clause 12.5(c), comply with all directions of any relevant Authority and Directions of the Principal's Representative with respect to the management of such access, safe passage and movement at all times.

(b) The Tunnelling Contractor and the Principal acknowledge that nothing in this deed including the right to inspect pursuant to clause 16.5 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

(i) the Principal has any management or control over the Tunnelling Contractor's Activities or the Construction Site or Extra Land; or

(ii) the Principal has any responsibility for any act or omission by the Tunnelling Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Approvals, Third Party Agreements, Adjoining Property Easements or this deed.

(c) Subject to clauses 4.9, 16.8 or 16.9, where a direction of an Authority or the Principal's Representative referred to in clause 12.5(a)(v) necessitates a reduction in the permissible working hours or working days for the Tunnelling Contractor's Activities:

(i) the Tunnelling Contractor will be entitled to an extension of time to any relevant Date for Milestone Achievement or Date for Substantial Completion under clause 19 if the requirements of that clause are satisfied; and

(ii) the Project Contract Sum will be adjusted for the increased or decreased Direct Costs and Overheads and Profit Margin incurred by the Tunnelling Contractor as a direct result of the direction of an Authority or the Principal's Representative, as stated by the Principal's Representative.

12.6 **Extra Land**

(a) The Tunnelling Contractor must:

(i) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Construction Site, which is necessary or which it requires for the execution of the Tunnelling Contractor's Activities (which may include additional land or buildings required for the Third Party Works, the underpinning of any structure or for the insertion of rock bolts); and

(ii) as a condition precedent to Substantial Completion of any Portion in which the Tunnelling Contractor has had to procure occupation or use of or relevant rights over any Extra Land:

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

(B) provide to the Principal's Representative:

(aa) a properly executed release on terms satisfactory to the Principal's Representative from all claims from the owner or occupier of, and from any other person having an interest in the Extra Land; or

(bb) if the Tunnelling Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the Tunnelling Contractor to the effect that such owner or occupier, or other person having an interest in the Extra Land, has failed or refused to execute such a release within 15 Business Days of it being provided by the Tunnelling Contractor to the owner, occupier or other person following completion of the work on the Extra Land; and

(iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or occupier of any part of the Extra Land where:

(A) such owner or occupier has not executed such a release; and

(B) the claim or Loss arises out of or in connection with the Tunnelling Contractor's Activities.

(b) [redacted], the Tunnelling Contractor acknowledges that:

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

(ii) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Tunnelling Contractor arising out of or in any way in connection with:

(A) identifying and obtaining access to Extra Land; or

(B) any delay, additional costs or other effects on the Tunnelling Contractor's Activities related to the ability of the Tunnelling Contractor or its Subcontractors to obtain access to Extra Land or approval to use Extra Land.

(c) If, at any time after the date of this deed, the Tunnelling Contractor notifies the Principal in writing that:

(i) it requires the occupation or use of or relevant rights over any land or buildings in addition to the Construction Site, which is necessary or which it requires for the execution of the Tunnelling Contractor's Activities (including additional land or buildings required for the Third Party Works, the underpinning of any structure or for the insertion of rock bolts); and

(ii) the owner of, occupier of, and/or relevant interest holder in respect of such land or buildings is not willing to enter into an agreement directly with the Tunnelling Contractor in respect of the relevant land or buildings,

the parties agree that the Principal may, in its absolute discretion and subject to any conditions the Principal requires, elect to enter into a Third Party Agreement with the relevant owner, occupier, and/or interest holder, and if the Principal elects to do so, then without limiting any other provision in this clause 12.6:

(iii) the land or buildings the subject of the relevant Third Party Agreement will be treated as Extra Land under this deed (**TPA Extra Land**);

(iv) the Tunnelling Contractor must comply with the terms of any Revised Allocation arising out of the execution of any Third Party Agreement relating to the TPA Extra Land at its own cost and risk, and the Tunnelling Contractor will not be entitled to make a claim pursuant to clause 12.24(e) in respect of any such Third Party Agreement;

(v) the Tunnelling Contractor will not be required to comply with clause 12.6(a)(ii)(B) in relation to such TPA Extra Land; and

(vi) the Tunnelling Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner, occupier and/or relevant interest holder of any part of the TPA Extra Land where the claim or Loss arises out of or in connection with the Tunnelling Contractor's Activities.

12.7 Temporary Areas

The Tunnelling Contractor must, as a condition precedent to Substantial Completion of any Portion where the Tunnelling Contractor has occupied or made use of a Temporary Area in connection with that Portion, reinstate the Temporary Area to a condition at least equivalent to the condition existing before that occupation or use except for such parts of the Temporary Area:

(a) that are required by this deed (including section 2.2.2 of the Particular Specification) to contain any Handover Works; or

(b) which this deed (including section 2.2.2 of the Particular Specification) specifies need not be reinstated (including where the Tunnelling Contractor is required to demolish buildings on the Temporary Area).

12.8 **Physical conditions**

(a) Without limiting clauses 12.9(c) or 32.10, the Tunnelling Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, the Tunnelling Contractor:

(i) examined this deed, the Construction Site and its surroundings, the Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Tunnelling Contractor during the tender period;

(ii) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this deed;

(iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of the Tunnelling Contractor's Activities;

(iv) informed itself of:

(A) all matters relevant to the employment of labour at the Construction Site; and

(B) all industrial matters relevant to the Construction Site; and

(v) was given the opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:

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

(B) for design purposes and otherwise;

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

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

(b) Without limiting or otherwise affecting clauses 12.8(c), 12.8(d) and 12.9, the Principal makes no representation and gives no warranty to the Tunnelling Contractor in respect of:

(i) the Site Conditions likely to be encountered during the execution of the Tunnelling Contractor's Activities or otherwise in respect of the condition of:

(A) the Construction Site, Extra Land or their surroundings;

(B) any structure or other thing on, under, above or adjacent to the Construction Site or Extra Land;

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

(iii) the condition or characteristics of any Adjoining Property.

(c) Subject to clauses 4.4, 12.11(c), 12.13(e), 12.13(g), 12.15(m), 12.17(c), [redacted] and 19.6, the Tunnelling Contractor accepts:

(i) the Construction Site, the Adjoining Properties and any Extra Land; and

(ii) any structures or other thing on, above or adjacent to, or under the surface of, the Adjoining Properties, the Construction Site and any Extra Land,

in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:

(iii) all Loss, delay or disruption it suffers or incurs; and

(iv) any adverse effect on the Project Works or the Temporary Works,

arising out of, or in any way in connection with the Site Conditions encountered in performing the Tunnelling Contractor's Activities and does so notwithstanding that the Principal may have in whole or in part specified the alignment, location, position, level or dimensions for the Project Works in the Tunnelling Specification.

(d) The Tunnelling Contractor must investigate, design and construct the Project Works and Temporary Works in accordance with this deed and will not be relieved of its obligations under this deed, irrespective of:

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

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

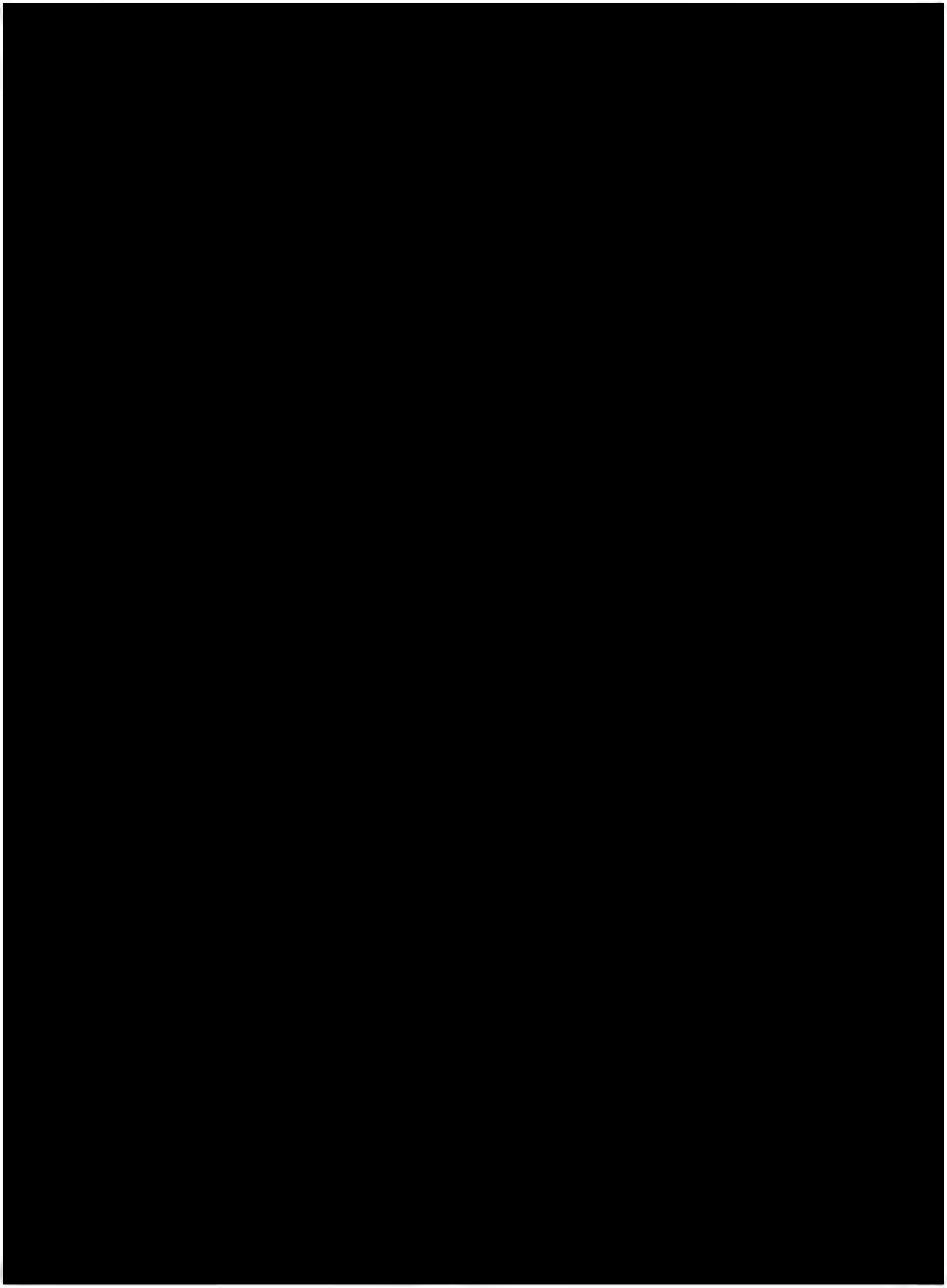
(A) the Construction Site, the Adjoining Properties or any Extra Land, the Environment or their surroundings; or

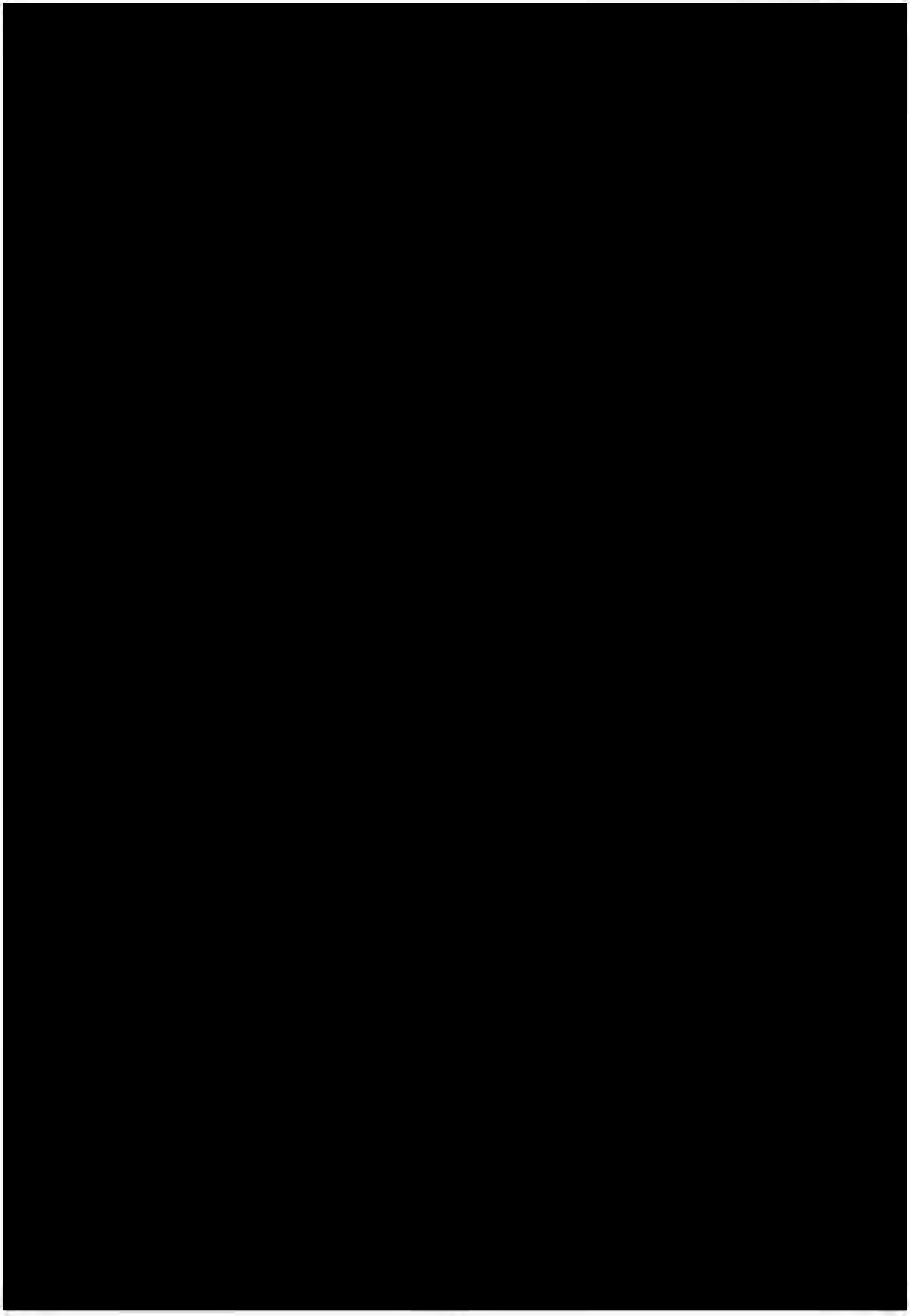
(B) any structure or other thing on, above or adjacent to, or under the surface of, the Adjoining Properties, the Construction Site or any Extra Land, the Environment or their surroundings; and

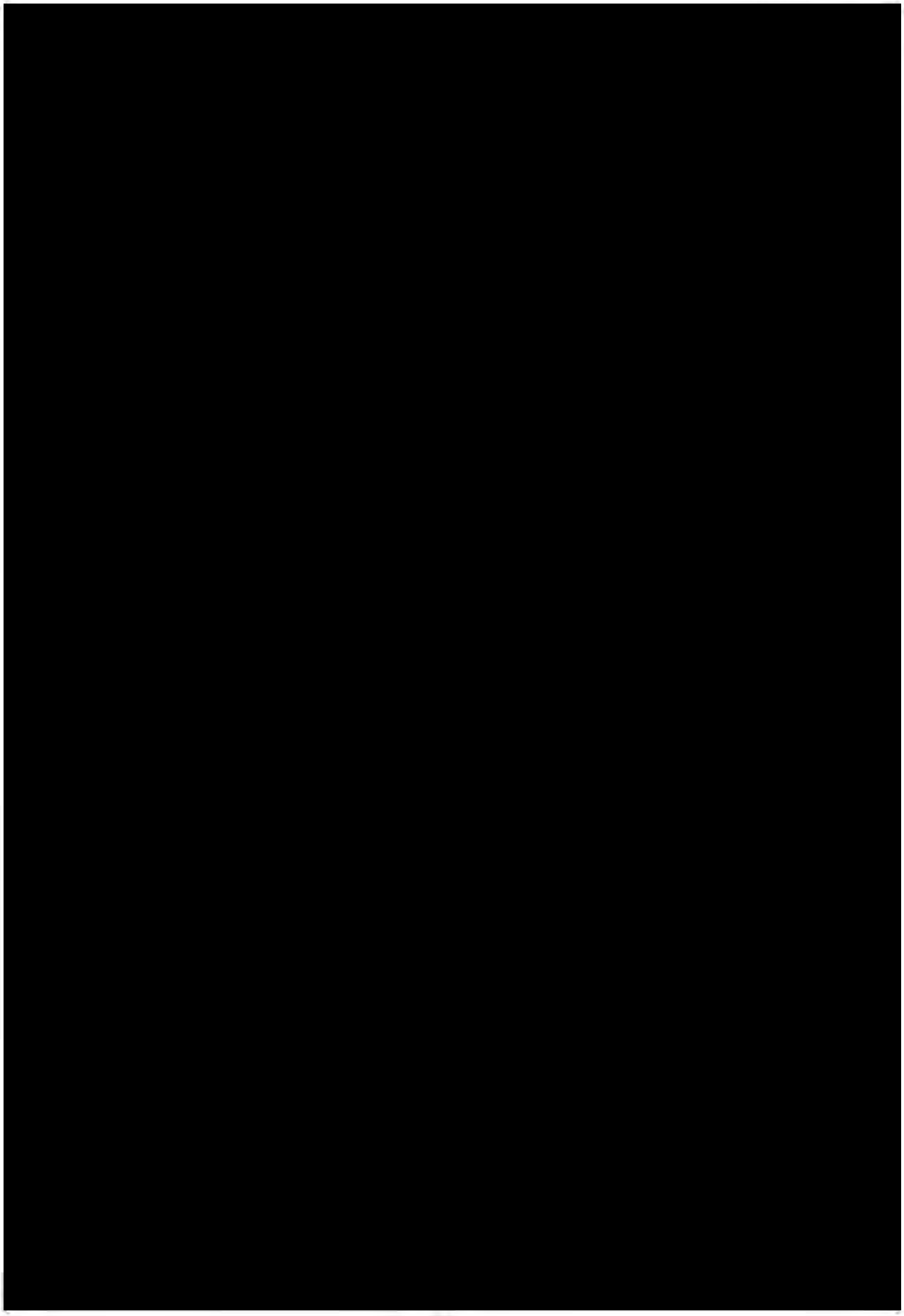
(iii) any assumptions, projections, estimates, contingencies or otherwise that the Tunnelling Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in subparagraph (ii),

and notwithstanding that the Principal may have in whole or in part specified the alignment, location, position, level or dimensions for the Project Works in the Tunnelling Specification.

(e) Nothing in clauses 12.8 or 12.9 limits the operation of clauses 4.4, [redacted] 12.11(c), 12.13(e), 12.13(g), 12.15(m), 12.17(c), [redacted] and 19.6.







12.9 **Information Documents**

(a) Not used.

(b) Without limiting or otherwise affecting clause 12.9(c):

(i) 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;

(ii) whether or not an Information Document or any part thereof forms a schedule or an exhibit to this deed, the Tunnelling Contractor acknowledges that:

(A) the Information Document or part thereof does not form part of this deed and that clause 12.9(c) applies to the Information Document or part thereof; and

(B) where an Information Document or any part thereof forms a schedule or an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof;

(iii) insofar as is permitted by Law, the Principal will not be liable upon any Claim by the Tunnelling 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 to or by the Tunnelling Contractor or any other person to whom the Information Documents are disclosed; or

(B) a failure by the Principal to provide any information to the Tunnelling Contractor.

(c) The Tunnelling Contractor:

(i) subject to clause12.10, warrants that it did not in any way rely upon:

(A) any information, data, representation, statement or document made by, or provided to the Tunnelling Contractor, by the Principal or anyone on behalf of the Principal or any other information, data,

representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or

(B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

for the purposes of entering into this deed or carrying out the Tunnelling Contractor's Activities but nothing in this subparagraph will limit or otherwise affect the Tunnelling Contractor's obligations under this deed;

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

(iii) acknowledges that it is aware that the Principal has entered into this deed relying upon:

(A) the warranties, acknowledgements and agreements in clauses 12.9(c)(i) and 12.9(c)(ii); and

(B) the warranties and acknowledgements in the Tender Form submitted by the Tunnelling Contractor as part of its Tender.

(d) Subject to clause 12.11(c) and without limiting clause 12.10(c) and the Tunnelling Contractor's entitlements in respect of the Reliance Letters, the Tunnelling Contractor releases and indemnifies the Principal (and any of 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 being limited by clause 12.9(d)(i)) any Loss suffered or incurred by them (or any of 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 to or by the Tunnelling Contractor or any other person to whom the Information Documents are disclosed by the Tunnelling Contractor;

(iv) any breach by the Tunnelling Contractor of this clause 12.9; or

(v) the Information Documents being relied upon or otherwise used by the Tunnelling Contractor or its Associates in the preparation of any information or document.

(e) Subject to clause 12.11(c), the Tunnelling Contractor releases the Principal from any Claim against the Principal by, or Liability of the Principal to, the Tunnelling Contractor, arising out of or in any way in connection with a failure by the Principal to provide any information to the Tunnelling Contractor (except to the extent the Principal is expressly required to provide such information under this deed).

[redacted]

[redacted]

12.10 **Geotechnical Reports** [redacted]

[redacted] the parties acknowledge and agree that:

(a) prior to the date of this deed the Principal procured:

(i) the Geotechnical Reports for the benefit of the Principal and the Tunnelling Contractor; and

(ii) the Reliance Letters from the authors of the Geotechnical Reports; and

[redacted]

[redacted]

(c) while the Tunnelling Contractor may rely on:

(i) each Geotechnical Report to the extent provided by the Reliance Letters;

[redacted]

subject to clauses [redacted] 12.11, the Tunnelling Contractor is not entitled to make any Claim against the Principal (and the Principal will not be liable upon any Claim by the Tunnelling Contractor) arising out of or in connection with any Geotechnical Report [redacted] or the accuracy of any information contained within any Geotechnical Report [redacted].

12.11 **Notice of Site Investigation Location Difference**

(a) If, during the execution of the Tunnelling Contractor's Activities, the Tunnelling Contractor becomes aware of a Site Investigation Location Difference, it must immediately give the Principal's Representative notice in writing.

(b) Within 10 Business Days of giving a notice under clause 12.11(a), the Tunnelling Contractor must give the Principal's Representative a written statement of:

(i) the Site Investigation Location Difference and in what respects it will have a material impact upon the Tunnelling Contractor's Activities;

(ii) the additional work and resources which the Tunnelling Contractor estimates to be necessary to deal with the Site Investigation Location Difference;

(iii) the time the Tunnelling Contractor anticipates will be required to deal with the Site Investigation Location Difference and the expected delay in achieving any Milestone or Substantial Completion of any Portion;

(iv) the Tunnelling Contractor's estimate of the Direct Costs of the measures necessary to deal with the Site Investigation Location Difference; and

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

(c) If the Site Investigation Location Difference causes the Tunnelling Contractor to:

(i) carry out additional work;

(ii) use additional Construction Plant; or

(iii) incur additional Direct Costs (excluding the costs of any delay or disruption arising out of or in any way in connection with the Site Investigation Location Difference or the additional work required to deal with the Site Investigation Location Difference),

which a competent and experienced contractor having done those things it is deemed to have done by clause 12.8(a) could not have avoided or mitigated, and could not reasonably have anticipated at the date of this deed, the Principal will pay the Tunnelling Contractor any additional Direct Costs incurred by the Tunnelling Contractor after the date the Tunnelling Contractor gives the written notice required by clause 12.11(a) for carrying out such work, plus Overheads and Profit Margin.

(d) The Tunnelling Contractor's entitlement under clause 12.11(c) will be reduced to the extent that the Tunnelling Contractor has not taken all reasonable steps to mitigate any extra costs incurred by it as a result of the Site Investigation Location Difference.

12.12 **Archaeological Clearance Works**

(a) The Tunnelling Contractor must:

(i) perform Archaeological Clearance Works at each Artefact Risk Area in accordance with the requirements of:

(A) sections 2.7.2 and 2.7.4 of the General Specification;

(B) the Construction Heritage Management Plan; and

(C) all applicable Laws, Codes and Standards and guidelines relating to heritage and conservation; and

(ii) not commence performance of Archaeological Clearance Works at any Artefact Risk Area until:

(A) the Construction Heritage Management Plan has been submitted to the Principal's Representative and the Independent Certifier under clause 11.3(a) and not been the subject of a notice under clause 11.3(b)(ii) within the time period specified in clause 11.3(b)(ii); and

(B) any required approvals have been obtained from the Secretary of the NSW Department of Planning, Industry and Environment in accordance with the requirements of the Project Planning Approval; and

[redacted]

(b) The Archaeological Clearance Works at an Artefact Risk Area will be taken to be complete when:

(i) the Tunnelling Contractor has satisfied the requirements of sections 2.7.2 and 2.7.4 of the General Specification; and

(ii) the Tunnelling Contractor has provided the Principal's Representative with a certificate in the form of Schedule B18,

in relation to the relevant Artefact Risk Area.

(c) The Tunnelling Contractor may not commence bulk excavation work at an Artefact Risk Area (or any part of an Artefact Risk Area) unless and until:

(i) the requirements of clause 12.12(b) have been satisfied for the applicable Artefact Risk Area; or

(ii) the Principal's Representative has otherwise given the Tunnelling Contractor written permission to do so subject to such conditions as the Principal's Representative may specify.

12.13 **Artefacts**

(a) As between the Principal and the Tunnelling Contractor, any Artefacts are the property of the Principal.

(b) The Tunnelling Contractor must:

(i) immediately notify the Principal's Representative if any Artefact is found;

(ii) ensure that the Artefact is managed in accordance with:

(A) the Construction Heritage Management Plan; and

(B) the Sydney Metro Unexpected Heritage Finds Procedure;

(iii) comply with all Laws, Planning Approvals, Codes and Standards and guidelines relating to heritage and conservation in relation to the Artefact;

(iv) comply with the requirements of any Authorities and directions of the Principal's Representative in relation to the Artefact; and

(v) continue to perform the Tunnelling Contractor's Activities except to the extent otherwise:

(A) directed by the Principal's Representative;

(B) ordered by a court or tribunal; or

(C) required by Law,

and must do so at its cost except to the extent contemplated by clauses 12.13(e) and 12.13(g).

(c) If the Tunnelling Contractor discovers an Artefact which the Tunnelling Contractor considers to be a State Significant Artefact or Aboriginal Object, the Tunnelling Contractor must:

(i) immediately notify the Principal's Representative in writing;

(ii) within 5 Business Days of the discovery provide the Principal's Representative with an initial statement of archaeological significance prepared by a suitably qualified heritage specialist outlining the reasons why the Artefact is considered to be a State Significant Artefact or Aboriginal Object (as applicable); and

(iii) as soon as reasonably practicable provide the Principal's Representative with:

(A) a complete and detailed assessment of the archaeological significance of the Artefact prepared by a suitably qualified heritage specialist; and

(B) such other information as is reasonably requested by the Principal's Representative; and

(iv) cooperate and consult with the Principal and all relevant Authorities in relation to the Artefact,

and must do so at its cost except to the extent contemplated by clause 12.13(e).

(d) Within 5 Business Days of the Tunnelling Contractor providing the information required by clause 12.13(c)(ii), the Principal's Representative (acting reasonably) will determine whether the Artefact is a State Significant Artefact or Aboriginal Object (as applicable) and notify the Tunnelling Contractor in writing.

(e) Subject to clause 12.13(f), if the Principal's Representative determines that an Artefact is a State Significant Artefact or Aboriginal Object, then any:

(i) additional work; or

(ii) change to the Tunnelling Contractor's work methodology,

that is required as a direct result of the State Significant Artefact or Aboriginal Object discovery will be treated as a Change, provided that, in respect of each Portion, the Tunnelling Contractor will have no entitlement to an extension of time arising out of or in connection with that Change in respect of the first 10 days of delay arising from the discovery of State Significant Artefacts or Aboriginal Objects (as applicable) in the aggregate per Portion.

(f) If a State Significant Artefact or Aboriginal Object is discovered in an Artefact Risk Area, the Tunnelling Contractor will be entitled to a Change under clause 12.13(e) if the nature and extent of the discovery was not identified in:

(i) any Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Tunnelling Contractor on or before the date of this deed (including the Tunnelling Specification); or

(ii) any information (including the Tunnelling Specification) relevant to the risks, contingencies and other circumstances and obtainable by the making of reasonable enquiries with respect to the Tunnelling Contractor's Activities,

on or before the date of this deed.

(g) If the Tunnelling Contractor discovers an Artefact that is not a State Significant Artefact or Aboriginal Object, the Principal will pay the Tunnelling Contractor its additional Direct Costs incurred by the Tunnelling Contractor in complying with its obligations under clause 12.13(b)(iv) in relation to the relevant Artefact plus Overheads and Profit Margin, as stated by the Principal's Representative, provided that this clause 12.13(g) will not apply with respect to any Artefact discovered in an Artefact Risk Area during performance of Archaeological Clearance Works.

12.14 **Site induction**

(a) Without limiting the Tunnelling Contractor's obligations under clause 7.2 to comply with the conditions and requirements of all Approvals, the Tunnelling Contractor must:

(i) provide safety and environmental site induction for persons nominated by the Principal's Representative on the Construction Site and for all personnel directly or indirectly engaged by the Tunnelling Contractor and requiring access to the Construction Site, any Extra Land and other areas where the Tunnelling Contractor's Activities are being performed; and

(ii) ensure such persons satisfactorily complete such site induction before such persons are given such access or commence such work.

(b) The induction must:

(i) comply with all applicable Law, Project Plans and the Principal's procedures, policies and rules; and

(ii) otherwise be in accordance with the requirements of this deed.

(c) The Tunnelling Contractor must keep and maintain comprehensive and detailed induction records and provide the Principal's Representative or its nominee, upon request, with access to such records.

12.15 **Hazardous Materials**

(a) The parties acknowledge and agree that:

(i) the Tunnelling Contractor has been provided with the Principal Hazardous Material Reports;

(ii) the Principal Hazardous Material Reports positively identify or assume the presence of Hazardous Materials which may be encountered by the Tunnelling Contractor in the performance of Demolition Works;

(iii) there may be Hazardous Materials (other than those positively identified or assumed to be present in the Principal Hazardous Material Reports) that are encountered by the Tunnelling Contractor in the performance of Demolition Works; and

(iv) the Tunnelling Contractor's Activities include taking the appropriate steps referred to in this clause 12.15 and clause 12.16 in respect of Hazardous Materials, regardless of whether or not the Hazardous Materials were positively identified or assumed to be present in the Principal Hazardous Material Reports.

(b) Without limiting clause 12.15(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 encountered during the performance of Demolition Works.

(c) The Tunnelling Contractor must:

(i) perform the Demolition Temporary Works and the Demolition Works in accordance with sections 2.2 and 3.3 of the Particular Specification including, without limitation:

(A) obtain the certification of a Demolition Structural Engineer in the form of Schedule B22 in accordance with section 3.3.1(n)(ii) of the Particular Specification;

(B) obtain the certification of a Demolition Structural Engineer in the form of Schedule B23 in accordance with section 3.3.1(o)(iii) of the Particular Specification;

(C) obtain the certification of a Demolition Structural Engineer in the form of Schedule B24 in accordance with section 3.3.3(a) of the Particular Specification;

(D) obtain the certification of a Demolition Temporary Works Independent Checker in the form of Schedule B25 in accordance with section 3.3.3(b) of the Particular Specification; and

(E) obtain the certification of a Demolition Structural Engineer in the form of Schedule B26 in accordance with section 3.3.3(d) of the Particular Specification,

(ii) provide for the management of any Hazardous Material in accordance with the requirements of this deed, including the Tunnelling Specification and all applicable Law and Codes and Standards, the Sydney Metro Principal

Contractor Health and Safety Standard, the Demolition Work Plan, the Asbestos Removal Control Plan and the Waste Management Plan; and

(iii) take all measures required to protect workers and others from Hazardous Materials in accordance with Law and Codes and Standards, the Sydney Metro Principal Contractor Health and Safety Standard, the WHS Management Systems and Auditing Guidelines and the Tunnelling Specification.

(d) Without limiting clause 12.15(a) and its obligation to comply with applicable Law, the Tunnelling Contractor must, using due care, skill and diligence:

(i) where a Principal Hazardous Material Report was provided by the Principal with respect to Demolition Works to be performed on a part of the Construction Site, undertake all additional site investigations necessary to identify the full extent of Hazardous Material on each part of the Construction Site where the relevant Demolition Works will be performed, in accordance with the WHS Regulation and the Waste Classification Guidelines; and

(ii) where no Principal Hazardous Material Report was provided by the Principal with respect to Demolition Works to be performed on a part of the Construction Site, prepare a suitable survey report to identify the full extent of Hazardous Material on each part of the Construction Site where the relevant Demolition Works will be performed, in accordance with the WHS Regulation and the Waste Classification Guidelines,

and must submit to the Principal's Representative:

(iii) the results of any additional investigations described under clause 12.15(d)(i) and/or the survey report(s) described under clause 12.15(d)(ii), as the case may be; and

(iv) the estimated quantities of any Hazardous Material, including a breakdown of any Compensable Hazardous Material, contained in the buildings, structures or facilities that are the subject of the Demolition Works or debris created by the Demolition Works on the relevant part of the Construction Site,

(the **Contractor Hazardous Material Investigation Documents**) at its earliest practical opportunity, once the Tunnelling Contractor has been provided with access to that part of the Construction Site where the relevant Demolition Works will be performed.

(e) In addition to the requirements set out in clause 12.15(d), the Tunnelling Contractor must, at the same time that the Tunnelling Contractor provides the Contractor Hazardous Material Investigation Documents in accordance with clause 12.15(d), provide the Principal's Representative with the proposed adjustment to the Construction Contract Sum in relation to the Compensable Hazardous Material (other than Compensable Transformer Oils) identified under clause 12.15(d), which proposed adjustment to the Construction Contract Sum shall include all relevant information as required under Schedule D19 and must demonstrate that the Tunnelling Contractor will take all reasonable steps to minimise the costs in respect of these Compensable Hazardous Materials, including any costs associated with their removal, handling, classification, transport and disposal.

(f) The Contractor Hazardous Material Investigation Documents must be submitted in a manner and at a rate which, having regard to the quantum of Contractor Hazardous Material Investigation Documents submitted, will give the Principal's Representative a reasonable opportunity to review the submitted Contractor Hazardous Material Investigation Documents prior to the Tunnelling Contractor commencing the

performance of the Demolition Works to which the Contractor Hazardous Material Investigation Documents relate and allowing sufficient time for the process set out in clauses 12.15(g) and 12.15(h) to be followed.

(g) The Principal's Representative may:

(i) review any Contractor Hazardous Material Investigation Document submitted under clause 12.15(d) and 12.15(e) and may inspect that part of the Construction Site where Demolition Works will be performed; and

(ii) if the Contractor Hazardous Material Investigation Documents submitted do not comply with this deed, notify the Tunnelling Contractor within 5 Business Days of the date of the initial submission of the Contractor Hazardous Material Investigation Documents providing reasons for the non-compliance.

(h) If the Tunnelling Contractor receives a notice under clause 12.15(g)(ii), the Tunnelling Contractor must promptly submit amended Contractor Hazardous Material Investigation Documents, or relevant part or component of it, as specified by the Principal's Representative, to the Principal's Representative and the process in clauses 12.15(d) to 12.15(h) will reapply, as appropriate.

(i) The Principal's Representative owes no duty to the Tunnelling Contractor to review any Contractor Hazardous Material Investigation Document submitted by the Tunnelling Contractor for errors, omissions or compliance with this deed.

(j) No review of, comments upon, or notice in respect of any Contractor Hazardous Material Investigation Document or any other act or omission of the Principal's Representative (including a notice under clause 12.15(g)(ii)) in relation to any Contractor Hazardous Material Investigation Document will lessen or otherwise affect:

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

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

(k) Notwithstanding any other clause of this deed, the Tunnelling Contractor cannot commence any Demolition Works until, for each building, structure or facility subject to the Demolition Works to be performed by the Tunnelling Contractor, the Contractor Hazardous Material Investigation Documents have been submitted to the Principal's Representative and:

(i) subject to clause 12.15(f), the Principal's Representative has not notified the Tunnelling Contractor within the 5 Business Day period specified in clause 12.15(g)(ii); or

(ii) the Principal's Representative has submitted a notice under clause 12.15(g)(ii) and each of the non-compliances identified in the notice has been resolved in accordance with clause 12.15(h).

(l) The parties acknowledge and agree that:

(i) the Tunnelling Contractor and the Principal's Representative must use their best endeavours to agree the increase to the Construction Contract Sum for all Compensable Hazardous Material other than Compensable Transformer Oils (with respect to which clause 12.15(m)(ii) will apply) within 5 Business Days of the date on which the relevant Contractor Hazardous Material Investigation Documents have:

(A) been approved by the Principal's Representative; or

(B) not been subject to a non-compliance notice from the Principal's Representative within the period contemplated under clause 12.15(g)(ii),

under the process set out in clauses 12.15(g) and 12.15(h); or

(ii) if the parties are unable to agree the increase to the Construction Contract Sum under clause 12.15(l)(i), the increase to the Construction Contract Sum for all Compensable Hazardous Material other than Compensable Transformer Oils will be determined by the Principal's Representative on the basis of the Contractor Hazardous Material Investigation Documents and the principles set out in Schedule D19, which determination shall be made by the Principal's Representative within 15 Business Days of the date on which the relevant Contractor Hazardous Material Investigation Documents have:

(A) been approved by the Principal's Representative; or

(B) not been subject to a non-compliance notice from the Principal's Representative within the period contemplated under clause 12.15(g)(ii),

under the process set out in clauses 12.15(g) and 12.15(h).

(m) The parties acknowledge and agree that, to the extent the Tunnelling Contractor has complied with its obligations under this clause 12.15 and clause 12.16, as applicable, the Construction Contract Sum will be increased by:

(i) an amount agreed by the Tunnelling Contractor and the Principal's Representative, or as otherwise determined by the Principal's Representative, pursuant to clause 12.15(l); and

(ii) an amount for the disposal of Compensable Transformer Oils, to be calculated in accordance with the rates set out in Schedule D19 and Schedule E2 based on disposal dockets.

(n) The Tunnelling Contractor acknowledges and agrees that:

(i) other than for the amounts referred to in clause 12.15(m), the Tunnelling Contractor will not be entitled to any increase in the Project Contract Sum or to make any Claim for payment:

(A) in respect of any Compensable Hazardous Material that may be encountered by the Tunnelling Contractor in a building, structure or facility that is the subject of the Demolition Works or in any debris created by the Demolition Works, which is additional to that in respect of which the increase to the Construction Contract Sum has been agreed to under clause 12.15(m);

(B) for complying with the requirements of this clause 12.15 and clause 12.16;

(C) in respect of preparing any Contractor Hazardous Material Investigation Document required under this clause 12.15;

(D) for any costs incurred arising out of or in connection with any delay or disruption to the Tunnelling Contractor's Activities resulting from the presence of any Hazardous Material regardless of whether the

Hazardous Material was referred to in the Principal Hazardous Material Report or otherwise; or

(E) in respect of any investigation of buildings, structures, facilities or debris on the Extra Land and any removal and disposal of Hazardous Material from such buildings, structures, facilities or debris; and

(ii) the Tunnelling 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 12.15 and clause 12.16, regardless of whether or not the Hazardous Material is Compensable Hazardous Material.

12.16 **Disposal of Hazardous Materials**

(a) In performing its obligations under clause 12.15, the Tunnelling Contractor must:

(i) remove from the Construction Site and any Extra Land; and

(ii) dispose of,

any Hazardous Material pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals.

(b) Without limiting any of its other obligations under this clause 12.16, the Tunnelling Contractor must classify, handle, transport and dispose any waste containing lead (including paint containing lead) in accordance with Step 5 of the Waste Classification Guidelines and the flowcharts in Attachment D of the Particular Specification.

(c) The Tunnelling Contractor must:

(i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Hazardous Material from the Construction Site or Extra Land holds all relevant Approvals that are necessary or desirable; and

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

(d) The Tunnelling Contractor must:

(i) keep complete, accurate and up to date records of all materials that are disposed of or otherwise removed from the Construction Site or any Extra Land in performing its obligations under clause 12.15 and this clause 12.16 (including all Hazardous Material) including classification certificates and tip dockets for all loads; and

(ii) if requested, provide a copy of any such records to the Principal's Representative.

(e) The Tunnelling Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the Tunnelling Contractor to comply with any obligation under clause 12.15 and this clause 12.16.

12.17 **Contamination**

(a) In addition to the requirements of the Planning Approvals and without limiting clause 12.8 (but subject to clauses 12.17(c), [redacted]), the Tunnelling Contractor bears the risk of all Contamination:

(i) on, in, over or under the Construction Site (but in each case within) or any Extra Land which is disturbed by or interfered with in the carrying out of the Tunnelling Contractor's Activities or caused or contributed to by the Tunnelling Contractor or its Associates, provided that, without limiting the Tunnelling Contractor's obligations under clauses 12.18 to 12.22, the Tunnelling Contractor's risk and obligation to Remediate such Contamination occurring on, in, over or under the Construction Site (but in each case within) is limited to that part of such Contamination which is actually disturbed by or interfered with in the carrying out of the Tunnelling Contractor's Activities or caused or contributed to by the Tunnelling Contractor or its Associates. The Tunnelling Contractor is not required to Remediate the entire mass of such Contamination or trace to the source of the Contamination occurring on, in, over or under the Construction Site (but in each case within) to the extent that wider mass or source of Contamination:

(A) has not actually been disturbed by or interfered with in the carrying out of the Tunnelling Contractor's Activities; or

(B) was not caused or contributed to by the Tunnelling Contractor or due to a breach of this deed by the Tunnelling Contractor or a wrongful act or omission of the Tunnelling Contractor or its Associates).

(ii) which migrates:

(A) on to, in to, over or under the Construction Site as a result of the Tunnelling Contractor's Activities and which could have been reasonably anticipated by a competent and experienced contractor that had examined:

(aa) the Construction Site and its surroundings; and

(bb) all Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Tunnelling Contractor during the tender period,

provided that the Tunnelling Contractor is not required to trace to the source of such Contamination where such source is outside the Construction Site; or

(B) on to, in to, over or under any Extra Land or from any Extra Land as a result of the Tunnelling Contractor's Activities; or

(C) from the Construction Site as a result of the Tunnelling Contractor's Activities due to a breach of this deed by the Tunnelling Contractor or a wrongful act or omission of the Tunnelling Contractor or its Associates; or

(iii) which otherwise arises out of or in connection with the Tunnelling Contractor's Activities provided that this clause 12.17(a)(iii) shall not operate to expand the Tunnelling Contractor's risk in respect of Contamination of the types dealt with in clauses 12.17(a)(i) or 12.17(a)(ii).

(b) To the extent clause 12.17(a)(i), 12.17(a)(ii) or 12.17(a)(iii) applies, the Tunnelling Contractor must undertake Remediation of any such Contamination in accordance with Law, Good Industry Practice, the Planning Approvals, applicable Codes and Standards, all guidelines made or approved by the EPA, the National Remediation Framework and any applicable Remediation Action Plan and related Agreed Remediation Scope (approved by the Principal's Representative or deemed to be

approved pursuant to clause 12.20(j)) [redacted]) so that:

(i) the Construction Site and any Extra Land is suitable for the performance of the Tunnelling Contractor's Activities and, in the case of the Construction Site the further construction, operation and maintenance of Sydney Metro West;

(ii) Contamination within the Construction Site will not, during the construction, operation and maintenance of Sydney Metro West:

(A) pose unacceptable exposure risks to workers, customers or the public;

(B) cause damage or degradation to infrastructure installed in connection with Sydney Metro West; or

(C) pose unacceptable risks to environmental receptors; and

(iii) whole of life costs associated with the further construction, operation and maintenance of Sydney Metro West at the relevant parts of the Construction Site where the Remediation is undertaken are minimised.

(c) If:

(i) Contamination on, in, over or under (but in each case within) the Construction Site or any Extra Land is caused by the Principal (or its Associates) after the date of this deed and such Contamination is disturbed by or interfered with in the carrying out of the Tunnelling Contractor's Activities, clause 12.17(b) will apply;

(ii) the Tunnelling Contractor is otherwise required by Law or directed by an Authority to undertake Remediation of Contamination for which the Tunnelling Contractor does not bear the risk under clause 12.17(a), the Tunnelling Contractor must comply with its obligations at Law, Good Industry Practice, under the Planning Approvals and all guidelines made or approved by the EPA in respect of any such requirement and the National Remediation Framework; or

(iii) the Contamination which is the subject of clauses 12.17(a)(i), 12.17(a)(ii) or 12.17(a)(iii) arises from an Excepted Risk occurring after the date of this deed, clause 12.17(b) will apply,

however:

(iv) where such compliance causes the Tunnelling Contractor to incur greater cost than otherwise would have been incurred had the Contamination not been caused by the Principal (or its Associates), the Authority had not issued such direction, the Tunnelling Contractor had not been required by Law to rectify such Contamination or the Excepted Risk had not occurred (except where the Excepted Risk causes Contamination to arise on Extra Land), as applicable, and irrespective of whether or not the Contamination arises in a Key Contaminated Area [redacted], this will be treated as a Change; and

(v) the Tunnelling Contractor will be entitled to an extension of time to any relevant Date for Milestone Achievement or Date for Substantial Completion under clause 19 if the requirements of that clause are satisfied (except where the Excepted Risk causes Contamination to arise on Extra Land).

(ca) Without limiting any express entitlement of the Tunnelling Contractor under this deed, the Tunnelling Contractor must promptly notify the Principal if it becomes aware of any Contamination risk to any permanent infrastructure in the performance of the Tunnelling Contractor's Activities, included via Detailed Site Investigations [redacted] undertaken under this deed, physical observations noted during the Tunnelling Contractor's Activities or any additional groundwater, vapour or ground gas monitoring as may be undertaken by the Tunnelling Contractor. The parties acknowledge that this clause 12.17(ca) will not apply where the Contamination risk to any permanent infrastructure is otherwise reported by the Tunnelling Contractor via other means under this deed, including under a Detailed Site Investigation report, [redacted] or any other formal written submissions.

[redacted]

(e) The Tunnelling Contractor must provide the Principal with reasonable access to perform the monitoring (including sampling) of existing groundwater monitoring wells and soil vapour monitoring locations on the Construction Site and any Extra Land.

(f) To the extent practicable, the Tunnelling Contractor must retain and protect existing groundwater monitoring wells and soil vapour monitoring locations to ensure serviceability for monitoring, including sampling. If the Tunnelling Contractor considers that existing groundwater monitoring wells and soil vapour monitoring locations cannot be retained or protected in the performance of the Tunnelling Contractor's Activities, the Tunnelling Contractor must notify the Principal in writing within 10 Business Days. If the Principal's Representative determines, acting reasonably, that existing groundwater monitoring wells and soil vapour monitoring locations cannot be retained, the Principal may direct the Tunnelling Contractor to decommission the existing groundwater monitoring wells and soil vapour monitoring

locations, which must be undertaken in accordance with Law, Good Industry Practice, the Planning Approvals, all guidelines made or approved by the EPA and any other requirements of this deed and the adjustment to the Project Contract Sum will be valued as if it were a Change.

(g) The Tunnelling Contractor must consider the prospect of Contamination migrating from those parts of the Construction Site which are disturbed by or interfered with in carrying out the Tunnelling Contractor's Activities and, without limiting its other obligations under this deed, including its obligations under clause 12.20(b)(viii), must take all reasonable measures necessary to investigate and mitigate this risk.

[redacted]

[redacted]

[redacted]

12.17C **Area of Contamination Concern** [redacted]

(a) Without limiting any other requirements of the Tunnelling Contractor under this deed, the Tunnelling Contractor must, as promptly as possible following the execution of this deed and in any case prior to the submission of any draft Detailed Site Investigation [redacted], submit a plan that demonstrates to the satisfaction of the Principal's Representative:

(i) the steps it intends to take in order to comply with its obligations under clauses 12.18 to 12.21 of this deed and under Schedules E7 and E11; and

(ii) that it has a sufficient understanding of the nature and extent of investigations and work required in respect of the Tunnelling Contractor's obligations specified in paragraph (i) above.

(b) Following receipt of the plan required under clause 12.17C(a):

(i) the Principal's Representative may, by written notice to the Tunnelling Contractor, request additional information and the Tunnelling Contractor must, within 5 Business Days of receiving such request, provide the Principal's Representative with the information requested; and/or

(ii) if requested by the Principal's Representative, the Tunnelling Contractor must meet with the Principal's Representative within 5 Business Days of the date of such request to discuss the plan provided under clause 12.17C(a).

(c) The Tunnelling Contractor will be required to make any such amendments to the plan submitted under clause 12.17C(a) as the Principal's Representative may reasonably require prior to confirming that it is satisfied with the plan (if any).

12.18 **Preliminary Works**

(a) The Tunnelling Contractor must undertake the Remediation of any Contamination encountered in the performance of Preliminary Works in any Area of Contamination Concern in accordance with:

(i) an environmental management plan to be prepared by the Tunnelling Contractor in accordance with the requirements of the Project Planning Approval, a copy of which environmental management plan must be provided to the Principal's Representative prior to the performance of the relevant Preliminary Works; and

(ii) clauses 12.17(b) and 12.17(c),

but the Tunnelling Contractor is not required to comply with the requirements set out in clauses 12.19 to 12.21 while undertaking any such Remediation activities.

(b) In addition to the requirements set out in clause 12.18(a), the scope and methodology for the Remediation of any Contamination encountered during the performance of Preliminary Works within a Key Contaminated Area shall be:

(i) limited to the Remediation of the Solid Waste that has been agreed in writing by the Principal, being Solid Waste which has been classified in accordance with the Waste Classification Guidelines and sampled at a density which is in accordance with sampling density detailed within the Industrial Waste Resources Guidelines (7), Sampling and Analysis: Soil Sampling (EPA Victoria 2010) and for which the resultant waste classification report has been provided to the Principal's Representative; and

(ii) documented sufficiently and captured in any Detailed Site Investigation, Remediation Action Plan, Remediation Cost Estimate(s) and Validation Report, if applicable, to be prepared in connection with any Key Contaminated Area where Preliminary Works have been performed by the Tunnelling Contractor.

(c) Without limiting the requirements set out in clause 12.18(b), prior to the performance of any Preliminary Works within a Key Contaminated Area, the Tunnelling Contractor must provide a report to the Principal demonstrating that the performance of Preliminary Works will comply with the requirements of this clause 12.18.

(d) The Tunnelling Contractor acknowledges that any Preliminary Works not performed in accordance with this clause 12.18 will be at the Tunnelling Contractor's risk [redacted]

12.19 **Detailed Site Investigations**

(a) Except for Preliminary Works, the Tunnelling Contractor must perform and submit to the Principal's Representative and the Independent Certifier a Detailed Site Investigation prior to commencing any excavation activities:

(i) at any Area of Contamination Concern; and

(ii) to the extent otherwise required under the Planning Approvals.

(b) Notwithstanding clause 12.19(a), the Tunnelling Contractor may also perform additional Detailed Site Investigations carried out in other areas of the Construction Site or outside the Construction Site if the Tunnelling Contractor deems it necessary to manage the risks associated with contaminated land and to appropriately plan for Remediation. Any additional Detailed Site Investigation performed in accordance with this clause 12.19(b) must also be submitted to the Principal's Representative and the Independent Certifier.

(c) Each Detailed Site Investigation:

(i) must

(A) investigate areas of proposed excavation or disturbance;

(B) investigate land within the Construction Site or Extra Land surrounding the areas of proposed excavation or disturbance with respect to the potential migration of Contamination via groundwater, ground gas, vapour and odour into the areas of excavation or disturbance; and

(C) characterise risks to the construction, operation and maintenance of Sydney Metro West and its infrastructure from Contamination,

(ii) be prepared in accordance with Law, Good Industry Practice, the Planning Approvals, all guidelines made or approved by the EPA and any other requirements of this deed;

(iii) be reviewed and approved by a Certified Contaminated Land Consultant; and

(iv) characterise the risk of Contamination migrating from the Construction Site as a result of the Tunnelling Contractor's Activities.

(d) In addition to the requirements set out in clause 12.19(c), each Detailed Site Investigation performed within an Area of Contamination Concern must:

(i) be reviewed and endorsed by an Accredited Site Auditor; and

(ii) be accompanied by an Interim Site Audit Advice prepared by the Accredited Site Auditor when submitted to the Principal's Representative and the Independent Certifier in accordance with clause 12.19(a).

(e) In addition to the requirements set out in clauses 12.19(c) and 12.19(d), each Detailed Site Investigation performed within a Key Contaminated Area must in accordance with the relevant EPA guidelines:

(i) determine and delineate the lateral and vertical extent of Contamination within each Key Contaminated Area;

(ii) include in-situ classification of Solid Waste at sampling densities not less than that specified within the NEPM (2013) and the Industrial Waste Resources Guidelines (7), Sampling and Analysis: Soil Sampling (EPA Victoria 2010), except for Virgin Excavated Natural Material (VENM) and Excavated Natural Material (ENM) which are to be classified in accordance with the requirements of the *Protection of the Environment Operations Act 1997* (NSW);

(iii) classify the Solid Waste in accordance with the Waste Classification Guidelines using a statistical approach where relevant;

(iv) be suitably detailed so as to inform the development of the Remediation Action Plan, any Remediation Cost Estimate and any Agreed Remediation Scope and to characterise contamination risk to the construction, operation and maintenance of Sydney Metro West (including but not limited to soil, groundwater, ground gas, vapour and odour risks arising from Contamination within the area of proposed excavation or disturbance or migrating into the area of proposed excavation or disturbance); [redacted]

[redacted]

(f) The Detailed Site Investigation reports must be submitted in the manner and at the rate set out in the Initial D&C Overall Program which manner and rate, having regard to the quantum of Detailed Site Investigation [redacted] reports submitted under this deed, will give the Principal's Representative a reasonable opportunity to review the submitted Detailed Site Investigation [redacted] reports and sufficient time for the process set out in clauses 12.19(g) and 12.19(h) [redacted] to be followed.

(g) The Principal's Representative may:

(i) review any Detailed Site Investigation report submitted under clauses 12.19(a) or 12.19(b); and

(ii) if the Detailed Site Investigation report submitted:

(A) complies with this deed, notify the Tunnelling Contractor that the Detailed Site Investigation report is acceptable; or

(B) does not comply with this deed, notify the Tunnelling Contractor within 15 Business Days of the initial submission of the Detailed Site Investigation report providing reasons for the non-compliance.

(h) If the Tunnelling Contractor receives a notice under clause 12.19(g)(ii)(B), the Tunnelling Contractor must promptly submit an amended Detailed Site Investigation report, or relevant part or component of it, to the Independent Certifier and the Principal's Representative and the process in this clause 12.19 will reapply, except the review period for the resubmitted Detailed Site Investigation, or relevant part or component, will be 5 Business Days.

(i) Subject to clause 12.19(f), where a Detailed Site Investigation that is submitted under clause 12.19(a) or clause 12.19(b):

(i) is not agreed under clause 12.19(g)(ii)(A) and is not subject to a non-compliance notice in accordance with clause 12.19(g)(ii)(B) within the review period specified in clause 12.19(g)(ii)(B); or

(ii) is subject to a non-compliance notice under clause 12.19(g)(ii)(B) but subsequently no further non-compliance notice is issued by the Principal's Representative within the re-review period specified in clause12.19(h),

the relevant Detailed Site Investigation will be deemed approved by the Principal's Representative for the purposes of clause 12.19(j).

(j) The Tunnelling Contractor may not, subject to clause 12.20, commence Remediation of Contamination in respect of excavation activities to which clause 12.19(a) applies unless and until the Detailed Site Investigation report for the relevant area has been approved by the Principal's Representative or deemed to be approved pursuant to clause 12.19(i).

(k) The Principal's Representative owes no duty to the Tunnelling Contractor to review any Detailed Site Investigation report submitted by the Tunnelling Contractor for errors, omissions or compliance with this deed.

(l) No review of, comments upon, notice in respect of any Detailed Site Investigation report or any other act or omission of the Principal's Representative (including a direction under clause 12.19(g)(ii) in relation to any Detailed Site Investigation report) will lessen or otherwise affect:

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

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

12.20 **Remediation Action Plans**

(a) Except in respect of any Preliminary Works, the Tunnelling Contractor must prepare and submit to the Principal's Representative and the Independent Certifier a Remediation Action Plan for the relevant area prior to commencing Remediation of:

(i) any Area of Contamination Concern; or

(ii) any other area of the Construction Site where the outcomes of a Detailed Site Investigation indicate that Contamination poses unacceptable risks to the construction, operation or maintenance of Sydney Metro West.

(b) Each Remediation Action Plan must:

(i) describe the nature and extent of Contamination based on the Detailed Site Investigation, the Information Documents and any other relevant information (as far as is practicable based on available structural design) which is necessary to characterise the risk to the construction, operation and maintenance of Sydney Metro West;

(ii) describe the manner in which the Tunnelling Contractor will Remediate Contamination within the proposed areas of excavation and/or disturbance;

(iii) include a detailed risk assessment to determine and describe the requirements for Remediation of Contamination of land (including soil, groundwater, ground gas and soil vapour) within the Construction Site or Extra Land surrounding the areas of proposed excavation or disturbance with respect to potential exposure scenarios, including but not limited to migration of Contamination via groundwater, ground gas, soil vapour and odour into the areas of excavation or disturbance;

(iv) present multiple viable Remediation options and select a preferred Remediation option explicitly taking into account (and for each proposed solution clearly detailing) how and why each of the following paragraphs (A) to (E) have been considered and (as appropriate) incorporated in the proposed Remediation option:

(A) options to alter or optimise infrastructure or Project Works, including via design amendments;

(B) options to manage residual Contamination under a long term environmental management plan

(C) whole-of-life costs and the long term burden of managing residual Contamination on the operation and maintenance of Sydney Metro West;

(D) to the extent practicable, maintaining the Overall D&C Program; and

(E) benefits (as far as is practicable based on available infrastructure design information);

(v) define what will constitute Practical Completion of the Remediation;

(vi) be prepared in accordance with Law, Good Industry Practice, the Planning Approvals, all guidelines made or approved by the EPA, the National Remediation Framework and any other requirements of this deed;

(vii) be reviewed and approved by a Certified Contaminated Land Consultant; and

(viii) consider and plan to mitigate the migration of Contamination from the areas of the Construction Site that are subject to the applicable Remediation Action Plan and, where relevant, the Agreed Remediation Scope.

(c) In addition to the requirements set out in clause 12.20(b), each Remediation Action Plan developed in relation to an Area of Contamination Concern must:

(i) be reviewed and endorsed by an Accredited Site Auditor; and

(ii) be accompanied by a 'Section B Site Audit Statement' prepared by the Accredited Site Auditor when submitted to the Principal's Representative and the Independent Certifier in accordance with clause 12.20(a).

(d) In addition to the requirements set out in clauses 12.20(b) and 12.20(c), each Remediation Action Plan developed in relation to a Key Contaminated Area must be divided in two parts distinctively dealing with each of the Remediation Activities (Solid Waste) and the Remediation Activities (Other Remediation Components) and, for each Remediation option submitted under clause 12.20(b)(iv), [redacted]

(i) details of any Remediation completed during the performance of any Preliminary Works;

(ii) a KCA Classification and Excavation Map, being a detailed map or maps, drawn to a practical scale of the relevant Key Contaminated Area that accurately identifies:

(A) the location of any samples that have been taken by and/or made available to the Tunnelling Contractor, including the Detailed Site Investigation samples or any relevant information provided to the Tunnelling Contractor in the Information Documents;

(B) a detailed mapping of remaining Solid Waste and its respective waste classification in accordance with the Waste Classification Guidelines across the relevant Key Contaminated Area, based on the relevant Detailed Site Investigations and clearly detailing the extent of lateral and vertical classification of Waste within each Key Contaminated Area;

(iii) a detailed excavation plan that is consistent with the KCA Classification and Excavation Map prepared under clause 12.20(d)(ii) describing the quantities in tonnes of each material, including a register in estimated tonnes of each waste classification of Solid Waste, proposed to be excavated and to be reused and/or disposed offsite (**KCA Excavation Quantity Register**);

(iv) details of any other elements of Remediation that are required to mitigate risks to the construction, operation and maintenance of Sydney Metro West including, but not limited to infrastructure design requirements, treatment of Contamination, capping and containment;

(v) precise details of how the validation of Remediation will be achieved and demonstrated; [redacted]

[redacted]

(e) Each Remediation option prepared by the Tunnelling Contractor under clause 12.20(b)(iv) must be accompanied by a detailed cost estimate of the costs of the Remediation Activities (Solid Waste), comprising a detailed schedule of quantities

and rates for all components of Remediation and which detailed cost estimate must be calculated in accordance with clause 3(a) of Part B of Schedule E7 (**Remediation Cost Estimate (Solid Waste)**).

(f) An additional detailed cost estimate in relation to any Remediation Activities (Other Remediation Components) which are not covered under the Remediation Cost Estimate (Solid Waste) must also be prepared and submitted by the Tunnelling Contractor with each Remediation option prepared by the Tunnelling Contractor under clause 12.20(b)(iv), which additional detailed cost estimate must be calculated in accordance with clause 2(a) of Part C of Schedule E7 (**Remediation Cost Estimate (Other Remediation Components)**). A Remediation Cost Estimate (Other Remediation Components) is only required when a Remediation option includes Remediation actions that are not taken into account in the Remediation Cost Estimate (Solid Waste) prepared in accordance with clause 12.20(e).

(g) The Remediation Action Plans and the Remediation Cost Estimates must be submitted in the manner and at the rate set out in the Initial D&C Overall Program which manner and rate, having regard to the quantum of Remediation Action Plans, Remediation Cost Estimates [redacted] submitted under this deed, will give the Principal's Representative a reasonable opportunity to review the submitted Remediation Action Plans, Remediation Cost Estimates [redacted] and sufficient time for the process set out in clauses 12.20(h) and 12.20(i) [redacted] to be followed

(h) The Principal's Representative may:

(i) review any Remediation Action Plan or Remediation Cost Estimate(s) submitted under clause 12.20(a), 12.20(e) and 12.20(f); and

(ii) if the Remediation Action Plan or the Remediation Cost Estimate(s) (as applicable) submitted:

(A) comply with the requirements of this deed, notify the Tunnelling Contractor that the Remediation Action Plan and/or Remediation Cost Estimate is acceptable and select the Remediation option that will be the Agreed Remediation Scope;

(B) does not comply with the requirement of this deed, notify the Tunnelling Contractor within 15 Business Days of the initial submission of the Remediation Action Plan or Remediation Cost Estimate(s) providing reasons for the non-compliance.

(i) If the Tunnelling Contractor receives a notice under clause 12.20(h)(ii)(B), the Tunnelling Contractor must promptly submit an amended Remediation Action Plan or Remediation Cost Estimate(s) (as applicable), or relevant part or component of it, to the Independent Certifier and the Principal's Representative and the process in this clause 12.20 will reapply, except the review period for the resubmitted Remediation Action Plan or Remediation Cost Estimate(s) (as applicable), or relevant part or component, will be 5 Business Days.

(j) Subject to clause 12.20(g), where a Remediation Action Plan that is submitted under clause 12.20(a) for a Key Contaminated Area:

(i) is not agreed under clause 12.20(h)(ii)(A) and is not subject to a non-compliance notice under clause 12.20(h)(ii)(B) within the review period specified in clause 12.20(h)(ii)(B); or

(ii) is subject to a non-compliance notice within the review period specified under clause 12.20(h)(ii)(B) but subsequently no further non-compliance notice is

issued by the Principal's Representative within the re-review period specified in clause 12.20(i),

the relevant Remediation Action Plan and/or Agreed Remediation Scope for the relevant Key Contaminated Area will be deemed approved by the Principal's Representative for the purposes of clause 12.20(l), 12.20(k)(i)(A) and 12.20(k)(ii)(A) of this deed, clause 2(a) of Part B and clause 1(a) of Part C of Schedule E7, provided that any deemed approval under this clause shall not apply to any Remediation Cost Estimate submitted under clause 12.20(e) or 12.20(f) and to any Remediation Action Plan submitted in respect of an Area of Contamination Concern that is not a Key Contaminated Area.

(k) The Tunnelling Contractor may not commence:

(i) Remediation Activities (Solid Waste) unless and until:

(A) the Agreed Remediation Scope (Solid Waste) has been determined in accordance with this deed; and

(B) the Remediation Cost Estimate (Solid Waste) for the preferred Remediation option has been submitted by the Tunnelling Contractor under clause 12.20(e) and:

(aa) the parties have agreed the Target Remediation Cost (Solid Waste); or

(bb) 10 Business Days have elapsed since the date of submission of the Remediation Cost Estimate (Solid Waste) and the parties have failed to agree to the Target Remediation Cost (Solid Waste); and

(ii) Remediation Activities (Other Remediation Components) unless and until:

(A) the Agreed Remediation Scope (Other Remediation Components) has been determined; and

(B) the Remediation Cost Estimate (Other Remediation Components) for the preferred Remediation option has been submitted by the Tunnelling Contractor under clause 12.20(f) and:

(aa) the parties have agreed the Target Remediation Cost (Other Remediation Components); or

(bb) 10 Business Days have elapsed since the date of submission of the Remediation Cost Estimate (Other Remediation Components) and the parties have failed to agree to the Target Remediation Cost (Other Remediation Components).

(l) The Principal's Representative must use its best endeavours to determine:

(i) the Target Remediation Cost (Solid Waste) on the basis of the rates and principles set out in Part B of Schedule E7 within 10 Business Days of the date on which the Agreed Remediation Scope (Solid Waste) has been determined; and

(ii) the Target Remediation Cost (Other Remediation Components) on the basis of the rates set out in the Design Payment Schedule and the Construction Payment Schedule and the principles set out in Part C of Schedule E7 within

10 Business Days of the date on which the Agreed Remediation Scope (Other Remediation Components) has been determined.

(m) The Principal's Representative owes no duty to the Tunnelling Contractor to review any Remediation Action Plan or Remediation Cost Estimate(s) submitted by the Tunnelling Contractor for errors, omissions or compliance with this deed.

(n) Subject to clause 12.20, no review of, comments upon, notice in respect of any Remediation Action Plan, Remediation Cost Estimate(s) or any other act or omission of the Principal's Representative (including a direction under clause 12.20(h)(ii) in relation to any Remediation Action Plan or Remediation Cost Estimate(s) or a determination under clause 12.20(l)) will lessen or otherwise affect:

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

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

(o) The Tunnelling Contractor will be entitled to claim an extension of time in relation to the Remediation Activities (Other Remediation Components) only if the Tunnelling Contractor demonstrates to the satisfaction of the Principal (acting reasonably) that it is not practicable to maintain the Overall D&C Program when proceeding with the Remediation Option that forms part of the Agreed Remediation Scope (Other Remediation Components) for a Key Contaminated Area.

12.21 **Site Audit and validation requirements**

(a) The Tunnelling Contractor must engage an Accredited Site Auditor to perform those parts of the Tunnelling Contractor's Activities that are required to be performed by an Accredited Site Auditor under Law, the Planning Approvals, any guidelines made or approved by the EPA and the terms of this deed.

(b) Without limiting clause 12.21(a), the Tunnelling Contractor must:

(i) ensure that an Accredited Site Auditor:

(A) reviews, comments on and endorses:

(aa) the Detailed Site Investigation prepared by the Tunnelling Contractor under clause 12.19(a) or 12.19(b) [redacted];

(bb) the Remediation Action Plan prepared by the Tunnelling Contractor under clause 12.21(a) [redacted];

(cc) the Validation Report prepared by the Tunnelling Contractor under clause 12.21(d)(i);

(B) prepares Interim Site Audit Advice at key milestones throughout the Remediation process for each Area of Contamination Concern in accordance with clauses 12.19(d)(ii) and 12.21(e)(ii)(D) [redacted];

(C) prepares 'Section B Site Audit Statements' in accordance with clause 12.20(c)(ii); and

(D) reviews all information and data generated through the Remediation process for each Area of Contamination Concern [redacted];

(ii) provide the Principal's Representative with a monthly written report authored or approved by the Accredited Site Auditor, from the commencement of the first Detailed Site Investigations [redacted] until the completion of the last Site Audit Statement and Site Audit Report, detailing for each Area of Contamination Concern [redacted]:

(A) the reports and all other information that have been provided for review to the Accredited Site Auditor;

(B) all written comments provided by the Accredited Site Auditor to the Tunnelling Contractor in response to the information described under clause 12.21(b)(ii)(A); and

(C) the outstanding actions required to address the comments of the Accredited Site Auditor described under clause 12.21(b)(ii)(B) and the status of those actions.

(c) The Tunnelling Contractor must attend (and must procure the attendance of the Accredited Site Auditor) to coordination meetings chaired by the Principal's Representative as may be reasonably required by the Principal's Representative, to review and discuss the status and suitability of any Remediation, Detailed Site Investigation, [redacted] Remediation Action Plan, [redacted] Interim Site Audit Advice and/or Validation Report.

(d) The Tunnelling Contractor, with respect to each area for which a Remediation Action Plan has been developed in accordance with clause 12.20(a) [redacted], must submit to the Principal's Representative and the Independent Certifier:

(i) a Validation Report that meets the requirements of clause 12.21(e)(ii) within 60 days of the Remediation Practical Completion of that area; and

(ii) a Site Audit Statement and Site Audit Report that meet the requirements of clause 12.21(e)(i) within 90 days of the Remediation Practical Completion of that area,

and the submission of these documents to the Principal's Representative and the Independent Certifier is a condition precedent to Completion of any Portion that contains such an area.

(e) Each Validation Report, Site Audit Statement and Site Audit Report must relate to the area subject to Remediation, be prepared using Good Industry Practice and in accordance with the requirements of Law, the Planning Approvals, all guidelines made or approved by the EPA and any other requirements of this deed. Additionally each:

(i) Site Audit Statement and Site Audit Report must:

(A) contain a level of detail commensurate with the nature and extent of Contamination at each area with respect to which a Remediation Action Plan [redacted] has been developed; and

(B) be prepared by an Accredited Site Auditor; and

(ii) Validation Report must:

(A) describe the Remediation activities completed;

(B) present all relevant information and data to demonstrate that risks associated with Contamination have been mitigated to an acceptable level;

(C) be reviewed and approved by a Certified Contaminated Land Consultant and endorsed by an Accredited Site Auditor; and

(D) be accompanied by an Interim Site Audit Advice produced by the Accredited Site Auditor.

(f) The Tunnelling Contractor must submit to the Principal's Representative and the Independent Certifier all versions (including drafts) of:

(i) each Validation Report that is submitted to the Accredited Site Auditor at the same time as it is submitted to the Accredited Site Auditor; and

(ii) each Site Audit Statement, Site Audit Report and Interim Site Audit Advice that is submitted to the Tunnelling Contractor by the Accredited Site Auditor immediately following receipt from the Accredited Site Auditor.

Such submissions will not be taken to be formal submissions under clause 12.21(d) and the period under clause 12.21(g)(ii) will not commence until the Tunnelling Contractor formally submits to the Principal's Representative and the Independent Certifier:

(iii) a Validation Report which satisfies the requirements of clause 12.21(e)(ii); or

(iv) a Site Audit Statement or Site Audit Report (as applicable) which satisfies the requirements of clause 12.21(e)(i).

(g) The Principal's Representative may:

(i) review any Validation Report, Site Audit Statement and Site Audit Report submitted under clause 12.21(d); and

(ii) if the Validation Report, Site Audit Statement or Site Audit Report submitted does not comply with this deed, notify the Tunnelling Contractor within 15 Business Days of the initial submission of the Validation Report, Site Audit Statement or Site Audit Report (as applicable) providing reasons for the non-compliance.

(h) If the Tunnelling Contractor receives a notice under clause 12.21(g)(ii), the Tunnelling Contractor must promptly submit an amended Validation Report, Site Audit Statement or Site Audit Report (as applicable), or relevant part or component of it, to the Principal's Representative and the Independent Certifier and the process in this clause 12.21 will reapply, except the review period for the resubmitted Validation Report, Site Audit Statement or Site Audit Report (as applicable), or relevant part or component, will be 5 Business Days.

(i) Where a Validation Report, Site Audit Statement or Site Audit Report that is submitted under clause 12.21(d):

(i) is not agreed by the Principal's Representative and is not subject to a non-compliance notice in accordance with clause 12.21(g)(ii) within the review period specified in clause 12.21(g)(ii); or

(ii) is subject to a non-compliance notice under clause 12.21(g)(ii) but subsequently no further non-compliance notice is issued by the Principal's Representative within the re-review period specified in clause 12.21(h),

the relevant Validation Report, Site Audit Statement and/or Site Audit Report will be deemed approved by the Principal's Representative for the purposes of clauses 5.4 and 7(b) of Part B of Schedule E7, clauses 3.4 and 5(b) of Part C of Schedule E7 [redacted], as applicable.

(j) The Principal's Representative may:

(i) provide copies of any Detailed Site Investigation [redacted], Remediation Action Plan [redacted], Interim Site Audit Advice, Validation Report, Site Audit Statement and Site Audit Report (or any draft thereof) to; and

(ii) seek comments in respect of any Detailed Site Investigation [redacted], Remediation Action Plan [redacted], Interim Site Audit Advice, Validation Report, Site Audit Statement and Site Audit Report (or any draft thereof) from,

any Interface Contractor or any Authority.

(k) No review of, comments upon, notice with respect to (including a notice under clause 12.21(g)(ii)) or any other act or omission of the Principal's Representative in relation to any Validation Report, Site Audit Statement and Site Audit Report will lessen or otherwise affect:

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

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

(l) The Tunnelling Contractor acknowledges and agrees that any Site Audit Statement required to be provided under this deed must meet the requirements of a Site Audit Statement – Section A1 unless a Site Audit Statement – Section A2 or a Site Audit Statement – Section B5 is otherwise agreed to be suitable by the Principal under the applicable Agreed Remediation Scope [redacted].

(m) Nothing in this clause 12.21 in any way limits the Tunnelling Contractor's obligations under clauses 7.1 and 7.2 or any other clause of this deed.

(n) The parties acknowledge and agree that the documents to be provided to the Independent Certifier under clauses 12.19 to 12.21 [redacted] are provided to the Independent Certifier for information purposes only and that only the Principal's Representative has the authority to review any such document as per the processes set out in clauses 12.19 to 12.21 [redacted].

12.22 **Disposal of Contamination and Waste**

(a) The Tunnelling Contractor

(i) must:

(A) remove from the Construction Site and any Extra Land; and

(B) dispose of,

any Contamination or Waste pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals; and

(ii) without limiting the Tunnelling Contractor's other obligations under this clause 12.22:

(A) where permitted under the terms of this deed and all relevant Law and Approvals, reuse/retain as much material onsite as possible (except where doing so would be less cost efficient than offsite reuse or disposal) pursuant to its obligation under this deed in accordance with all relevant Law and Approvals and any applicable Remediation Action Plan [redacted] and/or Agreed Remediation Scope [redacted];

(B) limit the amount of any excavated material disposed of at a higher Waste Classification than is necessary; and

(C) prioritise and maximise the reuse/retention on the Construction Site of excavated material that would be of higher Waste Classification over that of a lower Waste Classification (if such material had been classified for offsite disposal).

(b) The Tunnelling Contractor must:

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

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

(c) The Tunnelling Contractor must:

(i) sort all Contamination and Waste (including separating Contamination from clean material and Waste);

(ii) not contaminate clean material by intermixing any Contamination or Waste;

(iii) not intermix Contamination with clean material or any other type of Contamination or Waste; and

(iv) track Waste and spoil movements from cradle to grave, including but not limited to movement of Waste or spoil within the boundaries of the Construction Site or any Extra Land.

(d) The Tunnelling Contractor must ensure, and must ensure that its Associates ensure, that their respective employees, agents and contractors, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any

Contamination or other spoil or wastes and that they comply with all applicable Laws, Approvals and specific requirements of this deed that are relevant to their role.

(e) The Tunnelling Contractor must:

(i) keep complete, accurate and up to date records of all materials that are treated and reused, disposed of or otherwise removed from the Construction Site or any Extra Land (including all Contamination, each waste classification of Solid Waste and other wastes), including classification certificates and tip dockets for all loads and Waste tracking from cradle to grave and detailed and careful records of spoil movement within the boundaries of the Construction Site or any Extra Land; and

(ii) if requested, provide a copy of any such records to the Principal's Representative.

(f) The Tunnelling Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the Tunnelling Contractor to comply with any obligation under this clause 12.22.

12.23 **Remediation of Contaminated Future Development Sites**

(a) The Tunnelling Contractor acknowledges that following completion of the Project Works the Principal intends to sell, lease, develop or otherwise use the Contaminated Future Development Sites.

(b) Where Contamination is identified in a Contaminated Future Development Site, and that Contamination is not within a Key Contaminated Area [redacted] or is not otherwise Contamination which is the responsibility of the Tunnelling Contractor under clause 12.17(a)(i), 12.17(a)(ii) or 12.17(a)(iii), the Principal's Representative may direct the Tunnelling Contractor to undertake Remediation of the Contaminated Future Development Site as a Change at any time prior to the date that is 6 months prior to the then current Date for Substantial Completion of the Portion within which the relevant Contaminated Future Development Site is situated.

(c) If the Principal's Representative directs a Change under clause 12.23(b), the Tunnelling Contractor must undertake Remediation of the relevant Contaminated Future Development Site:

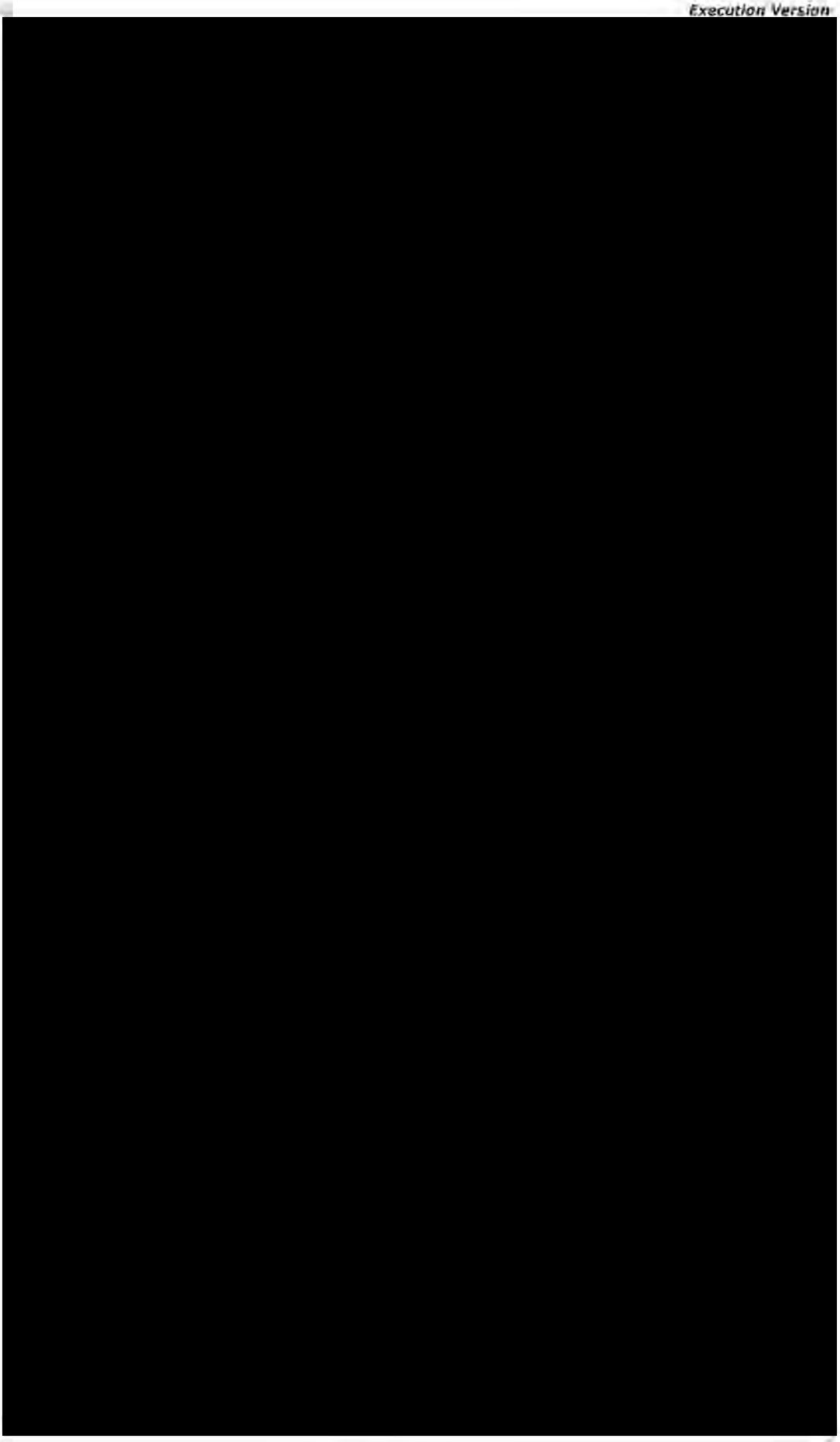
(i) in accordance with Law, Good Industry Practice, the Planning Approvals and all guidelines made or approved by the EPA and the National Remediation Framework;

(ii) so that the Contaminated Future Development Site is suitable for the purpose of residential, commercial or mixed use development (as directed by the Principal); and

(iii) otherwise in accordance with the Change directed by the Principal's Representative.

12.24 **Interface with Third Parties**

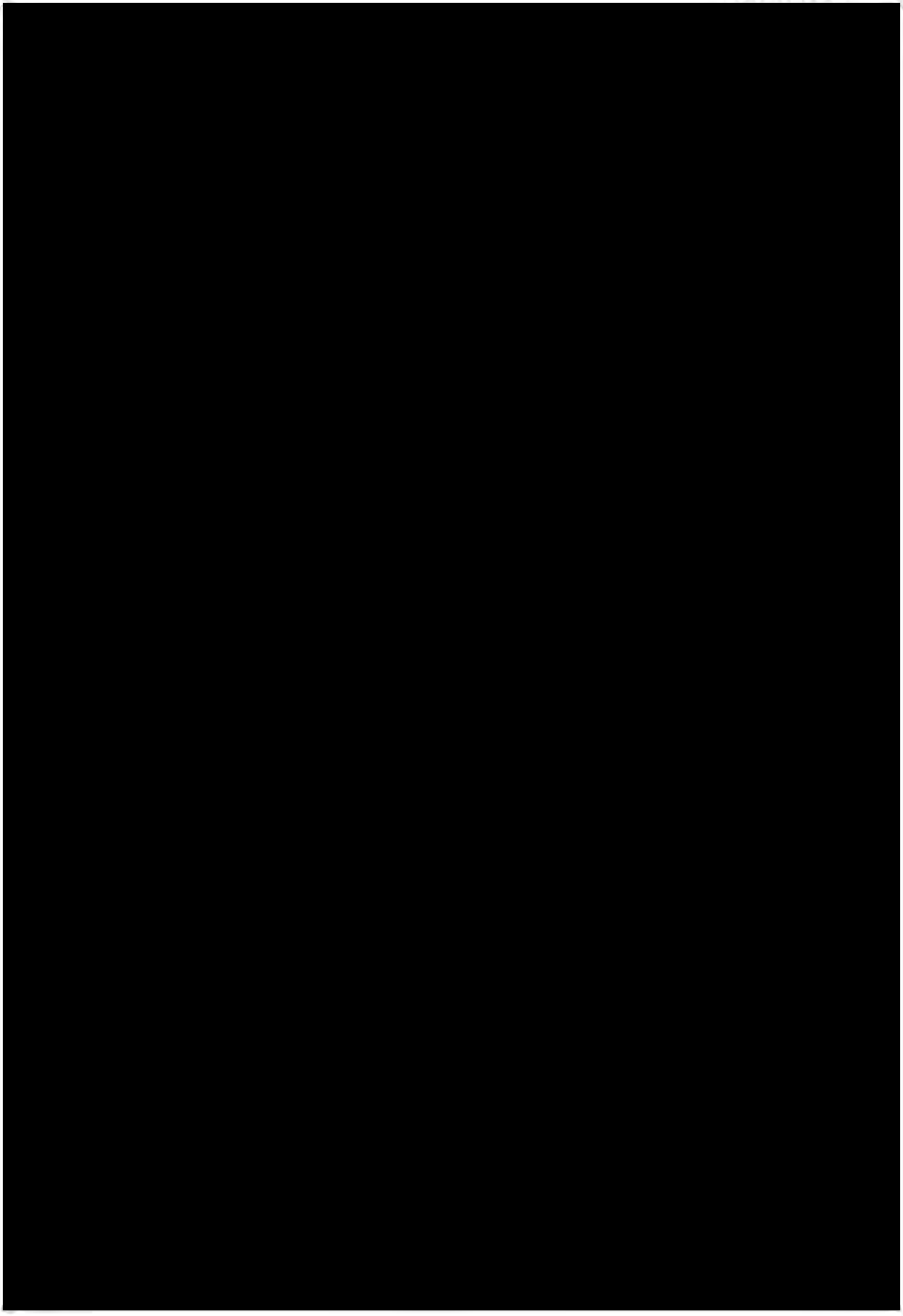
[redacted]

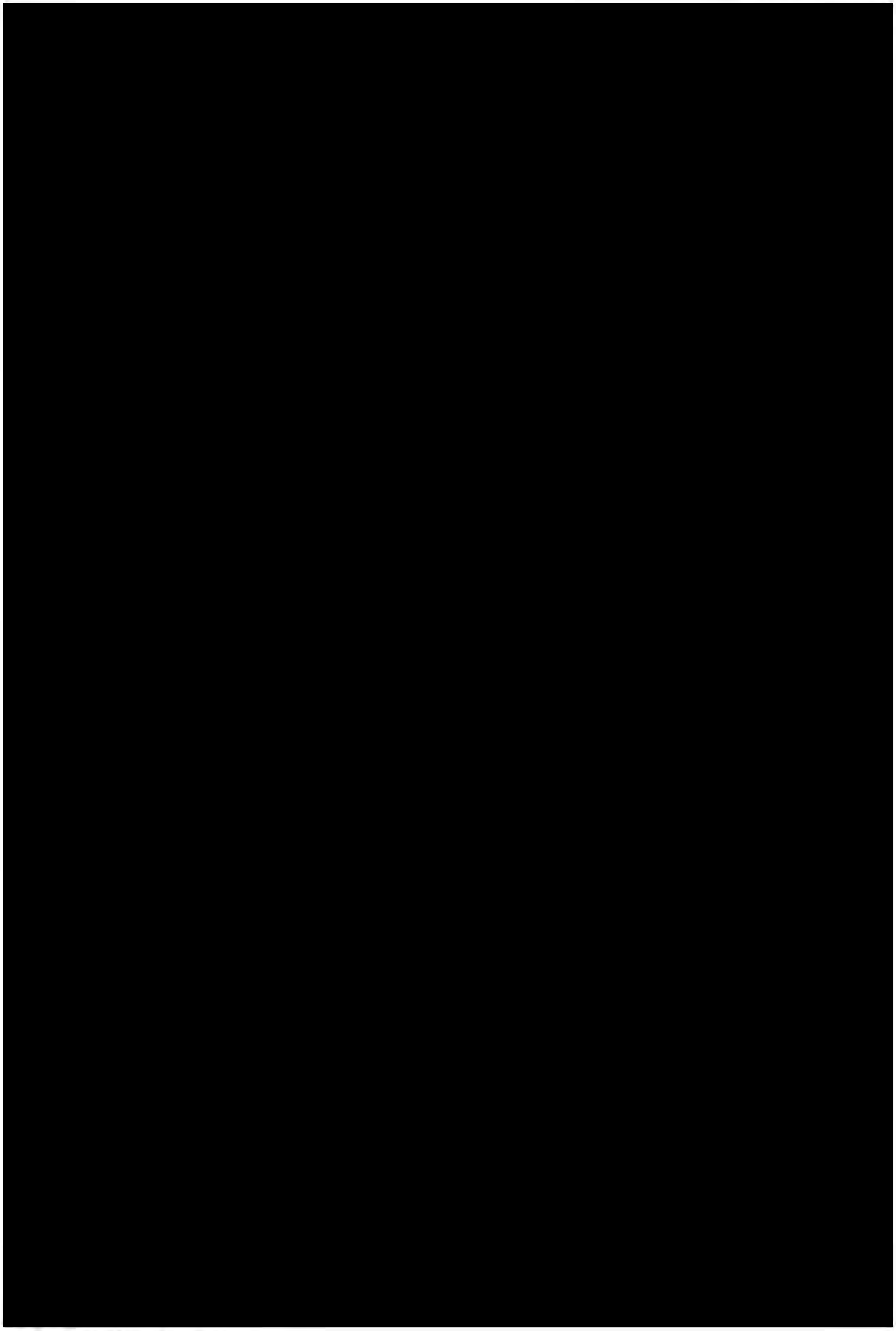


[redacted]

12.25 **Adjoining Properties**

[redacted]





12.26 **Existing Operations**

(a) The Tunnelling Contractor acknowledges that:

(i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the Tunnelling Contractor's Activities;

(ii) the access ways to the Construction Site are used by Existing Operators and other persons and will not be available exclusively to the Tunnelling Contractor; and

(iii) in using these access ways the Tunnelling Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.

(b) The Tunnelling Contractor bears the risk of:

(i) coordinating its access to the Construction Site with any other relevant party (including Existing Operators) that use the access ways to the Construction Site; and

(ii) any delay and disruption to the Tunnelling Contractor's Activities that arise from any Existing Operations on or in the vicinity of the Construction Site.

(c) Without limiting any other obligations of the Tunnelling Contractor, the Tunnelling Contractor must:

(i) minimise interference with the free movement of traffic (vehicular, waterborne, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Construction Site or the Existing Operations and not block or impair access to any premises, carparks, roadways, waterways, pedestrian ways, public spaces, parks, pedal cycle paths, or other facilities associated with the Existing Operations and comply with the Principal's reasonable directions in relation to them;

(ii) comply with the:

(A) Principal's reasonable directions in connection with the Existing Operations (including access to and use of the Construction Site); and

(B) Principal's directions in connection with workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any Law relating to workplace health and safety;

(iii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);

(iv) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on the Construction Site;

(v) ensure that in carrying out and completing the Tunnelling Contractor's Activities, the Project Works and Handover Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works and Handover Works, when completed, to fully comply with the requirements of this deed; and

(vi) immediately:

(A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the Tunnelling Contractor's Activities; and

(B) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 12.26(c) are complied with.

(d) The Tunnelling Contractor must:

(i) minimise disruption, interruption, interference, nuisance and inconvenience to the Existing Operations; and

(ii) program and coordinate the Tunnelling Contractor's Activities under this deed using design and construct best practices and so as to minimise the effect that the carrying out of the Tunnelling Contractor's Activities under this deed has on the Existing Operations.

(e) The Tunnelling Contractor must ensure that its Associates at all times comply with this clause 12.26.

(f) Subject to clauses 4.9, 16.8 or 16.9, where a direction of the Principal referred to in clause 12.26(c)(ii)(A) necessitates a reduction in the permissible working hours or working days or in the permissible noise and vibration limits for the Tunnelling Contractor's Activities:

(i) the Tunnelling Contractor will be entitled to an extension of time to any relevant Date for Milestone Achievement of a Milestone or Date for Substantial Completion of a Portion under clause 19 if the requirements of that clause are satisfied; and

(ii) the Project Contract Sum will be adjusted for the increased or decreased Direct Costs and Overheads incurred or saved by the Tunnelling Contractor as a direct result of the direction of the Principal plus Profit Margin, as stated by the Principal's Representative.

13. QUALITY

13.1 Quality Management System

The Tunnelling Contractor must implement a Quality Management System for the management of all aspects of the Tunnelling Contractor's obligations under this deed including in accordance with the applicable requirements of the Tunnelling Specification, including sections 2.4, 5.1 and 5.2 of the General Specification and the Assurance and Governance Plan.

13.2 Independent Certifier

(a) The Independent Certifier is to be engaged on the terms of the Independent Certifier Deed.

(b) The Independent Certifier's role is to, amongst other things:

(i) without limiting the rights or obligations of the parties under this deed, independently certify in accordance with the Independent Certifier Deed that the Project Works comply with the requirements of this deed; and

(ii) make determinations on matters that this deed expressly requires be determined by the Independent Certifier.

(c) Without limiting the effect which the determinations of the Independent Certifier will have upon the rights and obligations of the parties under this deed, the Independent Certifier does not have any power to give any Directions to the Tunnelling Contractor.

(d) The Independent Certifier is obliged to act independently of the Tunnelling Contractor, the Principal and any of their Associates, and is not an employee, agent, contractor or consultant of the Principal or the Tunnelling Contractor.

(e) The parties acknowledge that:

(i) the Independent Certifier has been engaged by the parties prior to the Principal electing whether to engage OpCo in relation to the OpCo Project Works or any other Interface Contractor in relation to Interface Works;

(ii) the Principal intends that if it engages OpCo, OpCo will accede to the Independent Certifier Deed;

(iii) the Independent Certifier is obliged to act independently of OpCo;

(iv) the Independent Certifier may (after receiving the prior written consent of the Principal which may be withheld or granted in its absolute discretion) be engaged by OpCo as independent certifier (upstream or downstream), but not in any other role, in relation to the OpCo Project Works but must demonstrate to the satisfaction of the parties that it has sufficient separation procedures in place to permit it to perform its services under the Independent Certifier Deed independently of OpCo, notwithstanding its engagement by OpCo as independent certifier (upstream or downstream) in relation to the OpCo Project Works;

(v) the Tunnelling Contractor may not make any Claim against the Principal arising out of or in any way in connection with the Independent Certifier being engaged by OpCo or any other Interface Contractor in relation to the OpCo Project Works or any other Interface Works; and

(vi) neither party may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence because it is engaged by OpCo or any other Interface Contractor in relation to the OpCo Project Works or any other Interface Works.

(f) The Tunnelling Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier:

(i) to attend design meetings;

(ii) access to all premises where the Tunnelling Contractor's Activities are being carried out; and

(iii) to recommend to the Principal's Representative the insertion of Hold Points or Witness Points in the Project Plans and the nominated authority to release the Hold Points,

all as may be:

(iv) necessary or reasonably required by the Independent Certifier or the Principal's Representative, to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed; or

(v) requested by the Independent Certifier or (subject to clause 13.2(h)) reasonably directed by the Principal's Representative.

(g) The Principal's Representative may provide comments to the Independent Certifier in respect of the Tunnelling Contractor's Activities (with a copy to the Tunnelling Contractor).

(h) The Principal's Representative may direct the insertion of additional Hold Points or Witness Points in the Project Plans and designate the nominated authority to release the Hold Points.

(i) If the Principal becomes liable to the Independent Certifier for any additional costs pursuant to section 4(a) of Schedule 2 of the Independent Certifier Deed and the fact, matter or thing which gives rise to the liability pursuant to section 4(a) of Schedule 2 of the Independent Certifier Deed arose out of or in connection with an act of omission of the Tunnelling Contractor, such costs will be a debt due and payable by the Tunnelling Contractor to the Principal.

13.3 **Proof Engineer**

(a) The Tunnelling Contractor must:

(i) engage the Proof Engineer at the Tunnelling Contractor's cost; and

(ii) must not replace the Proof Engineer without the prior written consent of the Principal (which must not be unreasonably withheld or delayed).

(b) The Tunnelling Contractor warrants that the Proof Engineer and any replacement Proof Engineer has:

(i) at least the qualifications, experience and expertise described in Schedule A24; and

(ii) the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 13.3 and the other requirements of this deed.

(c) The Proof Engineer's role is to, amongst other things:

(i) in respect of the Proof Engineered Temporary Works:

(A) undertake a full and independent assessment, without exchange of calculations or similar information, of the Proof Engineered Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing an independent dimensional check;

(B) provide to the Tunnelling Contractor, with copies to the Principal's Representative, a comprehensive report on the assessment required under clause 13.3(c)(i)(A); and

(C) independently certify that the Proof Engineered Temporary Works:

(aa) are adequate and suitable for their intended purpose; and

(bb) comply with the requirements of this deed (including section 3.2 of the Particular Specification),

and issue the certification required by clause 2(b)(ii) of Schedule A26.

(d) The parties acknowledge and agree that:

(i) the Proof Engineer is obliged to act independently of the Tunnelling Contractor, the Principal and any of their Associates;

(ii) the Proof Engineer must not be an employee of the Tunnelling Contractor, the Principal, the Independent Certifier or any of their Associates; and

(iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer to the Tunnelling Contractor must be in writing and must be made available to the Principal's Representative, upon request.

(e) The Tunnelling Contractor must provide the Proof Engineer with all information and documents and allow the Proof Engineer:

(i) to attend design meetings; and

(ii) access to the Construction Site and all places at which the Tunnelling Contractor's Activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of the Tunnelling Contractor given in relation to work health and safety,

all as may be:

(iii) necessary or reasonably required by the Proof Engineer or the Principal's Representative, to allow the Proof Engineer to perform its role under this deed; and

(iv) requested by the Proof Engineer or directed by the Principal's Representative.

(f) Nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Tunnelling Contractor to make any Claim against the Principal.

13.4 **Quality management, verification and certification**

(a) The Principal and the Tunnelling Contractor acknowledge that the design and construct project delivery method chosen for the Project Works and the Temporary Works:

(i) requires the Tunnelling Contractor to assume responsibility for all aspects of quality for the Tunnelling Contractor's Activities and for the durability of the Project Works and the Temporary Works; and

(ii) allows the Principal's Representative to monitor compliance of the Tunnelling Contractor's Activities with the requirements of this deed.

(b) The Tunnelling Contractor must ensure a Quality and Systems Manager is engaged who must:

(i) independently certify the effectiveness and integrity of the Tunnelling Contractor's quality system in achieving conformance with the requirements of this deed;

(ii) report to the Principal's Representative on quality issues in accordance with the requirements of this deed; and

(iii) have the requisite experience and ability described for the Quality and Systems Manager in Schedule A9.

(c) The Tunnelling Contractor must provide to the Principal's Representative a certificate executed by the Quality and Systems Manager in the form of:

(i) Schedule B9 within 3 months of the date of this deed;

(ii) Schedule B10 every 3 months from the date of this deed until the Date of Substantial Completion of the last Portion to achieve Substantial Completion;

(iii) Schedule B11 as a condition precedent to Substantial Completion of any relevant Portion; and

(iv) Schedule B12 upon the issue of a notice of Final Completion under clause 19.17(a).

(d) The Tunnelling Contractor must provide to the Principal's Representative a certificate executed by the Environmental Manager in the form of Schedule B5 every 3 months from the date of this deed until the Date of Substantial Completion of the last Portion to achieve Substantial Completion.

13.5 **Hold Points and Witness Points**

(a) The Tunnelling Contractor must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in section 2.4 of the General Specification and the Assurance and Governance Plan or inserted in Project Plans or other applicable documents by the Environmental Representative pursuant to clause 7.10(b)(iii) or by the Principal's Representative pursuant to clause 13.2(h).

(b) The insertion of any additional Hold Point:

(i) in a Project Plan or another applicable document by the Environmental Representative pursuant to clause 7.10(b)(iii); or

(ii) by the Principal's Representative pursuant to clause 13.2(h),

will be treated as a Change, except where the need for such Hold Point:

(iii) is already contemplated by this deed or the Planning Approvals;

(iv) arises out of or in connection with any breach of this deed by the Tunnelling Contractor or a wrongful act or omission of the Tunnelling Contractor or its Associates; or

(v) is related to rectification of a Defect.

13.6 **Project quality non-conformance**

(a) The Tunnelling Contractor must comply with the procedure for non-conformances set out in section 3.2.5 of the General Specification and the Assurance and Governance Plan. Further to the provisions of clause 8.3(b) of AS/NZS ISO 9001-2008 and without limiting clause 17.4, the use, release or acceptance of nonconforming work can only be given by the Principal's Representative, in its absolute discretion and without being under any obligation to do so.

(b) In addition to the procedure for non-conformances referred to in clause 13.6(a), and without limiting clause 17.3, if the Tunnelling Contractor has not complied with this deed including section 3.2.5 of the Tunnelling Specification, the Principal's Representative may give written notice to the Tunnelling Contractor of the Tunnelling Contractor's failure to comply and requiring compliance within a reasonable time specified in the notice.

(c) If the Tunnelling Contractor does not comply with the notice referred to in clause 13.6(b), the Principal may, subject to clause 32.9(b), employ others to carry out the direction.

(d) The amount of any Loss the Principal suffers or incurs in taking action contemplated in clause 13.6(c) or as a result of the Tunnelling Contractor's failure to comply with clause 13.6(b) will be a debt due from the Tunnelling Contractor to the Principal.

(e) Corrective actions implemented under the Tunnelling Contractor's quality system must comply with the requirements of this deed including section 3.2.5 of the General Specification.

(f) The Tunnelling Contractor must promptly issue all documents relating to quality non-conformances to the Principal's Representative.

13.7 **Monitoring and audits by the Principal's Representative**

(a) The Tunnelling Contractor acknowledges that the Principal's Representative may, at any time up to the Date of Substantial Completion of the last Portion to achieve Substantial Completion, arrange monitoring and audits (including testing) to see if the Tunnelling Contractor is complying with this deed (including the Assurance and Governance Plan, Construction Environmental Management Plan, Project Health & Safety Risk Governance Plan and the other Project Plans).

(b) The Tunnelling Contractor must:

(i) make arrangements to ensure that the Principal's Representative (and its nominee) has access to all facilities, documentation, records and personnel (including those of Subcontractors) that are needed by the Principal's Representative for the carrying out of the monitoring and audits referred to in clause 13.7(a); and

(ii) ensure that the Quality and Systems Manager, the Environmental Manager, the Tunnelling Contractor's work health and safety representatives and the Tunnelling Contractor's personnel responsible for the Chain of Responsibility Provisions are available, as necessary, to discuss details of quality matters with the Principal's Representative during the above monitoring and audits.

13.8 **Testing**

(a) The Tunnelling Contractor must carry out all tests required:

(i) by this deed; or

(ii) otherwise directed by the Principal's Representative.

(b) The additional Direct Costs and Overheads plus Profit Margin connected with a test which is directed by the Principal's Representative and which is not otherwise required by this deed will be borne by the Principal unless the test detects a Defect or is upon a Defect (in which case all such costs will be borne by the Tunnelling Contractor).

13.9 **No relief from obligations**

The Tunnelling Contractor will not be relieved from any of its liabilities or responsibilities under this deed (including under clause 17) or otherwise according to Law nor will the rights of the Principal whether under this deed or otherwise according to Law be limited or otherwise affected by:

(a) the implementation of, and compliance with, any quality system or the Assurance and Governance Plan by the Tunnelling Contractor;

(b) subject to clause 13.5(b), compliance with any Hold Point and Witness Point procedures;

(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 Tunnelling Contractor proceeding past any Hold Point or Witness Point or as 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 whilst participating in any Hold Point or Witness Point procedure including where such failure is the result of a negligent act or omission; or

(e) any monitoring or audit arranged by the Principal's Representative under clause 13.7 or any discussions between the Quality and Systems Manager and the Principal's Representative as contemplated under clause 13.7(b)(ii).

14. DESIGN AND DESIGN DOCUMENTATION

14.1 Design obligations

The Tunnelling Contractor must design the Project Works and the Temporary Works in accordance with:

(a) the Tunnelling Specification;

(b) any Change:

(i) directed by the Principal by a Change Order; or

(ii) otherwise approved by the Principal under the terms of this deed; and

(c) the other requirements of this deed.

14.2 Tunnelling Contractor's Tender Design

(a) The Tunnelling Contractor acknowledges that prior to the date of this deed it prepared the Tunnelling Contractor's Tender Design. The Tunnelling Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the Tunnelling Contractor of, or the reliance by the Tunnelling Contractor upon, the Tunnelling Contractor's Tender Design in performing the Tunnelling Contractor's Activities and that such use and reliance will not limit any of its obligations under this deed.

(b) Subject to any express entitlements under this deed, the Tunnelling Contractor is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:

(i) the design and construction of the Project Works and the Temporary Works using the Tunnelling Contractor's Tender Design costing more than the Project Contract Sum or taking longer than anticipated; and

(ii) any differences between the Project Works and the Temporary Works which the Tunnelling Contractor is required to design and construct (ignoring for this

purpose any differences which are the subject of a Change Order) and the Tunnelling Contractor's Tender Design including:

(A) differences necessitated by any Site Conditions encountered; and

(B) differences required to ensure that:

(aa) the Project Works and the Temporary Works satisfy the requirements of this deed;

(bb) upon Substantial Completion the Project Works are, and will be capable of remaining at all relevant times, fit for their intended purposes; and

(cc) the Temporary Works will be and remain fit for their intended purposes,

and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Tunnelling Contractor may have made in relation to any of the matters set out in clauses 14.2(b)(i) to 14.2(b)(ii) above.

(c) The Tunnelling Contractor may make changes to the Tunnelling Contractor's Tender Design but only to the extent that:

(i) the changes will not adversely impact the:

(A) durability;

(B) whole of life performance;

(C) environment and sustainability performance;

(D) functional performance;

(E) safety; or

(F) whole of life costs associated with any part of the Project Works including the costs of operation and maintenance,

depicted or achieved by the Tunnelling Contractor's Tender Design;

(ii) the Tunnelling Contractor has notified the Principal's Representative of the proposed change setting out in the notice the reason for the change and a detailed analysis of the impact on the matters referred to in this clause 14.2(c); and

(iii) the Tunnelling Contractor has obtained the consent in writing of the Principal's Representative to the change (with such consent not to be unreasonably withheld and the parties agree that it will be reasonable for the Principal to withhold its consent where the change will increase the Principal's liability to an Interface Contractor or adversely affect or delay the Interface Works).

14.3 **Design warranties**

(a) The Tunnelling Contractor warrants to the Principal that:

(i) the Tunnelling Contractor's Tender Design has been prepared by the Tunnelling Contractor;

(ii) it remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of this deed despite the Tunnelling Contractor's Tender Design;

(iii) if the Project Works and the Temporary Works are designed and constructed using the Tunnelling Contractor's Tender Design, the Project Works and the Temporary Works will satisfy the requirements of this deed but nothing in this clause 14.3(a)(iii) affects or limits clauses 14.2(a) or 14.2(b), which will prevail to the extent of any inconsistency;

(iv) it will carry out and complete the Tunnelling Contractor's Activities using the Tunnelling Contractor's Tender Design but nothing in this clause 14.3(a)(iv) affects or limits clauses 14.2(a), 14.2(b) or 14.3(c), which will prevail to the extent of any inconsistency;

(v) it will not make any adjustment or change to the Tunnelling Contractor's Tender Design which is not in accordance with clause 14.2(c);

(vi) without limiting any express entitlement of the Tunnelling Contractor under this deed, it has checked, examined, analysed and carefully considered the Tunnelling Specification and the Planning Approvals and that:

(A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the Tunnelling Specification;

(B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the Tunnelling Specification and the Planning Approvals;

(C) the Tunnelling Specification is proper, adequate and fit for its intended purpose including for the purpose of enabling the Tunnelling Contractor to carry out the Tunnelling Contractor's Activities in accordance with, and to ensure that the Project Works and the Temporary Works comply with, this deed including the other warranties in this clause 14.3;

(D) it will be fully and exclusively responsible and liable for the design of the Project Works and the Temporary Works (including the Design Documentation), including any submitted or re-submitted to the Independent Certifier or to the Principal's Representative in accordance with this deed;

(E) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by the Tunnelling Contractor of, or reliance upon, the Tunnelling Specification; and

(F) the use of, or reliance upon, the Tunnelling Specification does not affect any of its obligations under this deed or entitle the Tunnelling Contractor to make any Claim against the Principal arising out of or in any way in connection with the Tunnelling Specification;

(vii) the Design Documentation will:

(A) be prepared using Good Industry Practice;

(B) satisfy the requirements of the Tunnelling Specification and the other requirements of this deed;

(C) be and will remain at all relevant times fit for its intended purpose; and

(D) be prepared, certified, verified, completed and used in accordance with the requirements of this deed;

(viii) construction will be carried out in accordance with the Design Documentation which the Tunnelling Contractor is entitled to use for construction purposes in accordance with clause 6 of Schedule A26;

(ix) construction carried out in accordance with the Design Documentation which the Tunnelling Contractor is entitled to use in accordance with clause 6 of Schedule A26 will satisfy the requirements of this deed; and

(x) each Portion (both individually and in combination with any earlier completed Portions), the Project Works as a whole and the Handover Works, will:

(A) be completed in accordance with, and satisfy the requirements of, this deed;

(B) upon Substantial Completion, be fit for their intended purposes; and

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

(b) The Tunnelling Contractor agrees that its obligations under, and the warranties given in, clause 14.2 and this clause 14.3 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design (including the Design Documentation), construction, commissioning, testing and completion of the Project Works and the Temporary Works notwithstanding:

(i) any design work carried out by others prior to the date of this deed and incorporated in this deed;

(ii) subject to clause 15.3(f)(ii), any Change the subject of a Direction by the Principal's Representative; or

(iii) the termination (for any reason) of this deed.

(c) Despite any provision to the contrary in this deed, the Tunnelling Contractor will not be regarded as being in breach of any obligation under this deed in respect of or relating to any requirement that:

(i) the alignment, locations, dimensions and clear openings for the Project Works (including the Third Party Works) and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the alignment, locations, dimensions and clear openings of the Project Works (including the Third Party Works) and any related Design Documentation complies with the alignment, locations, dimensions and clear openings documented in the Tunnelling Specification; or

(ii) the Works and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the Tunnelling Contractor has relied on the load cases specified in the Tunnelling Specification for the purpose of designing the Works.

14.4 **Preparation, submission and review of Design Documentation**

(a) The Tunnelling Contractor must prepare and submit Design Documentation in accordance with the requirements of:

(i) Schedule A26; and

(ii) the Tunnelling Specification.

(b) All Design Documentation submitted by the Tunnelling Contractor under clause 14.4(a) (other than Design Documentation relating to Temporary Works which is requested by the Principal's Representative under clause 1.1(a) of Schedule A26 and Third Party Agreement Design Documentation) will be reviewed in accordance with the process set out in Schedule A26.

(c) The Tunnelling Contractor must:

(i) cooperate with the Principal's Representative and, if applicable, the Independent Certifier, to procure the review of the Design Documentation; and

(ii) if at any time required by the Principal's Representative or the Independent Certifier, make available the appropriate design personnel (including any Subcontractor that has carried out design work) to:

(A) explain the Design Documentation; and

(B) provide any further information required by the Principal's Representative and the Independent Certifier in relation to the Design Documentation.

(d) The Tunnelling Contractor:

(i) from the date of this deed to the Date of Completion of the last Portion to achieve Completion, must, at its own cost, comply with its obligations under clause 14.4(c)(ii); and

(ii) thereafter will be entitled to claim the reasonable costs incurred by the Tunnelling Contractor in complying with its obligations under clause 14.4(c)(ii), such costs as agreed with the Principal's Representative.

14.5 **Network Assurance Committee**

The Tunnelling Contractor must:

(a) comply with the requirements of section 3.2 of the General Specification in relation to the NAC assurance process; and

(b) without limiting clause 14.5(a):

(i) submit to the Principal's Representative each NAS in accordance with clause 8.1 of Schedule A26; and

(ii) cooperate with and provide all reasonable assistance to the Principal and its Associates to facilitate the review of each NAS in accordance with the process set out in clause 8 of Schedule A26.

14.6 **Ownership of documentation**

(a) Documents (including Design Documentation) supplied by or on behalf of the Tunnelling Contractor will be the Principal's property.

(b) The Tunnelling Contractor (irrevocably for all time and despite any termination of this deed for any reason):

(i) to the fullest extent permitted by law, assigns to the Principal all of the Tunnelling Contractor's right, title and interest, including all Intellectual Property Rights in or relating to:

(A) the Design Documentation; and

(B) the materials, documents, images, photographs and software relevant to the Tunnelling Contractor's Activities (other than processes and methods of working),

(collectively called the **Contract Documentation and Materials**) prepared or created by the Tunnelling Contractor [redacted] for or in connection with the Tunnelling Contractor's Activities, the Project Works or the Handover Works (other than the Temporary Works) (**Developed IP Rights**) worldwide, which assignment is effective automatically and immediately from the time it is prepared or created; and

(ii) in respect of all Intellectual Property Rights other than Developed IP Rights in or relating to:

(A) the Contract Documentation and Materials; and

(B) the Temporary Works (other than the Handover Works) and the processes and methods of working relevant to the Tunnelling Contractor's Activities (collectively called the **Contract Processes**),

(**Background IP Rights**)

grants to the Principal an irrevocable, royalty free, perpetual and fully assignable licence to use, reproduce, modify, adapt, vary and alter (and to sublicense others to use, reproduce, modify, adapt, vary and alter) the same for:

(C) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the Tunnelling Contractor's Activities or the Project Works and the Temporary Works;

(D) any purpose associated with further development of the Construction Site; and

(E) any other purpose connected with:

[redacted]

which licence for Background IP Rights is effective immediately from the date of this deed and will survive termination of this deed on any basis.

(c) The Tunnelling Contractor:

(i) warrants that the use of the Contract Documentation and Materials, or any other work provided by the Tunnelling Contractor under this deed by the Principal, its licensees, successors in title and their licensees, and anyone authorised by any of them, will not infringe any author's Moral Rights; 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 in connection with the Project Works, the Temporary Works, the Tunnelling Contractor's Activities or the Contract Documentation and Materials.

(d) For the purposes of clause 14.6(c), "use" of the Contract Documentation and Materials by the Principal, its licensees or successors in title or their licensees, or anyone authorised by any of them, 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 Material or part of the Project Works or Temporary Works to which the Contract Documentation or Material or any other work provided by the Tunnelling 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.

(e) The Tunnelling Contractor agrees to, and agrees to procure the cooperation of any third parties to, execute such further documents, including an irrevocable and unconditional consent, and do such further things (including assisting in relation to any litigation commenced by or brought against the Principal or its licensees, assignees or successors and their licensees, or any other person authorised by any of them) as reasonably requested by the Principal to give full effect to the provisions of this deed and to allow or assist the Principal (and its licensees, assignees and successors and their licensees, and any other person authorised by any of them) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the assigned Developed IP Rights or licensed Background IP Rights (as the case may be) or of any such adaptation) or to prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.

(f) The Tunnelling Contractor irrevocably appoints the Principal as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 14.6 if the Tunnelling Contractor fails to execute the document or do the relevant act or thing within 10 Business Days of a written request by the Principal's Representative.

(g) The Principal grants to the Tunnelling Contractor a royalty free licence for the duration of this deed to use, the Developed IP Rights assigned to the Principal under clause 14.6(b)(i) for the sole purpose of executing the Tunnelling Contractor's Activities.

(h) The Tunnelling Contractor warrants that:

(i) the:

(A) assignment to the Principal and any use, reproduction, modification, adaption, variation or alteration of the Developed IP Rights assigned under this clause 14.6; and

(B) use, reproduction, modification, adaption, variation or alteration of the Background IP Rights licensed under this clause 14.6 pursuant to the terms of this deed,

does not and will not infringe the rights, including Intellectual Property Rights and Moral Rights, of or duties owed to any person;

(ii) were it not for the assignments effected by this deed, the Tunnelling Contractor would be the absolute and unencumbered legal and beneficial owner of the Developed IP Rights referred to in clause 14.6(b)(i); and

(iii) the Tunnelling Contractor is either:

(A) the absolute and unencumbered legal and beneficial owner of the Background IP Rights referred to in clause 14.6(b)(ii); or

(B) able to grant the licence granted in clause 14.6(b)(ii).

(i) Without limiting clause 14.6(h), where any action or claim for infringement or alleged infringement of any Intellectual Property Rights results in the use, reproduction, modification, adaptation, variation, alteration or enjoyment by the Principal or its licensees, assignees or successors or their licensees, or other person authorised by any of them, of any Contract Documentation and Materials, the Contract Processes, the Tunnelling Contractor's Activities and/or the Project Works or any part of them, being disrupted, impaired or adversely affected, the Tunnelling Contractor must at its own expense and at the Principal's option:

(i) procure for the benefit of the Principal and its licensees, assignees and successors and their licensees and any other person authorised by any of them the right to continue to use and exploit the Intellectual Property Rights assigned or licensed pursuant to this clause 14.6, in accordance with this deed; or

(ii) modify or replace the Contract Documentation and Materials, the Contract Processes, the Tunnelling Contractor's Activities or the Project Works or relevant part of them, in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 14.6, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, the Contract Processes, the Tunnelling Contractor's Activities or the Project Works or relevant part of them in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 14.6 will:

(A) comply with the requirements of this deed; and

(B) not limit or otherwise affect the Principal's rights, or the Tunnelling Contractor's ability to comply with its obligations, under this deed or otherwise according to Law.

(j) The Tunnelling Contractor indemnifies, and agrees to keep indemnified, the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:

(i) a breach by the Tunnelling Contractor of any warranty set out in this clause 14.6; or

(ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Materials, the Contract Processes, the Tunnelling Contractor's Activities or the Project Works or any part of them.

(k) The Tunnelling Contractor:

(i) acknowledges that the Principal may provide Interface Contractors or any Alternate Operator with copies of any documents (including Design Documentation) provided to the Principal, the Independent Certifier or the Principal's Representative by or on behalf of the Tunnelling Contractor in any way in connection with this deed, the Project Works, the Temporary Works or the Tunnelling Contractor's Activities, provided that the Principal redacts any pricing information contained in such documents before providing them to an Interface Contractor or any Alternate Operator; and

(ii) must, upon request by the Principal's Representative, provide to the Principal's Representative copies of any Contract Documentation or Materials that OpCo, any Interface Contractor or any Alternate Operator may reasonably require.

14.7 **Delivery up of Design Documentation**

If this deed is terminated whether pursuant to clause 24 or otherwise at Law:

(a) the Tunnelling Contractor must:

(i) subject to clause 14.7(b), immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not and including any Design Documentation stored electronically) then in existence to the Principal; and

(ii) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Design Documentation; and

(b) the Tunnelling Contractor and each Subcontractor may retain a copy of all such Design Documentation.

14.8 **Initial ECI Design**

(a) The Tunnelling Contractor acknowledges that prior to the date of this deed the Principal prepared the Initial ECI Design, a copy of which was provided to the Tunnelling Contractor as an Information Document.

(b) The Initial ECI Design will not form part of this deed and is subject to the provisions of this deed and the Deeds of Disclaimer concerning Information Documents.

(c) The Tunnelling Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the Tunnelling Contractor of, or the reliance by the Tunnelling Contractor on, the Initial ECI Design and the existence of the Initial ECI Design will not limit any of the Tunnelling Contractor's obligations under this deed, including that the Tunnelling Contractor remains responsible for ensuring that the Project Works and the Temporary Works satisfy the requirements of this deed.

14.9 **Design Life**

[redacted]

14A FLOOD MODELLING

14A.1 Flood Model Tender Design Scenario and Tunnelling Contractor's Tender Design

(a) The Tunnelling Contractor acknowledges that prior to the date of this deed the Principal prepared the Reference Flood Model, including the Flood Model Baseline Design Scenario, and this was provided to the Tunnelling Contractor as an Information Document.

(b) The Tunnelling Contractor warrants to the Principal that:

(i) the Flood Model Tender Design Scenario as submitted by the Tunnelling Contractor with the Tunnelling Contractor's Tender Design, including any amendments by the Tunnelling Contractor to the Flood Model Baseline Design Scenario, is a complete and accurate reflection of the Tunnelling Contractor's Tender Design; and

(ii) without prejudice to the warranties given by the Tunnelling Contractor in clause 14.3, if the Project Works and Temporary Works are designed and constructed using the Tunnelling Contractor's Tender Design, the Project Works and Temporary Works will each satisfy the Flood Resilience Requirements.

14A.2 Consistency of Design Documentation with Flood Resilience Requirements

At each Design Stage, the Tunnelling Contractor must:

(a) review and assess the accuracy and completeness of the Flood Model WTP Design Scenario;

(b) amend the Flood Model WTP Design Scenario, as required, to ensure that it is a complete and accurate reflection of the Design Documentation, and submit details of all such amendments with the corresponding Design Documentation and Flood Model Output Schedule (which amended Flood Model WTP Design Scenario will form part of the Design Documentation and be reviewed as part of the process set out in Schedule A26); and

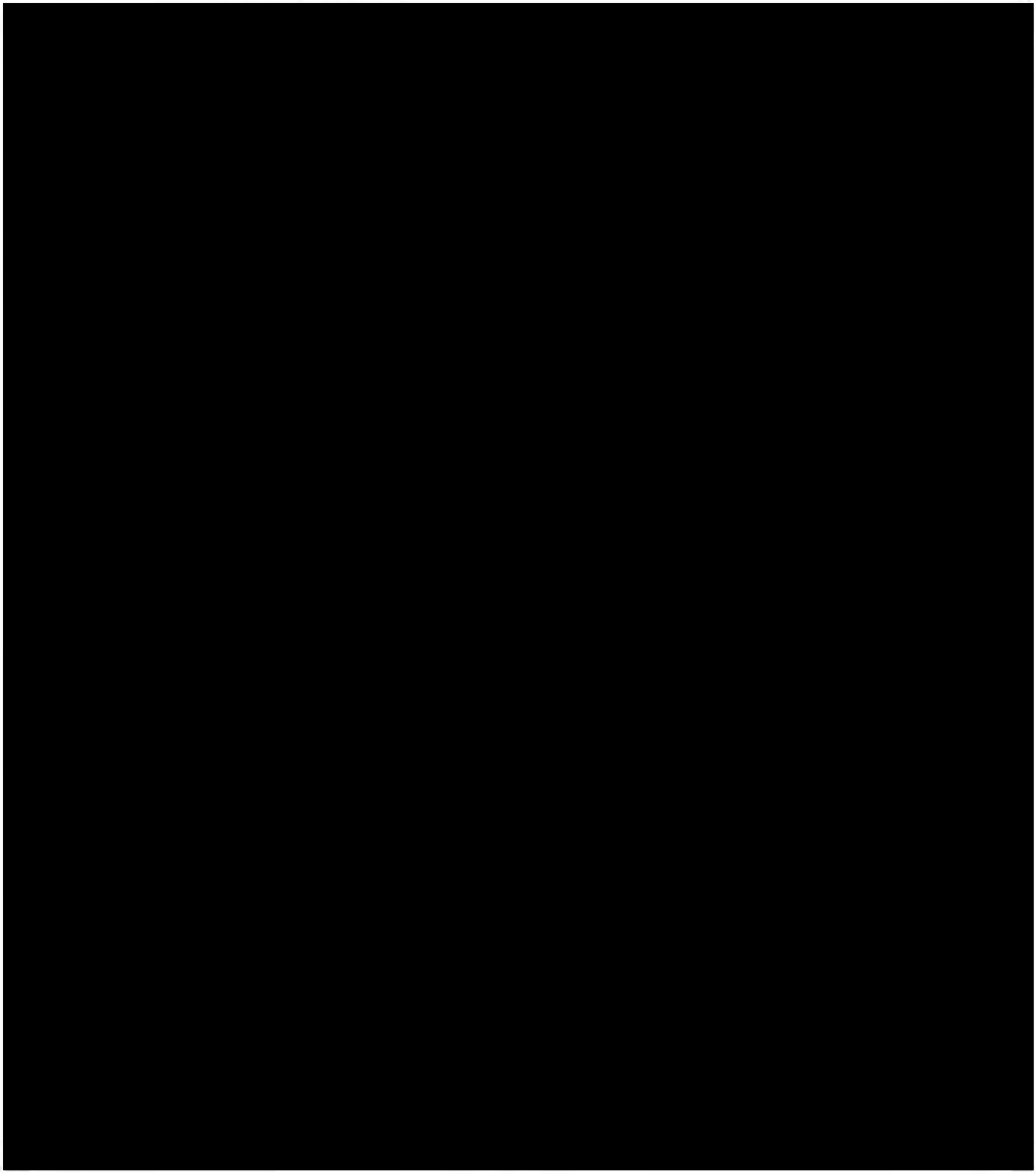
(c) ensure that the Project Works and Temporary Works when constructed in accordance with the Design Documentation will satisfy the Flood Resilience Requirements.

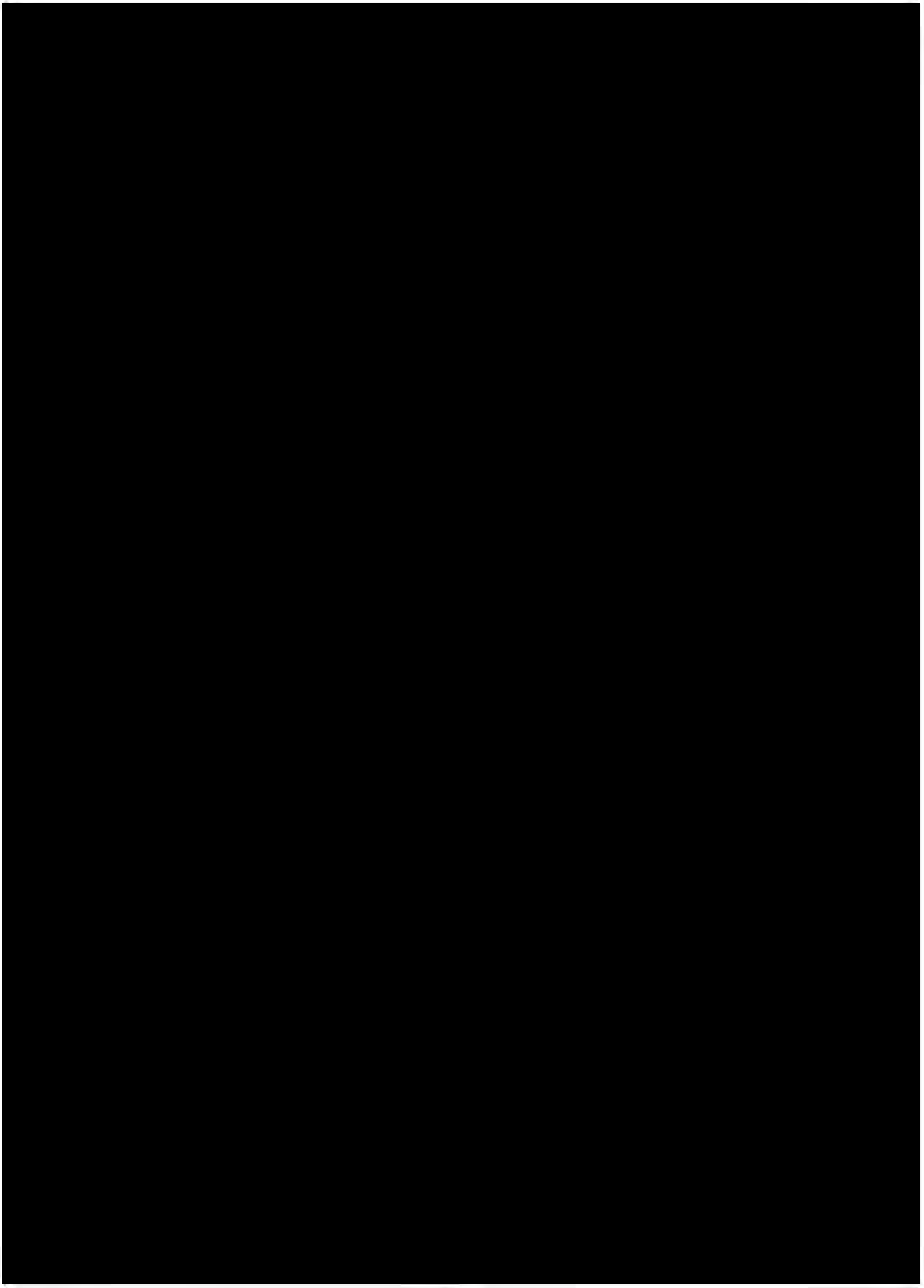
14A.3 Changes to the Reference Flood Model

(a) If, in preparing the Design Documentation, the Tunnelling Contractor identifies any inaccuracy or error in the Reference Flood Model, the Tunnelling Contractor must within 10 Business Days after becoming aware of the inaccuracy or error provide the

Principal's Representative with a written notice setting out detailed particulars of the inaccuracy or error (as applicable).

(b) The Principal's Representative may amend and reissue the Reference Flood Model for any reason and at any time as the Principal's Representative considers necessary or expedient, and the amended and reissued Reference Flood Model will become the Reference Flood Model.





15. **CHANGES**

15.1 **Open Book**

All documentation and information provided by the Tunnelling Contractor under this clause 15 (including any documentation or information prepared by a Significant Subcontractor) must be provided on an Open Book Basis, provided that these Open Book Basis principles will not require the Tunnelling Contractor to re-open any prices, rates, unit costs or margins set out in the Design Payment Schedule or the Construction Payment Schedule.

15.2 **Proposed Changes**

(a) The Principal's Representative may at any time issue to the Tunnelling Contractor a written document titled "Change Proposal Request" notifying the Tunnelling Contractor of a proposed Change that the Principal is considering (**Change Proposal Request**). Within 15 Business Days (but using its best endeavours to do so within 10 Business Days) of receipt of a Change Proposal Request (or such longer period as the Principal's Representative may direct), the Tunnelling Contractor must, at its cost, provide the Principal's Representative with a written notice containing the following details:

(i) the effect which the Tunnelling Contractor anticipates the Change will have on:

(A) the Design Contract Sum and the Design Payment Schedule;

(B) the Construction Contract Sum and the Construction Payment Schedule and any potential impacts on the costs of maintaining and using the Project Works, Temporary Works and the Handover Works;

(C) the Overall D&C Program and the Tunnelling Contractor achieving Milestone Achievement of each Milestone and Substantial Completion and Completion (as applicable) of each Portion and if the proposed Change would entitle the Tunnelling Contractor to an extension of time, the amount of its entitlement under clause 19.6 arising from that extension of time;

(D) the land or property rights that are required to construct the Project Works and the Temporary Works and whether the Tunnelling Contractor considers any additional land or property rights are required to carry out the proposed Change;

(E) the performance of the Tunnelling Contractor's Activities, the Project Works and the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected); and

(F) the functionality or integrity of the elements of the Tunnelling Contractor's Activities, the Project Works and the Temporary Works and the quality or performance standards required by this deed, including specific details of:

(aa) the elements of the Tunnelling Contractor's Activities, the Project Works and the Temporary Works that will be affected;

(bb) how and to what extent the functionality or integrity of those elements will be affected;

(cc) the quality or performance standards affected and how and to what extent they will be affected; and

(dd) any adverse effect which the Change will have on the Tunnelling Contractor's ability to satisfy its obligations under this deed (including any warranties the Tunnelling Contractor is required to give under this deed); and

(ii) any other information concerning the proposed Change which the Principal's Representative reasonably requires including:

(A) sufficient details to allow the Principal to reconsider the need for the Change; and

(B) the direct net costs that the Tunnelling Contractor anticipates would be incurred by it if a direction was given under clause 19.9(a)(ii) to accelerate the performance of the Tunnelling Contractor's Activities to overcome part or all of any delay in achieving:

(aa) Milestone Achievement of a relevant Milestone by the relevant Date for Milestone Achievement; and

(bb) Substantial Completion of a relevant Portion by the relevant Date for Substantial Completion,

caused by the Change specified in the Change Proposal Request;

(C) whether any land in addition to the Construction Site is required to implement the Change;

(D) reasonably available source documents required for the Principal's Representative to verify the information provided by the Tunnelling Contractor on an Open Book Basis; and

[redacted]

(b) The Principal will not be obliged to proceed with any proposed Change the subject of a Change Proposal Request.

(c) Except as directed in a Change Order, the Tunnelling Contractor will not be entitled to vary or change the Project Works or the Temporary Works.

[redacted]

15.3 **Change Orders**

(a) Whether or not the Principal's Representative has issued a Change Proposal Request under clause 15.2(a), the Principal's Representative may at any time, by a written document titled "Change Order", direct the Tunnelling Contractor to carry out a Change as specified in the Change Order.

The Principal's Representative will in the Change Order state one of the following:

(i) where the Tunnelling Contractor has provided a notice under clause 15.2(a) with respect to the Change, whether any one or more of the following will be adjusted as set out in the Tunnelling Contractor's notice under clause 15.2(a):

(A) the Design Contract Sum and the Design Payment Schedule;

(B) the Construction Contract Sum and the Construction Payment Schedule;

(C) a relevant Date for Milestone Achievement;

(D) a relevant Date for Substantial Completion;

(E) any other obligations of the Tunnelling Contractor under this deed (including adjustments required, if any, to any warranties the Tunnelling Contractor is required to give under this deed); and

(F) if applicable, any other matters set out in the Tunnelling Contractor's notice under clause 15.2(a); or

(ii) where the Principal's Representative's notice under subparagraph (i) states that the Principal's Representative does not agree with the Tunnelling Contractor's notice under clause 15.2(a), or where no Change Proposal Request has been issued under clause 15.2(a), that any adjustment to:

(A) the Design Contract Sum and the Design Payment Schedule; and

(B) the Construction Contract Sum and the Construction Payment Schedule,

will be made under clause 15.5(d).

(b) Where the Tunnelling Contractor receives a Change Order, it must perform its obligations under this deed in accordance with the Change specified in the Change Order.

(c) There is no limitation on the power of the Principal's Representative to direct a Change, and no Change or direction to carry out a Change will invalidate this deed.

(d) Where the Tunnelling Contractor receives a Change Order but the Principal's Representative has not issued a Change Proposal Request under clause 15.2(a), the Tunnelling Contractor may, within 10 Business Days of receipt of the Change Order (or such longer period as the Principal's Representative may direct), provide the Principal's Representative with a notice setting out the details specified in clause 15.2(a)(i)(D), 15.2(a)(i)(E) and 15.2(a)(i)(F). Without limiting the parties' rights under clause 25, the Principal is not required to take any action with respect to the Tunnelling Contractor's notice provided under this clause 15.3(d).

(e) Without limiting clause 17, the Principal's Representative may issue a Change Order at any time up to Substantial Completion of the last Portion to reach Substantial Completion.

(f) If the Principal directs the Tunnelling Contractor to implement a Change by issuing a Change Order:

(i) the Tunnelling Contractor must promptly implement the Change on the basis of the Change Order irrespective of:

(A) the nature, extent or value of the work the subject of the Change;

(B) the location or timing (including the impact on any Date for Milestone Achievement, Date for Substantial Completion or Date for Completion) of the work involved in the Change;

(C) any Dispute related to the Change;

(ii) the Tunnelling Contractor will be relieved of its obligations under this deed to the extent specified in the Change Order (or as otherwise determined under clause 25); and

(iii) the Design Contract Sum and/or the Construction Contract Sum, as applicable, will be adjusted in accordance with clause 15.5.

(g) The Tunnelling Contractor's entitlement (if any) to an extension of time arising out of or in connection with a Change will be dealt with under clause 19.6.

15.4 **Notice of Change**

(a) If the Tunnelling Contractor believes any Direction of the Principal's Representative, other than the issuing of a Change Order, constitutes or involves a Change it must, if it wishes to make a Claim against the Principal arising out of or, or in any way in connection with, the Direction:

(i) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with, the Direction, give notice to the Principal's Representative that sets out:

(A) that it considers the Direction constitutes or involves a Change;

(B) details of the relevant Direction;

(C) details of why it considers the Direction constitutes or involves a Change; and

(D) that the Tunnelling Contractor proposes to make a Claim in connection with the Direction; and

(ii) subject to clause 31.3, within 20 Business Days of giving the notice under clause 15.4(a)(i) (or such longer period as the Principal's Representative may direct), submit a written Claim to the Principal's Representative which includes detailed particulars of:

(A) why the Tunnelling Contractor believes the Direction constitutes or involves a Change;

(B) the details specified in clause 15.2(a)(i);

(C) the Direction, including the date or dates of the Direction and any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;

(D) the provisions of this deed or other legal basis upon which the Claim is based; and

(E) the amount claimed and how it has been calculated,

failing which the Tunnelling Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with the Principal's Representative's Direction.

(b) Despite the fact that the Tunnelling Contractor considers that a Direction by the Principal's Representative constitutes or involves a Change, the Tunnelling Contractor must continue to carry out the Tunnelling Contractor's Activities in accordance with this deed including any work connected with the Direction of the Principal's Representative in respect of which notice has been given under clause 15.4(a).

(c) If the Tunnelling Contractor issues a notice under clause 15.4(a)(i) or a Claim under clause 15.4(a)(ii), the Principal may:

(i) confirm that the Direction constitutes or involves a Change, or entitles the Tunnelling Contractor to make a Claim, by the giving of a notice under this clause 15.4(c)(i);

(ii) deny that the Direction constitutes or involves a Change, or entitles the Tunnelling Contractor to make a Claim, by the giving of a notice under this clause 15.4(c)(ii), in which case the Tunnelling Contractor:

(A) may within 10 Business Days issue a Notice of Issue under clause 25.3; and

(B) unless otherwise directed by the Principal's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or

(iii) withdraw the Direction by giving a notice under this clause 15.4(c)(iii).

(d) If within 20 Business Days after first receipt of the notice under clause 15.4(a)(i), the Principal's Representative has not taken any action under clause 15.4(c), the Principal's Representative will be deemed to have given a notice under 15.4(c)(ii).

15.5 **Valuation**

Subject to clauses 15.4, 15.7(h), 15.8(c)(ii)(A), 17.3 and 31, one or more of the following will, to the extent required by this deed, be adjusted for all Changes which have been the subject of a Direction by the Principal's Representative:

(a) the Design Contract Sum and the Design Payment Schedule; and

(b) the Construction Contract Sum and the Construction Payment Schedule;

by:

(c) to the extent that clause 15.3(a)(i) applies, the agreed amount specified in the Change Order; or

(d) to the extent clause 15.3(a)(ii) applies or where this deed contemplates that any additional work will be treated as a Change:

(i) the net cost of the work (including Materials) to be added and/or omitted as a result of the Change, valued:

(A) where applicable, on the basis of the relevant schedule of prices and rates set out in the Design Payment Schedule and the Construction Payment Schedule and where relevant, on the basis of any other appropriate data including, where work is directed to be carried out (or, if applicable, omitted or deleted) by a direction given by the Principal's Representative under clause 15.8(a) after the relevant date set out in Schedule A3 and to the extent it is reasonable to use it in respect of a Pre-Agreed Change, the details in Schedule A3 relevant to that Pre-Agreed Change plus Overheads and Profit Margin (except to the extent the relevant rates and prices are inclusive of overheads and profit); or

(B) otherwise on the basis of the Direct Costs plus the Overheads and the Profit Margin which will be in total satisfaction of all the Tunnelling Contractor's Overheads, preliminaries (including administrative costs, site supervision, establishment costs and attendance) and profit,

such value to be as stated by the Principal's Representative; and

(ii) if the Change includes an extension to a Date for Substantial Completion of a Portion, any Delay Costs the Tunnelling Contractor will incur due to the delay

or disruption that the Change will cause in the carrying out of the Tunnelling Contractor's Activities, with the amount of such Delay Costs to be as stated by the Principal's Representative. In the case of a Change issued pursuant to clauses 4.18(d), 7.4(a)(ii)(B), , 8.5(d) 10.1(a), 10.3(a), 12.4(i), 12.5(c), 12.17(f), 12.24(e), 13.5(b), 17.2(a)(ii), and 17.3(a)(i), such Delay Costs must not exceed on a per day basis the Delay Costs Maximum Daily Amount,

provided however that where the Principal's Representative has issued a Change Proposal Request, the Tunnelling Contractor's entitlement under this clause will not exceed any amount set out in the Tunnelling Contractor's notice under clause 15.2(a).

The parties acknowledge and agree that the principles set out in clauses 3(a), (b), (f), (g), (h) and (i) of Schedule E9 will be apply to the valuing of any Changes by the Principal's Representative in accordance with clause 15.5(d) (with any consequential changes necessary to take into account the nature of clause 15.5(d)).

15.6 **Omissions**

If the Principal's Representative directs a Change omitting or deleting any work from the Tunnelling Contractor's Activities:

(a) the Principal may thereafter either perform this work itself or employ or engage another person or persons to carry out and execute the omitted or deleted work;

(b) the Principal will not (other than pursuant to this clause 15 and clause 19.6) be liable upon any Claim (insofar as is permitted by Law) by the Tunnelling Contractor as a result of any work being omitted or deleted from the Tunnelling Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages another person or persons to carry out and execute the omitted or deleted work; and

(c) except for work omitted or deleted by a direction by the Principal's Representative made under clause 15.8(a) by the relevant date set out in Schedule A3, the work which has been omitted or deleted shall be valued in accordance with clause 15.5.

15.7 **Tunnelling Contractor may propose Change**

(a) The Principal and the Tunnelling Contractor acknowledge that:

(i) the design and construct project delivery method chosen is intended, among other things, to allow the Tunnelling Contractor to identify:

(A) Changes which may enhance the quality of the Tunnelling Contractor's Activities; and

(B) Changes which may permit project cost savings while maintaining or enhancing the quality of the Tunnelling Contractor's Activities; and

(ii) it is their intention that any cost savings should benefit the Principal and the Tunnelling Contractor equally.

(b) The Tunnelling Contractor may propose a Change by giving written notice to the Principal's Representative with details of the proposed Change.

(c) On receiving a notice under clause 15.7(b), the Principal's Representative may give written notice to the Tunnelling Contractor requiring it to give the Principal's Representative:

(i) details of:

(A) the proposed Change in addition to those provided in accordance with clause 15.7(b);

(B) the reason for the proposed Change;

(C) the effect of the proposed Change on the Tunnelling Contractor's Activities;

(D) the effect of the proposed Change on the Overall D&C Program and the Dates for Milestone Achievement of the Milestones or Dates for Substantial Completion or Dates for Completion of the Portions;

(E) the effect of the proposed Change (if any) on the land or property rights that are required to construct the Project Works and the Temporary Works and whether the Tunnelling Contractor considers any additional land or property rights are required to carry out the proposed Change; and

(F) the cost effect of assessing and carrying out the proposed Change, including:

(aa) where the proposed Change will involve additional costs, any increased costs;

(bb) where the proposed Change will lead to cost savings, proposals for any cost savings arising from the Change; and

(cc) an estimate of the effect the proposed Change will have on operating and maintenance costs, using its best endeavours and having regard to Good Industry Practice;

(ii) a written statement stating that the proposed Change:

(A) will not adversely affect the functional integrity of any of the elements of the Tunnelling Contractor's Activities and the performance standards required by this deed;

(B) will not adversely affect the quality standards required under this deed; and

(C) is consistent with and complies with the conditions and requirements of the Planning Approvals; and

(iii) any other information and supporting documentation the Principal's Representative reasonably requires.

(d) Subject to clause 15.7(e), the Principal's Representative:

(i) (in its absolute discretion) may, by notice in writing, approve or reject any Change the Tunnelling Contractor proposes; and

(ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the Tunnelling Contractor.

Prior to giving any direction under this clause 15.7(d), the Principal's Representative may seek to negotiate with the Tunnelling Contractor over the level of cost increase or savings arising from the proposed Change. If the parties agree in writing upon a

different level of cost increase or savings, the Tunnelling Contractor's notice will be deemed to be amended by the inclusion of this different level of cost increase or savings in place of the original cost increase or savings notified by the Tunnelling Contractor.

(e) If a Change proposed by the Tunnelling Contractor relates solely to Non-Proof Engineered Temporary Works (not including the Handover Works), the Principal's Representative will not unreasonably withhold its approval to any such proposed Change.

(f) If the Principal's Representative gives a direction under clause 15.7(d) approving a Change proposed by the Tunnelling Contractor, the Tunnelling Contractor must perform its obligations under this deed in accordance with the approved Change.

(g) With respect to any Change approved by the Principal's Representative pursuant to a direction under clause 15.7(d), the Project Contract Sum will be:

(i) if the Change gives rise to a cost increase, increased by the cost increase notified by the Tunnelling Contractor under clause 15.7(c)(i)(F); or

(ii) if the Change gives rise to cost savings, decreased by [redacted] of the cost savings notified by the Tunnelling Contractor under clause 15.7(c)(i)(F),

or such other increased or decreased amount (as appropriate) as may be agreed between the Principal and the Tunnelling Contractor pursuant to clause 15.7(d) and prior to the Principal's Representative's direction under clause 15.7(d) provided always that the Tunnelling Contractor must bear all costs and expenses (including compensation payable to third parties) that are incurred by the Principal in acquiring any additional land or property rights that are required to carry out the Change.

(h) The Tunnelling Contractor will:

(i) bear all costs:

(A) associated with proposing a Change under clause 15.7(b);

(B) associated with providing details under clause 15.7(c);

(C) reasonably incurred by the Principal (or the Principal's Representative), any Interface Contractor or OpCo or any Alternate Operator in assessing the proposed Change with all such costs (including the costs of any Interface Contractor or OpCo or any Alternate Operator) to be a debt due from the Tunnelling Contractor to the Principal;

(ii) where a proposed Change is approved by the Principal's Representative:

(A) bear all costs and expenses (including any compensation payable to third parties) incurred by the Principal in acquiring any additional land or property rights that are required to carry out the proposed Change with all such costs and expenses to be a debt due from the Tunnelling Contractor to the Principal;

(B) bear the risk of any delay or disruption that may arise out of or in connection with the need to acquire any additional land or property rights that are required to carry out the proposed Change; and

(iii) unless otherwise agreed and except as provided for in clause 15.7(g)(i):

(A) where a proposed Change is approved by the Principal's Representative, bear all costs associated with assessing and carrying out the proposed Change (including any additional costs arising out of or in connection with additional access to the Construction Site and/or with any rights required for such access); and

(B) not be entitled to make any Claim against the Principal arising out of or in connection with the Change.

15.8 **Pre-Agreed Changes**

(a) The Principal's Representative may, in its absolute discretion and without being under any obligation to do so, direct by way of Change any Pre-Agreed Change by giving written notice to the Tunnelling Contractor.

(b) The Principal and the Tunnelling Contractor agree that if a notice pursuant to clause 15.8(a) is given in respect of a Pre-Agreed Change by the relevant date specified in Schedule A3, this deed, including any relevant components of the Project Contract Sum, will be deemed to be amended in accordance with the relevant amendments set out in Schedule A3 from the date the Tunnelling Contractor receives such notice.

(c) Where the Principal's Representative directs a Pre-Agreed Change by giving written notice to the Tunnelling Contractor by the relevant date referred to in clause 15.8(b), the Tunnelling Contractor, in respect of that Pre-Agreed Change:

(i) must carry out its obligations under this deed as amended by clause 15.8(b); and

(ii) acknowledges that:

(A) any adjustment of the components of the Project Contract Sum made pursuant to clause 15.8(b) will be full compensation for any Loss or delay it suffers or incurs arising out of or in connection with the issue of such a notice, including any matters that would otherwise constitute Delay Costs, and no further adjustment will be made to the components of the Project Contract Sum under clause 15.5; and

(B) the Tunnelling Contractor is not entitled to make any Claim for:

(aa) any acceleration, compression, re-ordering or re-sequencing to the Tunnelling Contractor's Activities which the Tunnelling Contractor must perform at any time in order to achieve a Milestone by any relevant Date for Milestone Achievement or Substantial Completion of any relevant Portion by its applicable Date for Substantial Completion or Completion of any relevant Portion by its applicable Date for Completion; or

(bb) any extension of time for any delay to the carrying out of the Tunnelling Contractor's Activities,

in connection with the issue of such a notice or the amendment of this deed pursuant to clause 15.8(b).

(d) Nothing in this clause prevents the Principal's Representative from:

(i) issuing a Change Proposal Request as referred to in clause 15.2(a); or

(ii) directing a Change by issue of a Change Order,

that involves the same (or similar) changes to the Project Works as a Pre-Agreed Change after the relevant date for giving notice of the Pre-Agreed Change specified in Schedule A3.

(e) If the Principal's Representative:

(i) issues a Change Proposal Request as referred to in clause 15.2(a); or

(ii) directs a Change by issue of a Change Order,

which involves the same or similar changes to the Project Works as are required by a Pre-Agreed Change and which is issued or directed (as relevant) after the relevant date in Schedule A3 for that Pre-Agreed Change, the Principal and the Tunnelling Contractor agree that the Change will be valued in accordance with the process in clauses 15.1, 15.3 and 15.5.

15.9 **Tunnelling Contractor's entitlements**

This clause 15 is an exhaustive code of the Tunnelling Contractor's rights in any way in connection with any Change. The Tunnelling 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 15 otherwise than in accordance with the terms of this deed.

15.10 **Approvals for Changes**

(a) Subject to clause 15.10(b), the Tunnelling Contractor must apply for and obtain all:

(i) necessary amendments or modifications to any existing Approval; and

(ii) new Approvals that may be,

required for the execution of a Change.

(b) Where the amendment or modification to any Approval required for the execution of the Change relates to any Approval specified in Schedule D2, the Tunnelling Contractor must:

(i) carry out and provide to the Principal all surveys, investigations, reports, studies:

(A) requested by the Principal's Representative;

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

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

(ii) provide whatever other assistance and information the Principal's Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Approval.

(c) The Tunnelling Contractor must implement the Change once the Approvals referred to in this clause 15.10 have been amended, modified, or granted to permit the Change to be implemented.

15A **VALUATION MECHANISM**

15A.1 **Project Contract Sum Adjustment Event**

Schedule E9 will apply to the valuation of any Project Contract Sum Adjustment Event which will be added to or deducted from the Project Contract Sum, as the case may be.

16. CONSTRUCTION

16.1 Construction

(a) The Tunnelling Contractor must construct the Project Works and the Temporary Works:

(i) in accordance with the requirements of this deed including:

(A) the Tunnelling Specification;

(B) subject to clause 16.1(c), any Design Stage 3 Design Documentation which it is entitled to use for construction under clause 6 of Schedule A26; and

(C) any Direction of the Principal's Representative given or purported to be given under a provision of this deed, including any Change directed by the Principal's Representative by a Change Order,

(ii) using good workmanship and Materials which are:

(A) free of Defects and other imperfections; and

(B) of the quality specified in the Tunnelling Specification;

(iii) so that, upon Substantial Completion, they are and will be capable of remaining at all relevant times fit for their intended purposes; and

(iv) so that:

(A) the Project Works are within the boundaries of the Project Site; and

(B) all Temporary Works are within:

(aa) the boundaries of the Construction Site; or

(bb) areas permitted by the terms of any relevant Adjoining Property Owner Agreement or Adjoining Property Easement.

(b) The Tunnelling Contractor warrants that each Portion will upon Substantial Completion:

(i) be fit for its intended purpose; and

(ii) be capable of remaining, at all relevant times, fit for its intended purpose.

(c) If there is any ambiguity, discrepancy or inconsistency between this deed on the one hand or any Design Stage 3 Design Documentation or AFC Design Documentation, the requirements of this deed will prevail.

16.2 Early Design Services

(a) Prior to the date of this deed, the Tunnelling Contractor carried out the Early Design Services in accordance with the Early Design Services Deed.

(b) The parties agree that from the date of this deed, the Early Design Services form part of the Tunnelling Contractor's Activities and will be treated as though they had been performed by the Tunnelling Contractor under this deed, notwithstanding that the Early Design Services were performed prior to the date of this deed by the Tunnelling Contractor under the Early Design Services Deed.

16.3 **Performance of Tunnelling Contractor's Activities**

(a) Without limiting clause 16.1, in performing the Tunnelling Contractor's Activities, the Tunnelling Contractor must:

(i) keep the Construction Site clean and tidy and regularly remove from any place where the Tunnelling Contractor's Activities are being performed any waste or surplus material (including Materials) arising from such performance;

(ii) in respect of Construction Plant used in performing the Tunnelling Contractor's Activities:

(A) use any Construction Plant which this deed prescribes or otherwise requires the Tunnelling Contractor to use including any Construction Plant referred to in a Project Plan;

(B) ensure such Construction Plant complies with, and is maintained by the Tunnelling Contractor in accordance with, all relevant Laws;

(C) not remove Key Plant and Equipment from the Construction Site without the Principal's Representative's prior written consent;

(D) provide the Principal's Representative, upon request, written details of the name and address of the owner of such Construction Plant (where such owner is not the Tunnelling Contractor) held or used by the Tunnelling Contractor under an agreement with the owner of the Construction Plant;

(iii) act in a timely and expeditious manner;

(iv) once it has commenced any construction activities on the Construction Site, regularly and diligently proceed with the construction of the Project Works and take all steps reasonably available to it (including re-sequencing and re-scheduling the commencement of other Tunnelling Contractor's Activities) to minimise any disruption to, impact of the performance of the Tunnelling Contractor's Activities on, or compromising the safety of other users of:

(A) the Existing Operations;

(B) Local Areas; or

(C) Utility Services;

(v) give priority to the safety of persons, vehicles or waterborne craft using the Existing Operations or otherwise affected by the performance of the Tunnelling Contractor's Activities;

(vi) without limiting clause 4.5, coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles, waterborne craft and traffic) or operations of Authorities;

(vii) do all things and take all measures necessary to protect people and property; and

(viii) minimise nuisance, noise, vibration and disturbance and comply with the requirements of Authorities.

(b) Without limiting clause 16.1, the Tunnelling Contractor warrants that it will perform the Tunnelling Contractor's Activities using the workmanship and Materials required by this deed and which are fit for their intended purposes.

(c) The Tunnelling Contractor must take all reasonable precautions to avoid obstruction and damage to any property (including the property of the Principal) and Utility Services arising out of the performance of the Tunnelling Contractor's Activities.

(d) The Tunnelling Contractor must not commence construction of the Works under the relevant Third Party Agreement until all relevant preconditions to commencement of those Works in the Third Party Agreement have been satisfied.

16.4 **Setting out**

(a) The Tunnelling Contractor must:

(i) set out the Project Works in accordance with the requirements of this deed, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the Tunnelling Contractor that are suitable for their purposes;

(ii) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and

(iii) for this purpose keep all survey marks in their true positions.

(b) If the Tunnelling Contractor discovers an error in the position, level, dimensions or alignment of any part of the Project Works, the Tunnelling Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Tunnelling Contractor must at its cost rectify the error.

16.5 **Principal's right to inspect and seek comments**

(a) The Principal, the Principal's Representative (and any other persons nominated by the Principal), any Interface Contractor and the Independent Certifier may at any time:

(i) inspect the Tunnelling Contractor's Activities on the Construction Site; and

(ii) seek comments from others in respect of the Tunnelling Contractor's Activities,

and the Principal, the Principal's Representatives and any Interface Contractor may at any time provide comments to the Independent Certifier in respect of the Tunnelling Contractor's Activities (with a copy to the Tunnelling Contractor).

(b) An Interface Contractor may only inspect the Tunnelling Contractor's Activities on the Construction Site when accompanied by a representative of the Principal or the Independent Certifier.

(c) Neither the Principal, the Principal's Representative, any Interface Contractor nor any of the persons nominated by the Principal pursuant to paragraph (a) above, owes any duty to the Tunnelling Contractor to:

(i) inspect the Tunnelling Contractor's Activities; or

(ii) review any construction or repair for errors, omissions or compliance with the requirements of this deed if it does so inspect.

(d) No inspection or review of the Tunnelling Contractor's Activities or of any construction or repair by the Principal, the Principal's Representative, any Interface Contractor, any Alternate Operator, OpCo or any person nominated by the Principal pursuant to paragraph (a) above will in any way lessen or otherwise affect:

(i) the Tunnelling Contractor's obligations under this deed (including its obligations under clause 16.1(a)) or otherwise according to Law; or

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

16.6 **All work included**

(a) Subject to any express term of this deed to the contrary, the Tunnelling Contractor must, without adjustment to any component of the Design Contract Sum or the Construction Contract Sum, provide all services, labour, Materials, Utility Services, Temporary Works, Construction Plant and other work necessary for the Tunnelling Contractor's Activities whether or not they are:

(i) expressly mentioned in this deed or the Design Documentation prepared by the Tunnelling Contractor which the Tunnelling Contractor is entitled to use for construction purposes under clause 6 of Schedule A26; or

(ii) anticipated by the Tunnelling Contractor.

(b) Such services, labour, Materials, Utility Services, Temporary Works, Construction Plant and other work form part of the Tunnelling Contractor's Activities and must be undertaken and provided by the Tunnelling Contractor at its own cost and will not constitute a Change or otherwise entitle the Tunnelling Contractor to make a Claim against the Principal.

16.7 **The Principal's action**

(a) Without limiting clause 32.9, the Principal's Representative may take any action necessary to protect, or to prevent or minimise risks to, the Tunnelling Contractor's Activities, the Environment, other property or the health and safety of people which the Tunnelling Contractor must take under this deed but does not take.

(b) The amount of any Loss the Principal suffers or incurs arising out of or in connection with:

(i) taking the action contemplated in clause 16.7(a); or

(ii) the Tunnelling Contractor's failure to take that action,

will, except to the extent prohibited by Law, be a debt due from the Tunnelling Contractor to the Principal.

16.8 **Incident management**

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

(b) Should an Incident occur which is reportable under any relevant Law, the Tunnelling Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative.

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

(i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination, Hazardous Material or Waste arising from the Incident in accordance with the requirements of this deed;

(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) Without prejudice to the Principal's other rights under this deed, if the Principal's Representative forms the view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Tunnelling 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 Tunnelling Contractor as a debt due from the Tunnelling Contractor to the Principal.

(e) Without prejudice to the Principal's other rights under this deed, the Principal's Representative may issue an immediate stop work order in the event of any Incident, or the imminent risk of any Incident, involving:

(i) a significant spill of Contamination or Hazardous Materials;

(ii) any actual damage to the Environment or a significant risk of harm to the Environment; or

(iii) a fatality or injury to any person including any Incident which must be reported to SafeWork NSW, ONRSR or other work health and safety regulator.

(f) The Principal will not be liable upon any Claim by the Tunnelling Contractor for any Loss arising out of or in connection with any work stoppage due to a stop work order referred to in clause 16.8(e) or for the failure by the Principal's Representative to issue such a stop work order.

(g) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any stop work order referred to in clause 16.8(e) in relation to the Tunnelling Contractor's, its agents' or its Subcontractors' acts or omissions in performing the Tunnelling Contractor's Activities as a debt due from the Tunnelling Contractor to the Principal.

16.9 **Instructions from Authorities**

Notwithstanding any other provision of this deed, the Tunnelling Contractor:

(a) must not restrict, close, interfere with or obstruct the free flow of the public in public spaces, parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, or waterborne craft on any waterway, including Local Areas, contrary to the instructions of the New South Wales Police Service or any other Authority; and

(b) in restricting, closing, interfering with or obstructing the free flow of the public in public spaces or parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, or waterborne craft on any waterway, including Local Areas, must act in accordance with any instructions of the New South Wales Police Service or any other Authority including to cease any of the Tunnelling Contractor's Activities and to re-open the road, public space, park, pedestrian way, pedal cycle path, lane or shoulder.

16.10 **Survey**

The Tunnelling Contractor must, as a condition precedent to Substantial Completion of each Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative a survey certificate (within the meaning of that term in the *Surveying and Spatial Information Regulation 2017* (NSW)) signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) who is approved by the Principal's Representative stating that:

(a) the whole of the Portion is within the relevant boundaries of the Project Site stipulated in this deed, except only for parts of the Portion specifically required by this deed to be outside those boundaries (including any Handover Works which this deed specifically states may be left in a Temporary Area at Substantial Completion);

(b) the elements of the Portion are in the positions and within the tolerances required by this deed;

(c) the survey information included in the Asset Management Information provided by the Tunnelling Contractor pursuant to clause 16.13 complies with the requirements of this deed; and

(d) any other matter identified by the Principal's Representative complies with the requirements of this deed.

16.11 **Cleaning up**

Without limiting clause 16.3, in carrying out the Tunnelling Contractor's Activities, the Tunnelling Contractor must:

(a) keep the Construction Site, Extra Land and the Project Works clean and tidy and free of refuse;

(b) regularly remove rubbish, litter, graffiti and surplus material (including Materials) from the Construction Site and Extra Land;

(c) prior to vacating:

(i) any Temporary Areas for which a Site Access Expiry Date is specified in Table 4a of the Site Access Schedule; or

(ii) any Milestone Area,

remove all rubbish, surplus materials (including Materials), Construction Plant and Temporary Works from the relevant Temporary Areas or Milestone Area; and

(d) as a condition precedent to Substantial Completion of a Portion, remove all rubbish, surplus materials (including Materials), Construction Plant and Temporary Works (other than the Handover Works) from the relevant parts of the Construction Site and Extra Land relevant to that Portion except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by the Principal's Representative.

16.12 **Work methods**

Whether or not this deed prescribes a particular work method or a work method is otherwise a part of this deed or reviewed or approved (expressly or impliedly) by the Principal or the Principal's Representative, the fact that any work method that the Tunnelling Contractor adopts or proposes to adopt is impractical or impossible or that the Tunnelling Contractor, with or without the approval of the Principal's Representative, uses another work method will:

(a) not entitle the Tunnelling Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and

(b) not cause this deed to be frustrated.

16.13 **Asset Management Information**

(a) As a condition precedent to Substantial Completion of each Portion, the Tunnelling Contractor must prepare and submit the Asset Management Information for that Portion in respect of the Handover Works.

(b) As a condition precedent to Completion of each Portion, the Tunnelling Contractor must prepare and submit the Asset Management Information for that Portion in respect of the Project Works.

(c) Each set of Asset Management Information must contain the contents required by section 7 of the General Specification.

(d) The Tunnelling Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier an initial draft of the Asset Management Information for the Portion which is not intended to differ in substance from the final draft (including the initial submission of the Asset Management Information but excluding the incorporation of the other Project Plans required by clause 11.5(d)) but for minor details:

(i) no less than 180 days prior to the Date for Substantial Completion of the Portion for Asset Management Information in respect of the Handover Works;

(ii) no less than 180 days prior to the Date for Completion of the Portion for Asset Management Information in respect of the Project Works;

(iii) if either:

(A) with respect to the Asset Management Information in respect of the Handover Works:

(aa) the Principal's Representative reasonably anticipates that the Date of Substantial Completion of the Portion will be prior to the applicable Date for Substantial Completion, no less than

180 days prior to the Principal's Representative's reasonably anticipated Date of Substantial Completion for the Portion, provided that the Principal's Representative gives the Tunnelling Contractor 35 days' notice of the required date for submission; or

(bb) it is otherwise reasonably apparent that the anticipated Date of Substantial Completion of the Portion will be earlier than the applicable Date for Substantial Completion, no less than 180 days prior to the reasonably anticipated Date of Substantial Completion of the Portion; or

(B) with respect to the Asset Management Information in respect of the Project Works:

(aa) the Principal's Representative reasonably anticipates that the Date of Completion of the Portion will be prior to the applicable Date for Completion, no less than 180 days prior to the Principal's Representative's reasonably anticipated Date of Completion for the Portion, provided that the Principal's Representative gives the Tunnelling Contractor 35 days' notice of the required date for submission; or

(bb) it is otherwise reasonably apparent that the anticipated Date of Completion of the Portion will be earlier than the applicable Date for Completion, no less than 180 days prior to the reasonably anticipated Date of Completion of the Portion; or

(iv) if the Principal's Representative has given a direction under clause 10.1(a) and it is not possible for the Tunnelling Contractor to submit an initial draft of the Asset Management Information for the Portion within either of the time periods required by clauses 16.13(d)(i), 16.13(d)(ii) or 16.13(d)(iii) (as applicable), within such other reasonable period of time directed by the Principal's Representative.

(e) The Tunnelling Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier a final draft of the Asset Management Information for the Portion (including incorporation of the Project Plans required by clause 11.5(d)):

(i) no less than 90 days prior to the Date for Substantial Completion of the Portion for Asset Management Information in respect of the Handover Works;

(ii) no less than 90 days prior to the Date for Completion of the Portion for Asset Management Information in respect of the Project Works; or

(iii) if either:

(A) with respect to the Asset Management Information in respect of the Handover Works:

(aa) the Principal's Representative reasonably anticipates that the Date of Substantial Completion of the Portion will be prior to the applicable Date for Substantial Completion, no less than 90 days prior to the Principal's Representative's reasonably anticipated Date of Substantial Completion for the Portion, provided that the Principal's Representative gives the Tunnelling Contractor 35 days' notice of the required date for submission; or

(bb) it is otherwise reasonably apparent that the anticipated Date of Substantial Completion of the Portion will be earlier than the applicable Date for Substantial Completion, no less than 90 days prior to the reasonably anticipated Date of Substantial Completion of the Portion; or

(B) with respect to the Asset Management Information in respect of the Project Works:

(aa) the Principal's Representative reasonably anticipates that the Date of Completion of the Portion will be prior to the applicable Date for Completion, no less than 90 days prior to the Principal's Representative's reasonably anticipated Date of Completion for the Portion, provided that the Principal's Representative gives the Tunnelling Contractor 35 days' notice of the required date for submission; or

(bb) it is otherwise reasonably apparent that the anticipated Date of Completion of the Portion will be earlier than the applicable Date for Completion, no less than 90 days prior to the reasonably anticipated Date of Completion of the Portion; or

(iv) if the Principal's Representative has given a direction under clause 10.1(a) and it is not possible for the Tunnelling Contractor to submit a final draft of the Asset Management Information for the Portion within either of the time periods required by clauses 16.13(e)(i), 16.13(e)(ii) or 16.13(e)(iii) (as applicable), within such other reasonable period of time directed by the Principal's Representative.

(f) The Tunnelling Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier the final Asset Management Information for the Portion (including incorporation of the Project Plans required by clause 11.5(d)):

(i) no less than 30 days prior to the Date for Substantial Completion of the Portion for Asset Management Information in respect of the Handover Works;

(ii) no less than 30 days prior to the Date for Completion of the Portion for Asset Management Information in respect of the Project Works;

(iii) if the Principal's Representative reasonably anticipates that:

(A) with respect to the Asset Management Information in respect of the Handover Works, the Date of Substantial Completion of the Portion will be prior to the applicable Date for Substantial Completion, no less than 30 days prior to the Principal's Representative's reasonably anticipated Date of Substantial Completion for the Portion, provided that the Principal's Representative gives the Tunnelling Contractor 35 days' notice of the required date for submission; or

(B) with respect to the Asset Management Information in respect of the Project Works, the Date of Completion of the Portion will be prior to the applicable Date for Completion, no less than 30 days prior to the Principal's Representative's reasonably anticipated Date of Completion for the Portion, provided that the Principal's Representative gives the Tunnelling Contractor 35 days' notice of the required date for submission; or

(iv) if the Principal's Representative has given a direction under clause 10.1(a) and it is not possible for the Tunnelling Contractor to submit the final Asset Management Information for the Portion within either of the time periods required by clauses 16.13(f)(i), 16.13(f)(ii) or 16.13(f)(iii) (as applicable), within such other reasonable period of time directed by the Principal's Representative.

(g) The Tunnelling Contractor acknowledges and agrees that the Principal's Representative and Independent Certifier may review any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 16.13(d), 16.13(e), 16.13(f), 16.13(k)or 16.13(q).

(h) The Principal's Representative may:

(i) provide copies of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 16.13(d), 16.13(e), 16.13(f), 16.13(k) or 16.13(q) to; and

(ii) seek comments in respect of any Asset Management Information, or any draft of any Asset Management Information, from,

any Interface Contractor.

(i) The Tunnelling Contractor acknowledges and agrees that:

(i) the Principal's Representative and the Independent Certifier may (but are not obliged to) make comments to the Tunnelling Contractor; and

(ii) the Principal's Representative may (but is not obliged to) make comments (with a copy to the Tunnelling Contractor) to the Independent Certifier,

in respect of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 16.13(d), 16.13(e), 16.13(f), 16.13(k) or 16.13(q).

(j) The Principal and the Tunnelling Contractor acknowledge and agree that:

(i) the Independent Certifier may, within 15 Business Days of the submission of a set of Asset Management Information or a draft thereof, reject the Asset Management Information or the draft for a failure to comply with the requirements of this deed;

(ii) the Independent Certifier must, within 15 Business Days of the submission of the final set of Asset Management Information under clause 16.13(f) (**Final Submission**), either:

(A) reject the Final Submission for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Final Submission is required (together with reasons) and a time within which this must occur; or

(B) certify the Final Submission by:

(aa) including a notation on the Final Submission; and

(bb) providing to the Principal's Representative, the Tunnelling Contractor and, if required by the Principal's Representative, OpCo a document signed by the Independent Certifier in the form in Schedule B6; and

(iii) the Principal's Representative may at any time (including after the Independent Certifier has certified a Final Submission pursuant to clause 16.13(j)(ii)(B)) direct the Tunnelling Contractor to make amendments to the Asset Management Information so that the Asset Management Information complies with the requirements of this deed.

(k) If a set of Asset Management Information or any draft is rejected or if the Principal's Representative directs the Tunnelling Contractor to amend a set of Asset Management Information under clause 16.13(j), clause 16.13(q) shall apply.

(l) Where any Asset Management Information that is relevant to more than one Portion has previously been:

(i) submitted by the Tunnelling Contractor for another Portion under clause 16.13(d), 16.13(e) or 16.13(f); or

(ii) certified by the Independent Certifier pursuant to clause 16.13(j)(ii)(B),

the Tunnelling Contractor will not be required to re-submit such Asset Management Information for subsequent Portions provided that:

(iii) for each subsequent Portion the Tunnelling Contractor clearly identifies that the relevant Asset Management Information has already been submitted for a previous Portion; and

(iv) the relevant Asset Management Information:

(A) is still current and has not been amended by the Tunnelling Contractor;

(B) does not require amendment to:

(aa) reflect the impact of any Change directed by the Principal's Representative; or

(bb) otherwise comply with the requirements of this deed; and

(C) has not been the subject of a direction given by the Principal's Representative under clause 16.13(j)(iii).

(m) The Principal's Representative owes no duty to the Tunnelling Contractor to review any Asset Management Information or any draft submitted by the Tunnelling Contractor for errors, omissions or compliance with this deed.

(n) No review of, comments upon or rejection of any Asset Management Information or any draft by the Principal's Representative or the Independent Certifier, nor any other Direction by the Principal's Representative (including a direction under clause 16.13(q)) in respect of any Asset Management Information or any draft, will lessen or otherwise affect:

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

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

(o) The Tunnelling Contractor acknowledges and agrees that in addition to the purposes of the Project Plans to be incorporated into the Asset Management Information under clause 11.5(d), a purpose of each set of Asset Management Information is for the

Tunnelling Contractor to provide a detailed description of how the Principal (or any nominee of the Principal) should maintain the relevant Portion.

(p) The Tunnelling Contractor warrants that each set of Asset Management Information will be fit for its intended purpose, including for the purpose of enabling the Principal (or any nominee of the Principal) to maintain the relevant Portion.

(q) Without limiting clause 17, where a draft of a set of Asset Management Information is rejected by the Independent Certifier or the Principal's Representative directs the Tunnelling Contractor to amend a set of Asset Management Information under clause 16.13(j), the Tunnelling Contractor must:

(i) further develop, update or amend the Asset Management Information to address the matters raised by the rejection by the Independent Certifier under clause 16.13(j) or the Principal's Representative direction under clause 16.13(j)(iii) (as applicable); and

(ii) submit the further developed, updated or amended Asset Management Information to the Principal's Representative and the Independent Certifier within the time specified under clause 16.13(j)(ii)(A),

and the process in clauses 16.13(g) to 16.13(q) will be reapplied to the further developed, updated or amended Asset Management Information.

16.14 **Work as Executed Design Documentation**

(a) As a condition precedent to Completion of each Portion, the Tunnelling Contractor must prepare and submit Work as Executed Design Documentation for the relevant Portion.

(b) All Work as Executed Design Documentation must:

(i) comply with the requirements of this deed including section 7.8.4 of the General Specification; and

(ii) be accompanied by a certificate in the form of Schedule B19 from:

(A) the Tunnelling Contractor; and

(B) if prepared by a Subcontractor, the Subcontractor,

certifying that the Work as Executed Design Documentation complies with all requirements of this deed, including section 7.8.4 of the General Specification.

(c) The Principal and the Tunnelling Contractor acknowledge and agree that the Independent Certifier must, within 15 Business Days of the submission of the Work as Executed Design Documentation for a Portion, either:

(i) reject the Work as Executed Design Documentation for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Work as Executed Design Documentation (together with reasons) and a time within which this must occur; or

(ii) certify the Work as Executed Design Documentation by:

(A) including a notation on the Work as Executed Design Documentation; and

(B) providing to the Principal's Representative, the Tunnelling Contractor and, if required by the Principal's Representative, the Operator or any Alternate Operator, a document signed by the Independent Certifier in the form in Schedule B7.

(d) If the Work as Executed Design Documentation for a Portion are rejected by the Independent Certifier, the Tunnelling Contractor must update and resubmit the Work as Executed Design Documentation and clause 16.14(c) shall re-apply except that the reference to "15 Business Days" will be deemed to be a reference to "5 Business Days".

(e) The Tunnelling Contractor acknowledges and agrees that:

(i) the Principal's Representative and the Independent Certifier may (but are not obliged to) make comments to the Tunnelling Contractor;

(ii) the Principal's Representative may (but is not obliged to) make comments (with a copy to the Tunnelling Contractor) to the Independent Certifier,

in respect of any Work as Executed Design Documentation submitted under clause 16.14(a) or clause 16.14(d).

(f) The Principal's Representative may:

(i) provide copies of any Work as Executed Design Documentation to; and

(ii) seek comments in respect of any Work as Executed Design Documentation, from,

any Interface Contractor.

(g) The Principal's Representative owes no duty to the Tunnelling Contractor to review any Work as Executed Design Documentation submitted by the Tunnelling Contractor for errors, omissions or compliance with this deed.

(h) No review of, or comments upon or rejection of any Work as Executed Design Documentation by the Principal's Representative, nor any other Direction by the Principal's Representative in respect of any Work as Executed Design Documentation, will lessen or otherwise affect:

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

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

16.15 Training

(a) For each Portion, during the final 3 months prior to the Date for Substantial Completion of the Portion or such earlier date reasonably specified by the Principal's Representative, the Tunnelling Contractor must train personnel as nominated by the Principal's Representative (which may include personnel of any Interface Contractor) in all aspects of the maintenance of the Works, the Temporary Works and the Handover Works comprised in that Portion to a level of competency that will allow those personnel to operate, manage and maintain those Works, Temporary Works and Handover Works after the Date of Substantial Completion of the Portion.

(b) The Tunnelling Contractor must ensure that it has competent and experienced personnel available to consult with the Principal (and any nominee of the Principal)

on any aspect of the operation, maintenance and repair of the Works, the Temporary Works and the Handover Works at any time until the date 12 months after the Date of Substantial Completion of the last Portion to achieve Substantial Completion.

16.16 **Segment Manufacturing Facility**

(a) The Tunnelling Contractor must:

(i) design, construct, test and commission the Segment Manufacturing Facility;

(ii) maintain and operate the Segment Manufacturing Facility until the Portion Handover Date of the Portion which contains the Segment Manufacturing Facility;

(iii) keep complete, accurate and up to date records of all:

(A) quality management and testing and commissioning activities relating to the Segment Manufacturing Facility;

(B) inspection, service, maintenance, modification, recertification and repair activities carried out in relation to the Segment Manufacturing Facility;

(C) incidents and accidents in relation to the Segment Manufacturing Facility,

and provide copies of such records whenever requested by the Principal's Representative;

(iv) provide any other documentation relating to the Segment Manufacturing Facility that is reasonably requested by the Principal's Representative from time to time, including the Tunnelling Contractor's current:

(A) operation and maintenance manuals for the Segment Manufacturing Facility (including contractor operating procedures and protocols); and

(B) safe work method statements.

(v) provide

(A) operation and maintenance manuals in respect of the Segment Manufacturing Facility, including

(aa) operating procedures and protocols;

(bb) training materials and modules; and

(cc) decommissioning instructions; and

(B) as-built drawings for the Segment Manufacturing Facility,

as part of the Asset Management Information submitted under clause 16.13; and

(vi) permit the Principal and its nominees to inspect the Segment Manufacturing Facility at any time reasonably required by the Principal's Representative.

(b) The Principal may provide any information provided by the Tunnelling Contractor under clause 16.16(a) to third parties.

17. DEFECTS, INSPECTION AND REPAIR

17.1 Defects

(a) The Tunnelling Contractor must promptly give the Principal's Representative and, if required by the Principal's Representative, OpCo, or any Alternate Operator, a detailed written report of:

(i) any Defect it detects; and

(ii) all action proposed to correct that Defect, including the estimated time required.

(b) The Tunnelling Contractor must correct all Defects arising prior to the expiry of the Defects Correction Period whether or not the Principal's Representative or the Independent Certifier notifies the Tunnelling Contractor of them, including correcting any Defects identified in:

(i) a Notice of Milestone Achievement; or

(ii) a Notice of Substantial Completion,

including any Minor Defects and Agreed Defects.

(c) Without limiting any other obligation of the Tunnelling Contractor to correct Defects, the Tunnelling Contractor must:

(i) correct all Mandatory Defects as a pre-condition to the achievement of Milestone Achievement of the relevant Milestone or Substantial Completion of the relevant Portion;

(ii) use its best endeavours to correct all Minor Defects and Agreed Defects identified in:

(A) a Notice of Milestone Achievement within thirty (30) days of the Date of Milestone Achievement of the relevant Milestone; and

(B) a Notice of Substantial Completion within thirty (30) days of the Date of Substantial Completion of the relevant Portion;

(iii) correct all Minor Defects and Agreed Defects identified in a Notice of Milestone Achievement as a pre-condition to the achievement of Substantial Completion of the relevant Portion; and

(iv) correct all Minor Defects and Agreed Defects identified in a Notice of Substantial Completion as a pre-condition to the achievement of Completion of the relevant Portion.

17.2 Principal's Representative's Direction

(a) If prior to or during the applicable Defects Correction Period the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 17.1(a), the Principal's Representative may, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law, give the Tunnelling Contractor a direction specifying the Defect and doing one or more of the following:

(i) requiring the Tunnelling Contractor to correct the Defect or a part of it and specifying the time within which this must occur;

(ii) requiring the Tunnelling Contractor to carry out a Change to overcome the Defect or a part of it and specifying the time within which this must be carried out;

(iii) advising the Tunnelling Contractor that the Principal will accept the work or a part of it despite the Defect;

(iv) advising the Tunnelling Contractor that the Principal will direct an Interface Contractor to carry out a change or variation under its Interface Contract or other contract with the Principal (as applicable) to overcome (but not correct) the Defect or a part of the Defect; or

(v) in respect of any Defect:

(A) to which clause 17.3(b) applies; or

(B) subject to clause 17.2(c), discovered during a Defects Correction Period,

advising the Tunnelling Contractor that an Interface Contractor or other contractor will correct (or has corrected) the Defect, or any part of it.

(b) In determining the times at which the Tunnelling Contractor is required to correct a Defect or carry out a Change for the purposes of this clause 17.2, the Principal's Representative is entitled to have regard to the need to minimise the interference, delay and disruption to the activities which:

(i) any Interface Contractor may be carrying out in discharge of its obligations under its relevant Interface Contract; or

(ii) OpCo may be carrying out in discharge of its obligations under the OpCo Project Deed; or

(iii) any Alternate Operator may be carrying out in discharge of its obligations under its contract with the Principal.

(c) Unless the Principal's Representative considers that a Defect is an Urgent Defect or the Tunnelling Contractor is in breach of clauses 8 or 9, the Principal's Representative may not direct an Interface Contractor or other contractor to rectify a Defect, or any part of a Defect, pursuant to clause 17.2(a)(v)(B), unless the Principal's Representative has first given the Tunnelling Contractor a direction under clause 17.2(a)(i) and the Tunnelling Contractor has:

(i) failed to comply with such direction; or

(ii) otherwise failed to comply with its obligations under clause 17.3(a)(i).

(d) Where the Principal's Representative considers that a Defect is an Urgent Defect or the Tunnelling Contractor is in breach of clauses 8 or 9, the Principal's Representative may give the Tunnelling Contractor a direction under clause 17.2(a)(v)(B) whether or not a direction has first been given under clause 17.2(a)(i).

17.3 **Correction of Defect or Change**

(a) If a direction is given under clause 17.2(a)(i) or 17.2(a)(ii) at any time prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works (whether before or after Substantial Completion), the Tunnelling Contractor:

(i) must correct the Defect (or the part of it) or carry out the Change (as the case may be):

(A) within the time specified in the Principal's Representative's direction;

(B) at times notified by the Principal's Representative;

(C) in accordance with the requirements of any relevant Authority;

(D) so as to minimise the impact on the use of the relevant part of the Project Works;

(E) in a manner which causes as little inconvenience as possible to the activities which:

(aa) any Interface Contractor may be carrying out in discharge of its obligations under its relevant Interface Contract; and

(bb) to users of the Works, a Local Area, a Utility Service or any access and the adjacent community; and

(F) at the Tunnelling Contractor's risk in respect of any restrictions on access;

(G) if an Interface Contractor has taken possession of the relevant part of the Construction Site for the purposes of designing and constructing any Interface Works, in accordance with the requirements of the relevant Interface Contractor in relation to access and site safety;

(H) in accordance with its obligations under the Master Interface Deed; and

(I) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is a Defect; and

(ii) will be entitled to:

(A) receive an extension of time (if relevant); and/or

(B) claim an increase to any component of the Project Contract Sum on account of the increase to the Tunnelling Contractor's Direct Costs plus Overheads and Profit Margin,

on account of correcting the Defect (or the part of it) or carrying out the Change, but only to the extent that:

(C) it complies with clause 19.6 or clause 31 (as the case may be); and

[redacted]

(b) If the Tunnelling Contractor does not comply with clause 17.3(a)(i), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Tunnelling Contractor with respect to the Defect under this deed or otherwise at Law, give the Tunnelling Contractor a direction under clause 17.2(a)(v) and have the correction or Change work carried out at the Tunnelling Contractor's expense, and the cost of the correction or Change work incurred by the Principal will be a debt due from the Tunnelling Contractor to the Principal.

17.4 **Acceptance of work or rectification by others**

(a) [redacted] if a direction is given under clause 17.2(a)(iii) or 17.2(a)(v)(B) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, the reasonable cost of correcting a Defect [redacted] such amount to be as stated by the Principal's Representative, will be a debt due and payable from the Tunnelling Contractor to the Principal.

[redacted]

17.5 **Changes under other contracts to overcome Defects**

If a direction is given by the Principal's Representative under clause 17.2(a)(iv) for a Defect [redacted]

(a) the Tunnelling Contractor must indemnify the Principal from and against any Liability or claim that the Principal suffers or incurs arising out of or in connection with the change or variation directed by the Principal under the relevant Interface Contract or other contract (as applicable) to the extent necessary to overcome the Defect (or the part of it); and

(b) clause 17.4 will not apply.

17.5A **Responsibility for Defects**

(a) Subject to clause 17.5A(b), if a direction is given under clauses 17.2(a)(iii), 17.2(a)(iv) or 17.2(a)(v), thereafter as between the Tunnelling Contractor and the Principal, the Tunnelling Contractor will not be obliged to correct the Defect specified in the relevant direction.

(b) This clause 17.5A does not in any way prejudice or otherwise affect:

(i) the right of the Principal to reduce the Project Contract Sum under clause 17.4; and

(ii) the obligation of the Tunnelling Contractor to indemnify the Principal under clause 17.5.

17.6 **Works**

(a) Subject to clause 17.6(b), the Works within a Portion have:

(i) a Defects Correction Period which begins on the Date of Substantial Completion of the Portion and ends on [redacted]; and

(ii) in respect of any work the subject of a direction under clause 17.2(a)(i) or 17.2(a)(ii) during the Defects Correction Period which is carried out on or after [redacted] a further Defects Correction Period which begins on the date of the correction of the Defect (or the part of it) or completion of the Change and continues for 12 months.

(b) No Defects Correction Period for the Works (or any part of them) within a Portion will extend beyond [redacted]

17.7 **Local Area Works**

(a) Each discrete part of the Local Area Works has:

(i) a Defects Correction Period of 12 months, which begins when the relevant works are complete (being the date when the relevant condition precedents are satisfied in accordance with clause 17.7(d)); and

(ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a)(i) or 17.2(a)(ii) (relating to the discrete part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it) or completion of the Change,

provided that no Defects Correction Period for any discrete part of the Local Area Works will extend beyond the date that is 24 months after the date when the relevant condition precedents are satisfied in accordance with clause 17.7(d) as the date on which the relevant part of the Local Area Works were completed.

(b) The completion of the Local Area Works will be assessed on an area by area basis either:

(i) in accordance with this clause 17.7;

(ii) in the case of the Roads Interface Agreement Road Works, in accordance with the procedures in the Roads Interface Agreement in relation to Practical Completion (Roads Interface Agreement Road Works);

(iii) in the case of the Parramatta City Council Handover Works, in accordance with the procedure in the Parramatta City Council Interface Agreement in relation to Practical Completion (Council Handover Works);

(iv) in the case of the:

(A) Sydney Trains Works, in accordance with the procedure in the Sydney Trains Interface Agreement in relation to Practical Completion (Sydney Trains Works); and

(B) Sydney Trains Protection Zone Works, in accordance with the procedure in the Sydney Trains Interface Agreement in relation to Construction Completion (Sydney Trains Protection Zone Works); or

(v) in the case of the TfNSW (Maritime) Construction Licence Handover Works and the TfNSW (Maritime) Construction Licence Interface Works, in accordance with the procedure in the TfNSW (Maritime) Construction Licence in relation to Construction Completion (TfNSW (Maritime) Construction Licence Works).

(c) When the Tunnelling Contractor considers that a discrete part of the Local Area Works (other than the Roads Interface Agreement Road Works, the Parramatta City Council Handover Works, the TfNSW (Maritime) Construction Licence Handover Works, the TfNSW (Maritime) Construction Licence Interface Works, the Sydney Trains Protection Zone Works and the Sydney Trains Works) is complete, it must notify the Principal's Representative in writing and the Principal's Representative, the Project Director and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time.

(d) Each discrete part of the Local Area Works will not be regarded as complete and it is a condition precedent:

(i) to the commencement of the Defects Correction Period for a discrete part of the Local Area Works that the Tunnelling Contractor provide the Principal's Representative with:

(A) a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete;

(B) if the Tunnelling Contractor is unable to obtain a notice required under clause 17.7(d)(i)(A) despite having used its best endeavours to do so, a statement from the Tunnelling Contractor to the effect that:

(aa) the discrete part of the Local Area Works is complete and the Tunnelling Contractor has the notified the relevant Authority of this matter; and

(bb) the relevant Authority has failed or refused to provide the written notice required under clause 17.7(d)(i)(A) despite being given 15 Business Days to provide the notice requested by the Tunnelling Contractor;

(C) to the extent that the discrete part of the Local Area Works constitutes Roads Interface Agreement Road Works, the Independent Certifier has executed and provided to the Principal's Representative and TfNSW a certificate in the form of Schedule 5 to the Roads Interface Agreement with respect to the discrete part of the Local Area Works;

(D) to the extent that the discrete part of the Local Area Works constitutes Parramatta City Council Handover Works, the Independent Certifier has executed and provided to the Principal's Representative and the Parramatta City Council a certificate in the form of Schedule 4 to the Parramatta City Council Interface Agreement with respect to the discrete part of the Local Area Works;

(E) to the extent that the discrete part of the Local Area Works constitutes:

(aa) Sydney Trains Works, the Independent Certifier has executed and provided to the Principal's Representative and Sydney Trains a certificate in the form of Schedule 5 to the Sydney Trains Interface Agreement; and

(bb) Sydney Trains Protection Zone Works, the Independent Certifier has executed and provided to the Principal's Representative and Sydney Trains a certificate in the form of Schedule 6 to the Sydney Trains Interface Agreement,

with respect to the discrete part of the Local Area Works; and

(F) to the extent that the discrete part of the Local Area Works constitutes TfNSW (Maritime) Construction Licence Handover Works or TfNSW (Maritime) Construction Licence Interface Works, the Independent Certifier has executed and provided to the Principal's Representative and TfNSW a certificate in the form of Annexure I to the TfNSW (Maritime) Construction Licence with respect to the discrete part of the Local Area Works; and

(ii) to Substantial Completion of a Portion that the written notices or statements required under clauses 17.7(d)(i)(A) or 17.7(d)(i)(B) have been provided to the Principal's Representative for all discrete parts of the Local Area Works that form part of that Portion.

17.8 **Utility Service Works**

(a) Each discrete part of the Utility Service Works has:

(i) a Defects Correction Period of 12 months, which begins when:

(A) the relevant Utility Service Authority which has jurisdiction in respect of the Utility Service gives written notice that the work is complete; or

(B) if the Tunnelling Contractor is unable to obtain a notice required under clause 17.8(a)(i)(A) despite having used its best endeavours to do so, a written statement from the Tunnelling Contractor to the effect that:

(aa) the discrete part of the Utility Service Works is complete and the Tunnelling Contractor has notified the relevant Utility Service Authority of this matter; and

(bb) the relevant Utility Service Authority has failed or refused to provide the written notice required under 17.8(a)(i)(A) despite being given 15 Business Days to provide the notice requested by the Tunnelling Contractor,

and the Principal's Representative has been provided with a copy of the notice or statement; and

(ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a)(i) or 17.2(a)(ii) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, which begins:

(A) when the relevant Utility Service Authority gives written notice that the Defect (or the part of it) has been corrected or the Change completed and the Principal's Representative has been provided with a copy of the notice; or

(B) if the relevant Utility Service Authority fails or refuses to give the notice required under clause 17.8(a)(ii)(A), when the Principal's Representative determines that the Defect (or the part of it) has been corrected or the Change completed,

provided that no Defects Correction Period for any discrete part of the Utility Service Works will extend beyond the date that is 24 months after the date of the applicable notice or statement given under clause 17.8(a)(i).

(b) It is a condition precedent to Substantial Completion of a Portion, that:

(i) a written notice of the kind referred to in clause 17.8(a)(i) has been given for each discrete part of the Utility Service Works that form part of that Portion and the Principal's Representative has been provided with a copy of each such notice; or

(ii) the Tunnelling Contractor has:

(A) used best endeavours to obtain and provide the Principal's Representative with a written notice of the kind referred to in clause 17.8(a)(i)(A); and

(B) provided the Principal's Representative with a written statement of the kind referred to in clause 17.8(a)(i)(B).

17.9 **Property Works**

(a) Subject to clause 17.9(b), each discrete part of the Property Works has:

(i) a Defects Correction Period of 12 months, which begins upon:

(A) the completion of the Property Works; or

(B) submission by the Tunnelling Contractor of a certificate or signed statement (as the case may be) to the Principal's Representative under clause 12.4(a)(ii),

whichever is the later; and

(ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a)(i) or 17.2(a)(ii) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it) or completion of the Change

(b) No Defects Correction Period for any discrete part of the Property Works will extend beyond the date that is 24 months after the date of the applicable certificate or signed statement given under clause 12.4(a)(ii).

17.10 **Rights not affected**

Neither the Principal's rights, nor the Tunnelling Contractor's liability, whether under this deed or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Correction 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 17 or any other provision of this deed;

(b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or

(c) any direction of the Principal's Representative under clause 17.2.

17.11 **Warranties by others**

(a) The Tunnelling Contractor must, as a condition precedent to Substantial Completion of each Portion containing works or items to which the warranty relates, procure and provide each of the Principal and OpCo or any Alternate Operator (as required by the Principal's Representative), with all warranties required by Schedule A7, from the

relevant Subcontractors undertaking or supplying the work or items the subject of the warranty. These warranties must be in favour of the Principal and OpCo or any Alternate Operator (as required by the Principal's Representative) on the terms of the deed in Schedule A8.

(b) The provision of those warranties will not derogate from any rights which the Principal may have against the Tunnelling Contractor in respect of the subject matter of those warranties.

17.12 **Use of defective facilities**

The Tunnelling Contractor must not allow the use of any part of the Project Works or Temporary Works which the Tunnelling Contractor knows is defective or unsafe and which threatens the health or safety of people.

17.13 **Final inspections of Project Works**

(a) The Tunnelling Contractor, the Principal's Representative, the Independent Certifier and OpCo or any Alternate Operator will carry out a final inspection of the Project Works 6 months before the end of the Defects Correction Period (**Final Inspection**).

(b) Within 5 Business Days of the Final Inspection, the Principal's Representative and OpCo or any Alternate Operator may give the Independent Certifier written notice of any Defects which they observed during the Final Inspection or of which they are otherwise aware.

(c) Within 10 Business Days of the Final Inspection, the Independent Certifier must give the Principal's Representative and OpCo or any Alternate Operator a list of Defects (taking into account any notice received from the Principal's Representative or OpCo or any Alternate Operator under clause 17.13(b)).

(d) If the Independent Certifier notifies the parties of any Defects pursuant to clause17.13(c), the Principal may give a notice under clause 17.2 in respect of such Defect.

18. ADMINISTRATION OF THE PROJECT WORKS

18.1 **Principal's Representative**

(a) The Principal:

(i) must appoint a person to be the Principal's Representative for the purposes of this deed;

(ii) may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative; and

(iii) must give written notice of all appointments under clauses 18.1(a)(i) and 18.1(a)(ii) to the Tunnelling Contractor.

(b) The Principal's Representative may:

(i) by written notice to the Tunnelling Contractor appoint persons to exercise any of the Principal's Representative's functions under this deed;

(ii) not appoint more than one person to exercise the same function under this deed; and

(iii) revoke any appointment under clause 18.1(b)(i) by notice in writing to the Tunnelling Contractor.

(c) The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 18.1(b).

(d) An appointee of the Principal's Representative under clause 18.1(b) may:

(i) by written notice to the Tunnelling Contractor appoint persons to exercise any of the appointee's functions under this deed;

(ii) not appoint more than one person to exercise the same function under this deed; and

(iii) revoke any appointment under clause 18.1(d)(i) by notice in writing to the Tunnelling Contractor.

(e) The Principal and the Tunnelling Contractor acknowledge and agree that:

(i) [redacted] the Principal's Representative acts at all times as the servant or agent of the Principal, is subject to the directions of the Principal and will act solely in the interests of the Principal; [redacted]

[redacted]

(f) The Tunnelling Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of this deed. Only the Principal's Representative or an appointee of the Principal's Representative under clause 18.1(b) is authorised to give any Direction to the Tunnelling Contractor pursuant to this deed. The Tunnelling Contractor must not comply with any Direction purporting to be made or given by any person on behalf of the Principal, other than the Principal's Representative or an appointee of the Principal's Representative under clause 18.1(b).

18.2 Tunnelling Contractor's personnel

(a) The Tunnelling Contractor must:

(i) provide experienced and skilled personnel to perform its obligations under this deed; and

(ii) ensure that its personnel (including those referred to in clause 18.2(b)) as a team carry out the Tunnelling Contractor's Activities in a manner that is courteous and co-operative and recognises the interests and needs of the local community.

(b) The Tunnelling Contractor must:

(i) employ those personnel specified in Schedule A9 (or where the personnel are employees of a Subcontractor or sub-subcontractor, the Tunnelling Contractor must ensure they are so employed) in the positions and for the periods specified in Schedule A9;

(ii) subject to clause 18.2(b)(iii), not replace the personnel referred to in clause 18.2(b)(i) (or where the personnel are employees of a Subcontractor

or sub-subcontractor, the Tunnelling Contractor must ensure they are not replaced) without the Principal's Representative's prior written approval; and

(iii) if any of the personnel referred to in clause 18.2(b)(i):

(A) dies;

(B) becomes seriously ill;

(C) resigns from the employment of the Tunnelling Contractor or resigns from the employment of a Subcontractor or a sub-subcontractor (as applicable); or

(D) becomes the subject of a direction under clause 18.2(e),

replace them (or where they are employees of a Subcontractor or sub-subcontractor, the Tunnelling Contractor must use best endeavours to ensure they are replaced) with personnel of at least equivalent experience, ability, competency and expertise (including in addition to the experience, ability and expertise required by Schedule A9, the same level of experience set out in the curriculum vitae of the relevant person being replaced, which are included in Schedule F1 as electronic files) approved by the Principal's Representative (with such approval not to be unreasonably withheld).

(c) The personnel referred to in clause 18.2(b) (including any replacements) must:

(i) have the qualifications, skills and experience specified in Schedule A9 (except to the extent the Principal's Representative, in its absolute discretion, elects to waive any such requirements by written notice to the Tunnelling Contractor);

(ii) carry out the functions and be given the authorities and responsibilities specified for them in this deed;

(iii) be physically based in Australia (or, subject to clause 18.2(g), in such other location as approved by the Principal's Representative in its absolute discretion); and

(iv) be available for consultation with the Principal's Representative when the Principal's Representative reasonably requires.

(d) As required by Schedule A9 Tunnelling Contractor must ensure that the person appointed to the position of "Project Director" (including any replacement):

(i) at all times has the authority to act on behalf of and to bind the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities;

(ii) has full authority to promptly execute directions of the Principal or the Principal's Representative and to promptly make decisions in relation to the Tunnelling Contractor's Activities; and

(iii) without limiting clause 18.2(d)(i) or 18.2(d)(ii), has delegated authority to bind the Tunnelling Contractor in relation to any matter relating to the Tunnelling Contractor's Activities which has a financial impact of [redacted] or less without the need to obtain any additional internal or corporate approvals from the Tunnelling Contractor.

(e) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Tunnelling Contractor to

remove any person (including a person referred to in clause 18.2(b)) from the Construction Site or the Tunnelling Contractor's Activities.

(f) The Tunnelling Contractor must ensure that any person the subject of a direction under clause 18.2(e) is not again employed in the Tunnelling Contractor's Activities, or on the Construction Site.

(g) Notwithstanding any other provision of this deed, the Tunnelling Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim [redacted] arising out of or in any way in connection with the fact that any personnel referred to in clause 18.2(b)(i) are located outside of Australia.

18.3 **Design development meetings**

(a) The Tunnelling Contractor must hold regular meetings of its design team including its designers and, where relevant, the Proof Engineer (and in any event at Design Stage 1 and Design Stage 2 of each discrete design part or element in the Tunnelling Contractor's Activities).

(b) The Tunnelling Contractor must give reasonable notice to the Principal's Representative of those meetings and of any other meetings at which design issues are to be discussed, including with respect to safety issues, to enable the Principal's Representative, its delegate and any representatives of an Interface Contractor to attend. The Principal may request the Tunnelling Contractor to ensure the presence at the meeting of any relevant persons from any of the Tunnelling Contractor's Subcontractors involved in the design of any part of the Project Works.

(c) The Tunnelling Contractor must give the Principal's Representative:

(i) an agenda prepared in consultation with or as directed by the Principal's Representative for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues, including safety issues, as at the date of issue of the agenda); and

(ii) minutes of each design meeting within 48 hours after each meeting.

The Tunnelling Contractor agrees that no such agenda or minutes of meeting shall be relied upon by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.

18.4 **Project Site meetings**

(a) The Tunnelling Contractor must convene meetings on the Construction Site, or such other place or places as the Principal's Representative may direct, at weekly intervals (or such longer period as may be required by the Principal's Representative) prior to the Date of Substantial Completion of the last Portion to achieve Substantial Completion.

(b) The meetings referred to in clause 18.4(a) will be attended by:

(i) the Project Director (or his or her delegate);

(ii) the Principal's Representative (or its delegate); and

(iii) any other person required by the Principal's Representative (including any Subcontractor or a representative of any Interface Contractor).

(c) The Tunnelling Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting under clause 18.4(a) no less than 48 hours prior to each meeting.

(d) The role of chairperson for meetings under clause 18.4(a) will be held by the Principal's Representative (or its delegate).

(e) The chairperson of a meeting under clause 18.4(a) must give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting. The minutes of the meeting may not be relied on by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.

(f) The purpose of the meetings under clause 18.4(a) includes the review of (at least) the matters set out in the reports referred to in clause 18.11 and any other matter as required by the Principal's Representative.

18.5 **Management Review Group**

The Management Review Group comprises:

(a) the Principal's Representative;

(b) any nominees of the Principal's Representative;

(c) the following Tunnelling Contractor's personnel:

(i) the Project Director; and

(ii) the deputy project director;

(d) representatives of any of the Tunnelling Contractor's Subcontractors which the Principal's Representative reasonably requires; and

(e) any other person the Principal's Representative reasonably requires from time to time.

18.6 **Management Review Group functions**

Management Review Group functions include reviewing:

(a) the progress of the Tunnelling Contractor's Activities in relation to the Overall D&C Program and the performance of the Tunnelling Contractor;

(b) issues arising out of community relations and community concerns, including cumulative impacts resulting from interfaces with the community;

(c) issues arising out of the quality of the Tunnelling Contractor's Activities;

(d) matters arising from the Design Documentation, including any proposed design changes;

(e) value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;

(f) potential impact of design and construction outcomes on operation and maintenance requirements;

(g) environmental issues (including sustainability issues);

(h) issues arising out of the interface with any Interface Contractor;

(i) issues arising out of the subject of the Third Party Agreements;

(j) issues arising out of the subject of the Adjoining Property Easements;

(k) safety issues;

(l) workforce development and industry participation;

(m) issues in connection with the Chain of Responsibility Provisions;

(n) potential Claims that the parties have agreed to temporarily waive the requirements of clause 31.2(b) or clauses 15.4(a)(ii) and 15.4(c) (as applicable);

(o) risks included on the Risk Register and the actions that are being taken to avoid or mitigate such risks; and

(p) any other matters determined or directed by the Principal's Representative.

18.7 **Management Review Group meetings**

(a) The Management Review Group must meet:

(i) on a regular monthly basis prior to Substantial Completion of the last Portion to achieve Substantial Completion or such other regular period as the Principal and the Tunnelling Contractor agree in writing;

(ii) in accordance with this clause 18.7; and

(iii) at other times which the Principal's Representative or the Tunnelling Contractor requires.

(b) The Tunnelling Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting of the Management Review Group no less than 48 hours prior to each meeting.

(c) The role of chairperson for meetings of the Management Review Group will alternate between the Project Director and the Principal's Representative with the Principal's Representative to chair the first such meeting.

(d) The chairperson of a meeting of the Management Review Group must give all members of the Management Review Group (and any other person nominated by the Principal's Representative) minutes of the meeting within 5 Business Days after the meeting.

(e) The members of the IDAR Panel may, by invitation of either party, attend a Management Review Group meeting but will not be members of the Management Review Group.

18.8 **Completion Steering Committee**

(a) Within 3 months of the date of this deed, the parties must establish a Completion Steering Committee.

(b) The Completion Steering Committee will consist of:

(i) the Principal's Representative;

(ii) the Tunnelling Contractor's Project Director;

(iii) the Independent Certifier's Project Director; and

(iv) such other persons as the parties may agree from time to time (including the Delivery Partner if required by the Principal's Representative).

(c) The role of the Completion Steering Committee is to:

(i) provide leadership on matters relating to completion and handover of the Project Works and the Handover Works;

(ii) approve processes and procedures prepared by the Completion Working Group;

(iii) consider issues referred to it by the Completion Working Group; and

(iv) such other roles and functions as may be agreed by the parties.

(d) The Completion Steering Committee must meet:

(i) at least once every 2 months; and

(ii) at such other times as the parties may agree,

until the achievement of Substantial Completion of the last Portion.

18.9 **Completion Working Group**

(a) Within 3 months of the date of this deed, the parties must establish a Completion Working Group.

(b) The Completion Working Group will consist of:

(i) the Principal's Representative;

(ii) any nominees of the Principal's Representative;

(iii) the Project Director;

(iv) any nominees of the Project Director; and

(v) such other persons as the parties may agree from time to time (including the Delivery Partner if required by the Principal's Representative).

(c) The role of the Completion Working Group is to:

(i) provide a collaborative forum through which the parties can:

(A) plan and agree procedures for completion and handover of the Project Works and the Handover Works;

(B) plan and agree the process for the progressive submission of records and documentation required for Substantial Completion and Completion of each Portion;

(C) monitor the status of activities and tasks that must be completed in order to achieve Milestone Achievement of each Milestone and Substantial Completion and Completion of each Portion; and

(D) identify issues which may adversely impact upon the achievement of Milestone Achievement of any Milestone or Substantial Completion or Completion of any Portion by the applicable Date for Milestone Achievement, Date for Substantial Completion or Date for Completion (as applicable);

(ii) report to the Completion Steering Committee on matters relating to completion and handover of the Project Works and the Handover Works; and

(iii) such other roles and functions as may be agreed by the parties.

(d) The Completion Working Group must meet:

(i) at least once each month; and

(ii) at such other times as the parties may agree,

until the achievement of Substantial Completion of the last Portion.

18.10 **No legal effect**

The Management Review Group, the Completion Steering Committee and the Completion Working Group are consultative and advisory only and nothing which occurs during a meeting of any such group will:

(a) affect the rights or obligations of either party under the Tunnelling Contract Documents;

(b) entitle a party to make any Claim against the other;

(c) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this deed or otherwise according to law;

(d) prejudice a party's rights against the other whether under this deed or otherwise according to law; or

(e) be construed as a Direction by a party to do or not do anything.

18.11 **Tunnelling Contractor's reporting obligations**

(a) The Tunnelling Contractor must provide reports to the Principal and the Principal's Representative as required by the Tunnelling Specification or as otherwise reasonably requested by the Principal's Representative.

(b) The Principal may provide any such reports and the Overall D&C Program to any Interface Contractor.

18.12 **Minimise disruption and complaints and notifications**

(a) The Tunnelling Contractor must (acting consistently with all Laws and Approvals and exercising Good Industry Practice), in carrying out the Tunnelling Contractor's Activities, minimise:

(i) interference with the passage of people, vehicles, waterborne craft, traffic; and

(ii) disturbance to the occupants of the Adjoining Properties and of any other land adjoining the Construction Site or located in the vicinity of the Construction Site.

(b) The Tunnelling Contractor must immediately notify the Principal in writing if any:

(i) complaint is made or any proceedings are instituted or threatened;

(ii) letter of demand is issued; or

(iii) order or direction is made,

by anyone (including any Authority or any landowner, lessee or licensee on or near the Construction Site or any Extra Land) against the Tunnelling Contractor or any of its Associates in respect of any aspect of the carrying out of the Tunnelling Contractor's Activities, including:

(iv) Contamination, Hazardous Materials, noise or vibration arising out of, or in any way in connection with, the Tunnelling Contractor's Activities;

(v) the Tunnelling Contractor's non-compliance with any Planning Approval (or condition or requirement thereunder), any Project Plan, any Third Party Agreement, any Adjoining Property Easement or any Law regarding the Environment;

(vi) the Tunnelling Contractor's use or occupation of the Construction Site or any Extra Land;

(vii) the supply chain for the Tunnelling Contractor's Activities, including the bringing to and removal from the Construction Site or any Extra Land of items that require transport services; or

(viii) loss or damage of the kind referred to in clause 23.22.

(c) Without limiting the Tunnelling Contractor's obligations under section 6 of the General Specification, the Tunnelling Contractor must (at its own cost):

(i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 18.12(b);

(ii) take all reasonable measures to resolve those matters as soon as possible (including defending any proceedings or participating in any meeting of the Independent Property Impact Assessment Panel); and

(iii) keep a register of all complaints, proceedings, orders, letters of demand and directions referred to in clause 18.12(b), which:

(A) contains full details of:

(aa) each complaint, proceedings, letter of demand, order and direction; and

(bb) the action taken by the Tunnelling Contractor with respect to each complaint, proceedings, letter of demand, order and direction;

(B) is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and

(C) may be inspected by the Principal's Representative whenever the Principal's Representative reasonably requires.

(d) Where the Tunnelling Contractor receives a notification or complaint which relates to damage to any Adjoining Property or any other land or property adjoining the Construction Site or located in the vicinity of the Construction Site which arises out of or in connection with the Tunnelling Contractor's Activities, the Tunnelling Contractor must:

(i) respond to the notification or complaint within 24 hours;

(ii) visit the relevant property to inspect the damage that is the subject of the notification or complaint within 5 Business Days of receipt of the notification or complaint; and

(iii) where the cost of repairing such damage is:

(A) less than or equal to [redacted], complete the repair such damage within 10 Business Days (or such longer period permitted by the Principal's Representative) of the inspection referred to in clause 18.12(d)(ii); or

(B) more than [redacted] complete the repair of such damage within a reasonable time as notified by the Principal's Representative after the inspection referred to in clause 18.12(d)(ii).

(e) The Tunnelling Contractor must notify anyone who may be adversely affected by the Tunnelling Contractor's Activities before the relevant work is carried out including notification of:

(i) the likely duration of that work; and

(ii) Sydney Metro West 24 hour telephone number, postal address and email address, established by the Principal in case any person wishes to make a complaint.

18.13 **Independent Property Impact Assessment Panel**

(a) The Tunnelling Contractor acknowledges that the Principal has established an Independent Property Impact Assessment Panel for Sydney Metro West in accordance with the requirements of the Project Planning Approval.

(b) The Tunnelling Contractor must (at its cost):

(i) cooperate with the Independent Property Impact Assessment Panel and provide the Independent Property Impact Assessment Panel with any assistance, information or documentation that the Independent Property Impact Assessment Panel may reasonably require in order to carry out its functions;

(ii) permit the Independent Property Impact Assessment Panel to access the Construction Site and inspect the Tunnelling Contractor's Activities provided that the Tunnelling Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the Tunnelling Contractor's reasonable work health and safety procedures; and

(iii) attend any meeting of the Independent Property Impact Assessment Panel that it is requested to attend by the Principal's Representative or the chairperson of the Independent Property Impact Assessment Panel provided

that the Tunnelling Contractor is given reasonable prior written notice of any such meeting.

18.14 **Media requests**

The Tunnelling Contractor must not issue any information, publication, document or article for publication concerning the Tunnelling Contractor's Activities in any media without the prior written approval of the Principal's Representative. In granting approval, the Principal's Representative may make such approval subject to any conditions which it may determine.

If the Tunnelling Contractor receives a direct request from the media for comment in respect of any aspect of the Tunnelling Contractor's Activities, it must promptly provide details of such request to the Principal's Representative.

18.15 **Industrial relations**

The Tunnelling Contractor must in carrying out the Tunnelling Contractor's Activities:

(a) assume sole responsibility for and manage all aspects of industrial relations for the Tunnelling Contractor's Activities;

(b) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Tunnelling Contractor's Activities; and

(c) without limiting clause 7.1, comply with the Construction and Site Management Plan, the Workplace Relations Management Plan and the NSW Guidelines.

18.16 **Document management and transmission**

(a) Without limiting clause 32.1, the Tunnelling Contractor must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by the Principal's Representative, in accordance with the processes, procedures and systems in section 2.6 of the General Specification or as otherwise required by the Principal's Representative.

(b) Documents supplied to the Tunnelling Contractor will remain the property of the Principal and must be returned by the Tunnelling Contractor to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Tunnelling Contractor's Activities.

(c) The Tunnelling Contractor must keep all the Tunnelling Contractor's records relating to the Tunnelling Contractor's Activities in a secure and fire proof storage.

(d) The Tunnelling Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 18.16.

(e) The Tunnelling Contractor must ensure that any Contract Documentation and Materials that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:

(i) permit access to or use of a computer system by a third person not authorised by the Principal; or

(ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

18.17 **Exchange of Information between Government agencies**

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

(b) The Tunnelling Contractor acknowledges that any information about the Tunnelling 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 Tunnelling Contractor future opportunities for NSW government work.

(c) The Tunnelling Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Tunnelling Contractor's performance under this deed and that it will participate in the Principal's Contractor Performance Reporting process.

18.18 **Quarterly whole of project reviews**

(a) In each quarter in a calendar year at any time prior to Final Completion, the Principal may require that the Tunnelling Contractor attend and participate in one or more meetings with the Principal and its other contractors for Sydney Metro West. The purpose of these meetings is for the Principal, the Tunnelling Contractor and the Principal's other contractors to work together in good faith on a co-operative and collaborative basis to identify and consider:

(i) issues and potential issues that have, or which may have, an adverse impact upon the successful delivery of Sydney Metro West or any part of Sydney Metro West;

(ii) solutions to such issues or potential issues which may mitigate, remedy or avoid any adverse impact upon the successful delivery of Sydney Metro West or any part of Sydney Metro West;

(iii) improvements that can be implemented to save time, reduce cost or improve the quality of Sydney Metro West or any part of Sydney Metro West;

(iv) the manner in which any such solutions and improvements can be implemented; and

(v) any other matters that the Principal may require.

(b) If the Principal requires the Tunnelling Contractor to attend and participate in any meeting contemplated by clause 18.18(a), the Principal's Representative must provide the Tunnelling Contractor with at least 10 Business Days prior written notice of any such meeting.

(c) If the Principal's Representative provides the Tunnelling Contractor with a notice under clause 18.18(b), the Tunnelling Contractor must ensure that the following personnel attend and participate in the meeting:

(i) the Tunnelling Contractor's Project Director;

(ii) representatives of any of the Tunnelling Contractor's Subcontractors which the Principal's Representative reasonably requires; and

(iii) any other person directed by the Principal's Representative.

18.19 **Early Warning**

(a) The Tunnelling Contractor must enter any early warning on the Risk Register as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:

(i) a delay to Milestone Achievement of any Milestone;

(ii) a delay to Substantial Completion of any Portion;

(iii) a delay to Completion of any Portion;

(iv) a delay or an adverse effect on the performance of the Tunnelling Contractor's Activities or the Project Works;

(v) a party being in breach of any term of this deed; or

(vi) a Claim by the Tunnelling Contractor.

(b) Each early warning entered on the Risk Register must include a description of the risk and the actions which are to be taken to avoid or mitigate the risk.

(c) The Tunnelling Contractor must provide the Principal with real time access to the Risk Register or as otherwise directed by the Principal's Representative.

(d) The Principal may in its absolute discretion and without any obligation to do so, provide an early warning in relation to any fact, matter or thing described under clause 18.19(a) by entering the risk the subject of the early warning on the Risk Register.

(e) The Tunnelling Contractor must attend risk management meetings with the Principal's Representative on a monthly basis or as otherwise directed by the Principal's' Representative. At risk management meetings, the parties agree to:

(i) review the current Risk Register;

(ii) develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register and the Tunnelling Contractor must inform the Principal if it considers any such proposal or solution would give rise to a Change or otherwise give rise to a Claim by the Tunnelling Contractor;

(iii) decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and

(iv) remove from the Risk Register those risks which have been avoided or passed.

(f) A notification, record or action under this clause 18.19 will not relieve the Tunnelling Contractor from or alter its rights, liabilities or obligations under this deed, including any and all other notification obligations under this deed.

19. TIME AND COMPLETION

19.1 Start and progress

(a) The Tunnelling Contractor must:

(i) start to perform its obligations under this deed from the date of this deed; and

(ii) regularly and diligently progress the Tunnelling Contractor's Activities in accordance with this deed to ensure that:

(A) Milestone Achievement of each Milestone is achieved by the Date for Milestone Achievement for the Milestone;

(B) Substantial Completion of each Portion is achieved by the Date for Substantial Completion for the Portion; and

(C) Completion of each Portion is achieved by the Date for Completion for the Portion.

(b) Without limiting its rights under the SOP Act, the Tunnelling Contractor must not suspend the progress of the whole or any part of the Tunnelling Contractor's Activities except where directed by a court or by the Principal's Representative under clauses 7.6(e) or 19.8 or as otherwise required by Law.

(c) Without limiting clause 19.1(d) or clause 19.2(d), the Tunnelling Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Tunnelling Contractor to carry out the Tunnelling Contractor's Activities in accordance with this deed.

(d) The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions, earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this deed.

19.2 **Tunnelling Contractor's programming obligations**

(a) The Tunnelling Contractor must prepare the Overall D&C Program required by section 2.2 of the General Specification which must contain the details required by section 2.2 of the General Specification.

(b) The Tunnelling Contractor must:

(i) update the Overall D&C Program and report against it:

(A) in accordance with the Tunnelling Specification and section 2.2 of the General Specification; and

(B) if the Principal gives early access under clause 12.1(a) or early access is deemed to be given under clause 12.1(f);

(ii) provide the reports and updated Overall D&C Program in accordance with sections 2.2 of the General Specification; and

(iii) give the Independent Certifier and the Principal's Representative the reports required by the Tunnelling Specification and section 2.2 of the General Specification in an electronic form approved by the Principal.

(c) No submission of or Direction relating to, or review of or comment upon, the Overall D&C Program prepared by the Tunnelling Contractor, by the Principal or the Principal's Representative in connection with the Overall D&C Program nor the inclusion of the Overall D&C Program as a schedule to this deed, will:

(i) relieve the Tunnelling Contractor from or alter its liabilities or obligations under this deed, especially (without limitation) the obligations under clause 19.3;

(ii) evidence or constitute notification of a delay or the claiming of or the granting of, an extension of time to any Date for Milestone Achievement, Date for Substantial Completion or Date for Completion, or a Direction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Tunnelling Contractor's Activities; or

(iii) affect the time for performance of the Principal's or the Principal's Representative's obligations under this deed, including obliging the Principal or the Principal's Representative to do anything earlier than is necessary to enable the Tunnelling Contractor to achieve Milestone Achievement of a Milestone by the Date for Milestone Achievement, Substantial Completion of a Portion by the Date for Substantial Completion of the Portion or Completion of a Portion by the Date for Completion of the Portion.

(d) if the Tunnelling Contractor chooses to compress the Tunnelling Contractor's Activities or otherwise accelerate progress:

(i) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Tunnelling Contractor to achieve Milestone Achievement of a Milestone before the Date for Milestone Achievement of the Milestone, Substantial Completion of a Portion before the Date for Substantial Completion of the Portion or Completion of a Portion before the Date for Completion of the Portion; and

(ii) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

19.3 **Dates for Substantial Completion and Completion**

The Tunnelling Contractor must achieve:

(a) Milestone Achievement of each Milestone by the Date for Milestone Achievement of the relevant Milestone;

(b) Substantial Completion of each Portion by the Date for Substantial Completion of the relevant Portion; and

(c) Completion of each Portion by the Date for Completion of the relevant Portion.

19.4 **Importance of Completion on time**

The Tunnelling Contractor acknowledges:

(a) the importance of complying with its obligations under clause 19.3 to enable:

(i) Interface Contractors to carry out and complete the Interface Works within the time required by their respective Interface Contracts;

(ii) subject to clause 1.9:

(A) OpCo to carry out the work required under the OpCo Project Deed in order that operations of Sydney Metro West may commence; and

(B) any Alternate Operator to operate and maintain Sydney Metro West,

including so as to allow the Principal to pursue improved public transport in Sydney.

(b) The Date for Milestone Achievement of any Milestone and the Date for Substantial Completion or the Date for Completion of any Portion will only be extended as set out in:

(i) clause 19.6;

(ii) a Change Order issued by the Principal's Representative; or

(iii) a determination under the Dispute Procedure or arbitration or litigation proceedings.

19.5 **Risk and notice of delay**

(a) Except as expressly provided for in clauses 19.6 and 19.10, the Tunnelling Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Tunnelling Contractor's Activities and performance of its obligations under this deed both before and after any Date for Milestone Achievement of a Milestone or Date for Substantial Completion or any Date for Completion (as applicable) of a Portion.

(b) The Tunnelling Contractor must within 5 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the commencement of an Excusable Cause of Delay which has, or is likely to, give rise to a delay in achieving Milestone Achievement of a Milestone or Substantial Completion or Completion of a Portion, give the Principal's Representative written notice of:

(i) details of the Excusable Cause of Delay; and

(ii) how Milestone Achievement of each relevant Milestone or Substantial Completion or Completion of each relevant Portion (as applicable) has or is likely to be delayed.

19.6 **Extension of time**

(a) If the Tunnelling Contractor is, or will be, delayed by an Excusable Cause of Delay, in a manner that will delay it from achieving Milestone Achievement of a Milestone or Substantial Completion or Completion of a Portion, the Tunnelling Contractor may claim an extension of time to the relevant Date for Milestone Achievement, Date for Substantial Completion or Date for Completion (as applicable).

(b) To claim an extension of time the Tunnelling Contractor must:

(i) [redacted] within 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the commencement of an Excusable Cause of Delay which has or will give rise to a delay in achieving Milestone Achievement of a Milestone or Substantial Completion or Completion of a Portion, submit a written claim to the Principal's Representative for an extension of time to the Date for Milestone Achievement of the Milestone or the Date for Substantial Completion or Date for Completion of the Portion (as applicable), specifying:

(A) the number of days claimed;

(B) details of the Excusable Cause of Delay and why the Excusable Cause of Delay actually caused or will cause a delay in achieving Milestone Achievement of a Milestone or Substantial Completion or Completion of a Portion (as applicable), including a statement of the facts and the provisions of this deed on which the claim is based;

(C) detailed evidence in satisfaction of the requirements of this clause 19.6;

(D) critical path analysis in the same format as the Overall D&C Program for the period of the delay; and

(E) if early access to the Construction Site was given, or deemed to be given under clause 12.1(f), details of the extent (if any) to which the Tunnelling Contractor's use of Accessible parts of the Construction Site has mitigated the delay (or details of why such use has not mitigated the delay) or to the extent the Tunnelling Contractor did not use the parts of the Construction Site made Accessible, why the delay would not have been mitigated had it used such early access.

[redacted]

(ii) if the effects of the delay continue for more than 20 Business Days after the date of commencement of the Excusable Cause of Delay and the Tunnelling Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative containing the information required by clause 19.6(b)(i) [redacted]

(A) every 15 Business Days after the first written claim made under clause 19.6(b)(i) (or such other period as approved by the Principal's Representative); and

(B) until 5 Business Days after the cessation of the Excusable Cause of Delay,

(c) The Principal's Representative may, within 10 Business Days of receiving the Tunnelling Contractor's claim or further claim for an extension of time for Milestone Achievement of a Milestone or Substantial Completion or Completion of a Portion, by written notice to the Tunnelling Contractor, request additional information in relation to the claim or further claim. The Tunnelling Contractor must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.

(d) [redacted] it is a condition precedent to the Tunnelling Contractor's entitlement to an extension of time that:

(i) the Tunnelling Contractor gives the claims required by clause 19.6(b) as required by that clause;

[redacted]

(iii) the Tunnelling Contractor is actually, or will be, delayed in achieving Milestone Achievement of a Milestone or Substantial Completion or Completion of a Portion (as applicable) by one or more Excusable Causes of Delay; and

(iv) subject to clause 19.6(f)(iii), the Tunnelling Contractor has not been given a direction to accelerate under clause 19.9(a)(ii) with respect to the whole of the delay the subject of the claim under clause 19.6(b).

(e) If the Tunnelling Contractor fails to comply with any of the conditions precedent in clause 19.6(d):

(i) the Principal will not be liable upon any Claim by the Tunnelling Contractor; and

(ii) the Tunnelling Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with any delay that arises from the relevant Excusable Cause(s) of Delay.

(f) Subject to clauses 19.6(h) and 19.9(j), if the conditions precedent in clause 19.6(d) have been satisfied, the Principal's Representative must determine the reasonable extension of time to the Date for Milestone Achievement of a Milestone or Date for Substantial Completion or Date for Completion of a Portion (as applicable) to which the Tunnelling Contractor is entitled either:

(iii) where the Principal's Representative has given the Tunnelling Contractor a direction to accelerate under clause 19.9(a)(ii) with respect to all or part of a delay the subject of the Tunnelling Contractor's claim under clause 19.6(b) and subsequently issues a notice under clause 19.9(g) withdrawing the direction to accelerate, within 15 Business Days after the date of issue of the notice withdrawing the acceleration,

by giving the Tunnelling Contractor:

(iv) written notice of the determination which includes the extension of time granted and the adjusted Date for Milestone Achievement, Date for Substantial Completion or Date for Completion (as applicable), with reasons where the extension of time granted is for a shorter period of time than that claimed by the Tunnelling Contractor; or

(v) if no extension is granted, written notice of that decision, with reasons.

(g) A failure of the Principal's Representative to grant an extension of time in accordance with clause 19.6(f) will not cause time to be set at large, but nothing in clause 19.6(f) or this clause 19.6(g) will prejudice any right of the Tunnelling Contractor to claim damages.

(h) [redacted], in respect of each claim for an extension of time under clause 19.6(b), the Tunnelling Contractor's entitlement to an extension of time will be reduced to the extent that:

(i) the Tunnelling Contractor or any of its Associates caused or contributed to the delay or the Excusable Cause of Delay was within the reasonable control of the Tunnelling Contractor;

(ii) the Tunnelling Contractor failed to take all reasonably practicable steps to preclude the cause of the delay or to avoid or minimise the consequences of the delay, including, without limitation:

(A) the expenditure of reasonable sums of money to accommodate the cause of delay and the Tunnelling Contractor's Activities affected by the delay; or

(B) taking reasonable steps to reschedule or resequence activities within the Overall D&C Program; or

(iii) having regard to (without limitation) clause 19.6(b)(i)(E), the cause of the delay could practicably have been precluded or its consequences could practicably have been avoided or minimised if the Tunnelling Contractor had utilised any early access to the Construction Site that was given under clause 12.1(a) (or deemed to be given under clause 12.1(f)) to the extent that the relevant part of the Construction Site to which early access was given was Accessible, but where such early access was given or deemed to be given it was not utilised by the Tunnelling Contractor; or

(iv) a delay caused by an Excusable Cause of Delay and a delay caused other than by an Excusable Cause of Delay occurred at the same time and the Tunnelling Contractor would have been delayed even if the Excusable Cause of Delay had not occurred; or

(v) the Tunnelling Contractor has been given a direction to Accelerate under clause 19.9(a)(ii) to overcome part of any delay.

(i) The Principal's Representative may in its absolute discretion for any reason and at any time, from time to time, by notice in writing to the Tunnelling Contractor and the Principal unilaterally extend the Date for Milestone Achievement of a Milestone or Date for Substantial Completion or Date for Completion of a Portion (as applicable) by any period specified in a notice to the Tunnelling Contractor and the Principal. The power to extend the Date for Milestone Achievement of a Milestone or Date for Substantial Completion or Date for Completion of a Portion under this clause 19.6(i):

(i) may be exercised whether or not the Tunnelling Contractor has made, or is entitled to make, a claim for an extension of time to any Date for Substantial Completion or Date for Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Milestone Achievement, Date for Substantial Completion or Date for Completion, under this clause 19.6;

(ii) subject to clause 19.6(i)(iii), may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 19.6(i) for the benefit of the Tunnelling Contractor;

(iii) without limiting clause 18.1(e), may be exercised or not exercised (as the case may be) by the Principal's Representative in accordance with the directions of the Principal;

(iv) shall include an obligation on the Principal to pay any Delay Costs that the Tunnelling Contractor would otherwise have been entitled under clause 19.10 in respect of the period by which the relevant Date for Substantial Completion of a Portion is unilaterally extended pursuant to this clause 19.6(i); and

(v) is not a Direction which can be the subject of a Dispute pursuant to clause 25 or in any other way opened up or reviewed by any other person (including the IDAR Panel or any arbitrator or court).

(j) If the Principal's Representative gives the Tunnelling Contractor a direction to accelerate under clause 19.9(a)(ii) and the direction only applies to part of the delay, the Tunnelling Contractor's entitlement to any extension of time which it otherwise would have had will be reduced to the extent that the direction to accelerate requires the Tunnelling Contractor to accelerate to overcome the delay.

(k) The Tunnelling Contractor acknowledges and agrees that, when determining the Tunnelling Contractor's entitlement to claim an extension of time pursuant to clause 19.6(a):

(i) where the Tunnelling Contractor is delayed by reason of the cause set out in paragraph (h) of the definition of Excusable Cause of Delay, the Tunnelling Contractor's entitlement to claim an extension of time will be reduced to the extent that the Tunnelling Contractor failed to cooperate with the Principal and provide any assistance or documentation that the Principal may reasonably require in relation to that Native Title Claim; and

(ii) where the Tunnelling Contractor is delayed by reason of the cause set out in paragraph (i) of the definition of Excusable Cause of Delay, the Tunnelling Contractor will only be entitled to claim an extension of time in respect of each day of delay that occurs after the 10 day aggregate period referred to in paragraph (i) of the definition of Excusable Cause of Delay has elapsed.

19.7 Corrective action

(a) If at any time the progress of the Tunnelling Contractor's Activities has fallen behind that shown in the Overall D&C Program or otherwise is not in accordance with this deed, the Tunnelling Contractor must at its own cost take the necessary corrective action so as to ensure that progress is maintained in accordance with this deed. Such corrective action may include the working of overtime and additional shifts, the application of more resources to carry out the work, the adjustment and rescheduling of activities and any proposals for the creation of additional Portions. The Principal's Representative from time to time may direct the Tunnelling Contractor to provide details of the corrective action it plans to take under this clause 19.7(a).

(b) If the Tunnelling Contractor fails to take corrective action in accordance with clause 19.7(a), the Principal's Representative may direct the Tunnelling Contractor as to the corrective action it is to take (which may include the creation of additional Portions as contemplated by clause 10.1 or clause 10.3) and the Tunnelling Contractor must comply with that direction at its own cost and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with that direction.

(c) No direction by the Principal's Representative will be taken to constitute a direction under clause 19.7(a) unless the direction is in writing, is signed by the Principal's Representative and expressly states that it is a direction under clause 19.7(a).

19.8 Suspension

(a) The Principal's Representative may direct the Tunnelling Contractor to:

(i) suspend the progress of the Tunnelling Contractor's Activities or any part of them for such time or times as the Principles may think fit; and

(ii) subsequently recommence any suspended part of the Tunnelling Contractor's Activities.

(b) If the suspension arises as a result of:

(i) the Tunnelling Contractor's failure to carry out its obligations under this deed (including under clause 9 or where the Tunnelling Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this deed or where any process, procedure, test method, calculation, analysis or report required by this deed has resulted in or will result in a non-conformance), the Tunnelling Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension;

(ii) a cause other than the Tunnelling Contractor's failure to perform its obligations under this deed:

(A) a direction to suspend under this clause 19.8 will entitle the Tunnelling Contractor to:

(aa) be paid by the Principal its additional Direct Costs plus Overheads and Profit Margin, as stated by the Principal's Representative; and

(bb) an extension of time to the Date for Milestone Achievement of any Milestone or Date for Substantial Completion of any Portion, where it is otherwise so entitled under clause 19.6;

(B) the Tunnelling Contractor must take all reasonable steps possible to mitigate the additional Direct Costs and Overheads incurred by it and any delay in achieving Milestone Achievement of any Milestone or Substantial Completion of any Portion (as applicable) as a result of the suspension.

(c) The Tunnelling Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under clause 19.8(b)(ii).

19.9 **Directions to change sequencing, accelerate, defer activities or make accessible**

(a) The Principal's Representative may, by notice in writing expressly referring to this clause 19.9(a), direct the Tunnelling Contractor:

(i) in what order and at what time stages or parts of the Tunnelling Contractor's Activities must be performed (**Resequencing**);

(ii) to complete the Tunnelling Contractor's Activities in advance of the dates for completion of those activities shown on the Overall D&C Program, including to:

(A) achieve Milestone Achievement of any Milestone prior to the relevant Date for Milestone Achievement;

(B) achieve Substantial Completion or Completion of any Portion prior to the relevant Date for Substantial Completion or Date for Completion (as applicable); or

(C) overcome or minimise the extent and effects of some or all of a delay that is the subject of a claim by the Tunnelling Contractor under clause 19.6(b) irrespective of whether or not the cause of delay for which the Tunnelling Contractor has made its claim under clause 19.6(b) entitles the Tunnelling Contractor to an extension of time to the relevant Date for Milestone Achievement, Date for Substantial Completion or Date for Completion,

(**Acceleration**);

(iii) to defer performance of any part of the Tunnelling Contractor's Activities until after Milestone Achievement or Substantial Completion (**Deferred Activities**), in which case the Tunnelling Contractor will not be required to complete the Deferred Activities as a condition precedent to Milestone Achievement or Substantial Completion of the relevant Milestone or Portion, and the Principal must specify a reasonable time period within which such Deferred Activities must subsequently be performed; or

(iv) to promptly make a work space ready for an Interface Contractor to perform work even if Milestone Achievement or Substantial Completion for that work space has not been reached (**Making Accessible**).

(b) The Principal's Representative may request that, prior to implementing any direction given under clause 19.9(a), the Tunnelling Contractor provide details of the estimated:

(i) impacts on the Design Contract Sum, Design Payment Schedule, Construction Contract Sum and Construction Payment Schedule;

(ii) impact on the Overall D&C Program; and

(iii) impact on any Date for Milestone Achievement, Date for Substantial Completion or Date for Completion (if any),

arising from the direction and the Tunnelling Contractor must provide such details within 15 Business Days of the Principal's Representative's request (and use best endeavours to provide such details within 10 Business Days).

(c) A direction under clause 19.9(a) may specify a revised Date for Milestone Achievement for a Milestone or Date for Substantial Completion or Date for Completion for a Portion as a consequence of the Resequencing, Acceleration, Deferred Activities or Making Accessible. The revised Date for Milestone Achievement, Date for Substantial Completion or Date for Completion may be earlier than the then current Date for Milestone Achievement, Date for Substantial Completion or Date for Completion (as applicable).

(d) The Tunnelling Contractor must comply with a direction given under clause 19.9(a)(iii) and clause 19.9(a)(iv).

(e) The Tunnelling Contractor must comply with a direction given under clause 19.9(a)(i) and 19.9(a)(ii) except to the extent:

(i) it is not reasonably possible for the Tunnelling Contractor to perform the proposed Acceleration or Resequencing; and

(ii) the Tunnelling Contractor, in a notice required under clause 15.4(a)(i), gives a detailed explanation of the reasons why it is not reasonably possible for the Tunnelling Contractor to perform the proposed Acceleration or Resequencing.

(f) If a direction has been given under clause 19.9(a), the Principal's Representative will, subject to clause 19.9(j), adjust the affected Date for Milestone Achievement, Date for Substantial Completion or Date for Completion (as applicable):

(i) to the new date(s) identified in the direction given under clause 19.9(a); or

(ii) if the Tunnelling Contractor has delivered a notice under clause 19.9(e)(ii), earlier dates determined by the Principal's Representative, having regard to what is reasonably possible.

(g) The Principal's Representative may, at any time, by notice in writing to the Tunnelling Contractor withdraw a direction given under 19.9(a) provided that, if:

(i) the Tunnelling Contractor has taken steps to comply with such direction, the withdrawal will be treated as a new direction given under clause 19.9(a) to which clause 19.9(h) also applies; and

(ii) the direction was given under clause 19.9(a)(ii) to overcome or minimise the extent and effects of some or all of a delay which was the subject of a claim by the Tunnelling Contractor under clause 19.6(b), the Tunnelling Contractor will be entitled to any extension of time to which it may otherwise have been entitled but reduced to the extent that any acceleration by the Tunnelling Contractor prior to the withdrawal of the direction has mitigated the delay, as stated by the Principal's Representative.

(h) Where the Tunnelling Contractor considers that a direction given under clause 19.9(a) constitutes a Change, the Tunnelling Contractor must give the Principal's Representative notice under and in accordance with clause 15.4(a)(i).

(i) If the Tunnelling Contractor does not give notice strictly in accordance with clause 15.4(a)(i) it will have no Claim against the Principal in connection with a direction given under clause 19.9(a).

(j) The Tunnelling Contractor will have no entitlement to an extension of time or to claim an adjustment to the Design Contract Sum and/or Construction Contract Sum for a Direction under clause 19.9(a) to the extent that:

(i) the need for Acceleration, Resequencing, Deferred Activities or Making Accessible arises out of or in connection with any breach of this deed by the Tunnelling Contractor (for example, a failure to reach Substantial Completion of a Portion by the Date for Substantial Completion of that Portion); and

(ii) the direction for Acceleration, Resequencing, Deferred Activities or Making Accessible is:

(A) in effect:

(aa) a direction to the Tunnelling Contractor to perform the Tunnelling Contractor's Activities in accordance with this deed (other than this clause), or consistently with this deed; or

(bb) a direction to the Tunnelling Contractor to take corrective action to rectify any non-compliance with the requirements of this deed; or

(B) related to rectification of a Defect [redacted]

(k) Except to the extent set out in clauses 19.6(d), 19.9(i) and 19.9(j), this clause 19.9 does not impact the Tunnelling Contractor's entitlement under this deed to an extension of time.

(l) The Principal's right to liquidated damages under clause 19.11(d) and where applicable, common law damages pursuant to clause 19.11(i)(ii), for a failure by the Tunnelling Contractor to achieve Milestone Achievement of a Milestone by the Date for Milestone Achievement of the Milestone or Substantial Completion of a Portion by the Date for Substantial Completion of the Portion will not be affected by a Direction given by the Principal's Representative under this clause 19.9.

19.10 **Tunnelling Contractor's delay costs**

[redacted]

[redacted]

19.11 **Liquidated damages for delay in reaching Milestone Achievement and Substantial Completion**

(a) The Principal and the Tunnelling Contractor agree and acknowledge that the Principal is pursuing a policy of building Sydney Metro West and the Project Works for purposes that include achieving the objectives set out in clauses 3.1 and 3.2.

(b) The Tunnelling Contractor and the Principal acknowledge and agree that the Tunnelling Contractor's Activities represents a most important element of the building of Sydney Metro West, as a major new public transport link which, together with Sydney Metro City & Southwest and Sydney Metro Northwest (and their integration), will service the needs of Sydney, including the needs of its workforce and its economy, and will provide frequent rapid transit services to handle projected population increases, create employment both during and after the Tunnelling Contractor's Activities, improve the efficiency of the Sydney public transport network and improve the local environment.

(c) The Tunnelling Contractor acknowledges and agrees that its failure to achieve Milestone Achievement of the Milestones by the required Dates for Milestone Achievement and Substantial Completion of the Portions by the required Dates for

Substantial Completion will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.

(d) The Tunnelling Contractor agrees that if it does not:

(i) achieve Milestone Achievement of a Milestone by the Date for Milestone Achievement of the Milestone, it must pay the Principal the applicable amount of liquidated damages for that Milestone set out in section 3 of Schedule A2 (each of which is exclusive of GST) for every day after the Date for Milestone Achievement of the Milestone up to and including:

(A) the Date of Milestone Achievement of the applicable Milestone; or

(B) the date that this deed is validly terminated,

whichever first occurs;

(ii) achieve Substantial Completion of a Portion by the Date for Substantial Completion of the Portion, it must pay the Principal the applicable amount of liquidated damages for that Portion set out in section 2 of Schedule A2 (each of which is exclusive of GST) for every day after the Date for Substantial Completion of the Portion up to and including:

(A) the Date of Substantial Completion of the applicable Portion; or

(B) the date that this deed is validly terminated,

whichever first occurs.

(e) The parties agree that the liquidated damages provided for in clause 19.11(d):

(i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the Tunnelling Contractor to achieve Milestone Achievement of a Milestone by the Date for Milestone Achievement or Substantial Completion of the Portion by the Date for Substantial Completion of the Portion (as applicable) and do not constitute, and are not intended to be, a penalty and have been freely agreed to by the Tunnelling Contractor; and

(ii) will be recoverable by the Principal from the Tunnelling Contractor as a debt due and payable.

(f) The Principal and the Tunnelling Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.

(g) The Tunnelling Contractor agrees to pay the liquidated damages under clause 19.11(d) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.

(h) The Tunnelling Contractor entered into the obligation to pay the amounts specified in clause 19.11(d) with the intention that it is a legally binding, valid and enforceable contractual provision against the Tunnelling Contractor in accordance with its terms.

(i) The Tunnelling Contractor agrees:

(i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and

(ii) that if this clause 19.11 (or any part of this clause 19.11) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages (including loss of revenue and loss of profits from the loss of use of the Works) as a result of the Tunnelling Contractor failing to achieve Milestone Achievement of a relevant Milestone by its Date for Milestone Achievement or Substantial Completion of a relevant Portion by its Date for Substantial Completion, but the Tunnelling Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.

(j) The Principal's Representative, when issuing a payment schedule pursuant to clause 20.2(c) or 20.2(d) after the Date for Milestone Achievement of a relevant Milestone or the Date for Substantial Completion of a relevant Portion (as applicable), may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 19.11(d) to the date of the payment schedule (despite Milestone Achievement of that Milestone or Substantial Completion of that Portion (as applicable) not having occurred).

(k) The Principal and the Tunnelling Contractor agree that the aggregate of the amount payable under clauses 19.11(d) and 19.11(i)(ii) is:

(i) limited as set out in clause 22.1(b); and

(ii) will be the Principal's sole financial remedy against the Tunnelling Contractor for failing to achieve Milestone Achievement of any Milestone by the relevant Date for Milestone Achievement or Substantial Completion of any Portion by the relevant Date for Substantial Completion,

and the Principal will not be entitled to make, nor will the Tunnelling Contractor be liable upon, any Claim in these circumstances other than for the amount for which the Tunnelling Contractor is liable under this clause 19.11 (including where applicable common law damages under clause 19.11(i)(ii)). The sole remedy provided in this clause 19.11(k)(ii) relates to the delay itself and does not limit the Principal's rights with respect to an event giving rise to a delay or the consequences of that event (other than the delay) or limit or reduce the Tunnelling Contractor's liability for any other acts, omissions or default (including the Principal's entitlement to damages other than liquidated damages) with respect to an event giving rise to delay or the consequences of that event, including where this deed is terminated by the Principal under clause 24 or otherwise at Law.

(l) The Tunnelling Contractor acknowledges and agrees that the payment of liquidated damages pursuant to clause 19.11(d) and where applicable, the payment of common law damages pursuant to clause 19.11(i)(ii), will not relieve the Tunnelling Contractor of any of its obligations under this deed.

19.11A **Milestone Achievement**

(a) The Tunnelling Contractor must, in respect of each Milestone, give the Principal's Representative:

(i) 6 months;

(ii) 3 months;

(iii) 1 month; and

(iv) 1 week,

written notice of the estimated Date of Milestone Achievement of the Milestone.

(b) Subject to clause 19.11A(h), the Principal's Representative, the Project Director and the Independent Certifier must, within 5 Business Days of receipt of the notice referred to in clause 19.11A(a)(ii) jointly inspect the Tunnelling Contractor's Activities at a mutually convenient time.

(c) Within 2 Business Days of the joint inspection referred to in clause 19.11A(b), the Independent Certifier must give the Tunnelling Contractor and the Principal a notice either:

(i) containing a list of items which it believes must be completed before Milestone Achievement of the Milestone is achieved; or

(ii) stating that it believes the Tunnelling Contractor is so far from achieving Milestone Achievement of the Milestone that it is not practicable to issue a list as contemplated in clause 19.11A(c)(i).

(d) When the Tunnelling Contractor considers it has achieved Milestone Achievement of the Milestone, the Tunnelling Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B27. Notwithstanding the foregoing, the parties acknowledge that the Principal's Representative may also issue a written notice to the Independent Certifier and the Tunnelling Contractor if it considers, in its absolute discretion, that the Tunnelling Contractor has achieved Milestone Achievement of a Milestone.

(e) Following the issuance of a notice by the Tunnelling Contractor or the Principal's Representative under clause 19.11A(d), and subject to clause 19.11A(h), the Principal's Representative, the Project Director and the Independent Certifier must jointly inspect the Tunnelling Contractor's Activities at a mutually convenient time.

(f) Following the joint inspection under clause 19.11A(e), the Independent Certifier must within 5 Business Days of receipt of a notice under clause 19.11A(d), or of receipt of a notice under clause 19.11A(g):

(i) if Milestone Achievement of the Milestone has been achieved provide to the Principal's Representative and the Tunnelling Contractor a document signed by the Independent Certifier in the form in Schedule B28; or

(ii) if Milestone Achievement of the Milestone has not been achieved, issue a notice to the Tunnelling Contractor and the Principal in which it states:

(A) the items which remain to be completed before Milestone Achievement of the Milestone; or

(B) that the Tunnelling Contractor is so far from achieving Milestone Achievement of the Milestone that it is not practicable to notify the Tunnelling Contractor of the items which remain to be completed as contemplated by clause 19.11A(f)(ii)(A).

(g) If the Independent Certifier issues a notice under clause 19.11A(f)(ii) the Tunnelling Contractor must proceed with the Tunnelling Contractor's Activities and thereafter when it considers it has achieved Milestone Achievement of the Milestone it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 19.11A(d) and 19.11A(f) will reapply.

(h) The Tunnelling Contractor acknowledges and agrees that:

(i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 19.11A, including representatives of any Interface Contractor; and

(ii) the Principal's Representative and any Interface Contractor may provide comments to the Independent Certifier (with a copy to the Tunnelling Contractor) in relation to any non-compliance of the Tunnelling Contractor's Activities with this deed.

19.12 **Substantial Completion**

(a) The Tunnelling Contractor must, in respect of each Portion, give the Principal's Representative:

(i) 6 months;

(ii) 3 months;

(iii) 1 month; and

(iv) 1 week,

written notice of the estimated Date of Substantial Completion of the Portion.

(b) Subject to clause 19.12(h), the Principal's Representative, the Project Director and the Independent Certifier must, within 5 Business Days of receipt of the notice referred to in clause 19.12(a)(ii) jointly inspect the Tunnelling Contractor's Activities at a mutually convenient time.

(c) Within 2 Business Days of the joint inspection referred to in clause 19.12(b), the Independent Certifier must give the Tunnelling Contractor and the Principal a notice either:

(i) containing a list of items which it believes must be completed before Substantial Completion of the Portion is achieved; or

(ii) stating that it believes the Tunnelling Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to issue a list as contemplated in clause 19.12(c)(i).

(d) When the Tunnelling Contractor considers it has achieved Substantial Completion of the Portion, the Tunnelling Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B1. Notwithstanding the foregoing, the parties acknowledge that the Principal's Representative may also issue a written notice to the Independent

Certifier and the Tunnelling Contractor if it considers, in its absolute discretion, that the Tunnelling Contractor has achieved Substantial Completion of a Portion.

(e) Following the issuance of a notice by the Tunnelling Contractor or the Principal's Representative under clause 19.12(d), and subject to clause 19.12(h), the Principal's Representative, the Project Director and the Independent Certifier must jointly inspect the Tunnelling Contractor's Activities at a mutually convenient time.

(f) Following the joint inspection under clause 19.12(e), the Independent Certifier must within 5 Business Days of receipt of a notice under clause 19.12(d), or of receipt of a notice under clause 19.12(g):

(i) if Substantial Completion of the Portion has been achieved:

(A) provide to the Principal's Representative and the Tunnelling Contractor a document signed by the Independent Certifier in the form in Schedule B14; and

(B) additionally:

(aa) if the relevant Portion includes any Roads Interface Agreement Road Works or any Roads Interface Agreement Project Works, provide to the Principal's Representative and TfNSW:

(a) a certificate in the form of Schedule 5 to the Roads Interface Agreement with respect to the Roads Interface Agreement Road Works; and/or

(b) a certificate in the form of Schedule 8 to the Roads Interface Agreement with respect to the Roads Interface Agreement Project Works,

(as applicable);

(bb) if the relevant Portion includes any Parramatta City Council Handover Works, provide to the Principal's Representative and the Parramatta City Council a certificate in the form of Schedule 4 to the Parramatta City Council Interface Agreement with respect to the relevant Parramatta City Council Handover Works;

(cc) if the relevant Portion includes any Sydney Trains Works or any Sydney Trains Protection Zone Works, provide to the Principal's Representative and Sydney Trains:

(a) a certificate in the form of Schedule 5 to the Sydney Trains Interface Agreement with respect to the Sydney Trains Works; and/or

(b) a certificate in the form of Schedule 6 to the Sydney Trains Interface Agreement with respect to the Sydney Trains Protection Zone Works,

(as applicable); or

(dd) if the relevant Portion includes any TfNSW (Maritime) Construction Licence Handover Works or any TfNSW (Maritime) Construction Licence Interface Works, provide to the Principal's Representative and TfNSW a certificate in the form of Exhibit I

to the TfNSW (Maritime) Construction Licence with respect to the TfNSW (Maritime) Construction Licence Handover Works and/or TfNSW (Maritime) Construction Licence Interface Works (as applicable); or

(ii) if Substantial Completion of the Portion has not been achieved, issue a notice to the Tunnelling Contractor and the Principal in which it states:

(A) the items which remain to be completed before Substantial Completion of the Portion; or

(B) that the Tunnelling Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to notify the Tunnelling Contractor of the items which remain to be completed as contemplated by clause 19.12(f)(ii)(A).

(g) If the Independent Certifier issues a notice under clause 19.12(f)(ii) the Tunnelling Contractor must proceed with the Tunnelling Contractor's Activities and thereafter when it considers it has achieved Substantial Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 19.12(d) and 19.12(f) will reapply.

(h) The Tunnelling Contractor acknowledges and agrees that:

(i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 19.12. including representatives of any Interface Contractor; and

(ii) the Principal's Representative, any Interface Contractor may provide comments to the Independent Certifier (with a copy to the Tunnelling Contractor) in relation to any non-compliance of the Tunnelling Contractor's Activities with this deed.

(i) Without affecting the Tunnelling Contractor's obligation to achieve Substantial Completion of each Portion by the relevant Date for Substantial Completion the parties acknowledge that:

(i) no separate Date for Substantial Completion of the Project Works is specified in this deed;

(ii) Substantial Completion of the Project Works is achieved by achieving Substantial Completion of all Portions;

(iii) Substantial Completion of the Project Works will be taken to have occurred once Substantial Completion of all Portions has occurred; and

(iv) the Date of Substantial Completion of the Project Works will be taken to be the Date of Substantial Completion of the last Portion to reach Substantial Completion.

19.13 **Completion**

(a) When the Tunnelling Contractor considers it has achieved Completion of the Portion, the Tunnelling Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B20. Thereafter, and subject to clause 19.13(d), the Principal's Representative, the Project Director and the Independent Certifier must, within 5 Business Days of receipt of the Tunnelling Contractor's written notice, jointly inspect the Tunnelling Contractor's Activities at a mutually convenient time.

(b) Following the joint inspection under clause 19.13(a), the Independent Certifier must within 5 Business Days of receipt of a notice under clause 19.13(a), or of receipt of a notice under clause 19.13(c):

(i) if Completion of the Portion has been achieved, provide to the Principal's Representative and the Tunnelling Contractor a document signed by the Independent Certifier in the form in Schedule B21; or

(ii) if Completion of the Portion has not been achieved, issue a notice to the Tunnelling Contractor and the Principal in which it states:

(A) the items which remain to be completed before Completion of the Portion; or

(B) that the Tunnelling Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the Tunnelling Contractor of the items which remain to be completed as contemplated by clause 19.13(b)(ii)(A).

(c) If the Independent Certifier issues a notice under clause 19.13(b)(ii) the Tunnelling Contractor must proceed with the Tunnelling Contractor's Activities and thereafter when it considers it has achieved Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 19.13(a) and 19.13(b) will reapply.

(d) The Tunnelling Contractor acknowledges and agrees that:

(i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 19.13, including representatives of any Interface Contractor; and

(ii) the Principal's Representative, any Interface Contractor may provide comments to the Independent Certifier (with a copy to the Tunnelling Contractor) in relation to any non-compliance of the Tunnelling Contractor's Activities with this deed.

(e) Without affecting the Tunnelling Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion the parties acknowledge that:

(i) no separate Date for Completion of the Project Works is specified in this deed;

(ii) Completion of the Project Works is achieved by achieving Completion of all Portions;

(iii) Completion of the Project Works will be taken to have occurred once Completion of all Portions has occurred; and

(iv) the Date of Completion of the Project Works will be taken to be the Date of Completion of the last Portion to reach Completion.

19.14 **Effect of Notice of Milestone Achievement, Notice of Substantial Completion or Notice of Completion**

(a) A Notice of Milestone Achievement, Notice of Substantial Completion or Notice of Completion (as applicable) will not:

(i) constitute approval by the Principal or the Principal's Representative of the Tunnelling Contractor's performance of its obligations under this deed;

(ii) be taken as an admission or evidence that the Project Works or the Handover Works comply with this deed; or

(iii) prejudice any rights or powers of the Principal or the Principal's Representative.

(b) Without limiting clause 19.14(a), the parties agree that, in the absence of manifest error by the Independent Certifier, the Independent Certifier's certification as set out in a Notice of Milestone Achievement, Notice of Substantial Completion or Notice of Completion (as applicable) is final and binding on the parties for the purposes only of establishing that Milestone Achievement of a Milestone or Substantial Completion or Completion (as applicable) of the relevant Portion has occurred.

19.15 **Access following Milestone Achievement of a Milestone or Substantial Completion of a Portion**

Following Milestone Achievement of each Milestone and Substantial Completion of each Portion, the Principal must procure that each relevant Interface Contractor provides the Tunnelling Contractor with such access to the Construction Site as may be reasonably required by the Tunnelling Contractor in order to rectify any Minor Defects and Agreed Defects identified in a Notice of Milestone Achievement or Notice of Substantial Completion, subject to the Tunnelling Contractor complying with the requirements of the Master Interface Deed.

19.16 **Transitional Handover Services and handover**

(a) The Principal's Representative may give written notice to the Tunnelling Contractor at least 5 Business Days before the Tunnelling Contractor's:

(i) estimated Date of Substantial Completion of a Portion (which has been notified in accordance with clause 19.12(a)); or

(ii) estimated Date of Milestone Achievement of a Milestone (which has been notified in accordance with clause 19.11A(a)),

that Transitional Handover Services must be carried out in respect of the Portion or the Milestone Area (as applicable).

(b) If the Principal's Representative gives such a notice:

(i) in respect of:

(A) a Portion, the Tunnelling Contractor must carry out the Transitional Handover Services in respect of the Portion from the relevant Date of Substantial Completion until the date specified in a notice given by the Principal pursuant to clause 19.16(c); or

(B) a Milestone Area, the Tunnelling Contractor must carry out the Transitional Handover Services in respect of the Milestone Area from the relevant Date of Milestone Achievement until the date specified in a notice given by the Principal pursuant to clause 19.16(c); and

(ii) the Tunnelling Contractor is entitled to be paid for the Transitional Handover Services in respect of the Portion or Milestone Area (as applicable) in accordance with the Transitional Handover Services Payment Schedule.

(c) At any time after issuing a notice under clause 19.16(a) in respect of a Portion or a Milestone Area (as applicable), the Principal's Representative may give further written notice to the Tunnelling Contractor that the Tunnelling Contractor is to cease

performance of the Transitional Handover Services in respect of the Portion or Milestone Area (as applicable) on the date specified in the further notice, which date must be at least 3 Business Days after the date on which the Tunnelling Contractor receives the further notice.

(d) On the Portion Handover Date:

(i) the Tunnelling Contractor must:

(A) hand control of the Portion to the Principal; and

(B) provide the Principal with all spare parts, consumables and special tools as required by the Tunnelling Specification (including section 7.6.1 of the General Specification); and

(ii) there must not be any Encumbrances over the Handover Works.

(e) On the Milestone Area Handover Date, the Tunnelling Contractor must hand control of the Milestone Area to the Principal.

19.17 **Final Completion**

(a) When the Tunnelling Contractor considers that Final Completion has been reached, it must give the Principal's Representative notice in writing and deliver a final payment claim which complies with the requirements of clause 20.2(k).

(b) If the Principal's Representative considers that Final Completion has been reached, it will issue a Final Certificate with the payment schedule issued pursuant to clause 20.2(c).

(c) The Final Certificate is without prejudice to any of the Principal's rights under this deed and is not evidence of accord and satisfaction of the Tunnelling Contractor's Activities or the Project Works.

20. PAYMENT

20.1 Principal's payment obligation for design and construction

(a) Subject to clauses 20.9 and 25.11 and to any other right to set-off which the Principal may have under this deed, the Principal must pay the Tunnelling Contractor the Project Contract Sum and any other amount payable by the Principal to the Tunnelling Contractor under this deed in accordance with this clause 20, the Design Payment Schedule, the Construction Payment Schedule, the Performance Incentive Regime Schedule and the Transitional Handover Services Payment Schedule for the progressive completion of the Tunnelling Contractor's Activities.

(b) The Design Payment Schedule, the Construction Payment Schedule, the Performance Incentive Regime Schedule and the Transitional Handover Services Payment Schedule may set out (among other things):

(i) those parts of the Tunnelling Contractor's Activities which must be completed before the Tunnelling Contractor may claim a progress payment with respect to that part;

(ii) the payment the Tunnelling Contractor may claim for each progress payment;

(iii) any limitations or other constraints on the Tunnelling Contractor's ability to make claims for payment; and

(iv) the restrictions (if any) on the timing and sequencing of the Tunnelling Contractor's Activities with which the Tunnelling Contractor must comply.

In addition to the Design Payment Schedule, the Construction Payment Schedule, the Performance Incentive Regime Schedule and the Transitional Handover Payment Schedule, clause 20.2(i) sets out further payment constraints that are to apply.

(c) The Design Contract Sum, the Construction Contract Sum, the Performance Amount and the rates set out in the Transitional Handover Services Payment Schedule are not subject to rise and fall.

20.1A **Monthly payment claim forecasting**

(a) No later than the twenty-second day of each month (or if this day is not a Business Day, the next Business Day after this day), the Tunnelling Contractor must provide the Principal's Representative with its estimate of the magnitude of its end of month progress claim, for that month (**Progress Claim Forecast**).

(b) The Progress Claim Forecast must include a one page summary detailing the magnitude of the payment and assumptions used to determine the amount including specifically assumptions of forecast work to be completed up to the end of the month.

20.2 **Payment claims**

(a) The Tunnelling Contractor must give the Principal's Representative a progress claim, with respect to the Project Contract Sum, the Performance Amount and any other amount payable by the Principal to the Tunnelling Contractor under this deed (including any amounts payable under clause 19.16(b)(ii)):

(i) on the last Business Day of each month, which progress claim must capture all work performed up to and including the twenty-fifth day of the same month (excluding any work captured in any previous progress claim made by the Tunnelling Contractor under this deed); and

(ii) thirty (30) Business Days after:

(A) the issue of a Notice of Substantial Completion for the last Portion to reach Substantial Completion; and

(B) the issue of a notice of Final Completion under clause 19.17(a).

(b) For each claim made under clause 20.2(a) and clause 20.13, the Tunnelling Contractor must:

(i) give the Principal's Representative:

(A) a claim in a format required by the Principal's Representative (including electronic format) showing the amount the Tunnelling Contractor claims (including a breakdown of the amount of work completed and the amounts payable in respect of Sydney Metro Works, each category of Third Party Works and any specific assets notified by the Principal to the Tunnelling Contractor, including evidence of the relevant completion date of each category of Third Party Works and any such specific assets (as the case may be)); and

(B) where the Principal has given notice under clause 21.6(a)(iv), a valid tax invoice for any taxable supplies to which the payment relates; and

(ii) in the case of the payment claims issued after:

(A) the issue of a Notice of Substantial Completion for the last Portion to reach Substantial Completion; and

(B) the issue of a notice of Final Completion under clause 19.17(a),

comply with clause 20.2(k).

(c) The Principal's Representative must, on behalf of the Principal, within 10 Business Days of receipt of the Tunnelling Contractor's claim under clause 20.2(a), issue to the Tunnelling Contractor and the Principal, a payment schedule stating the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Tunnelling Contractor under this deed and which the Principal proposes to pay to the Tunnelling Contractor or the amount which the Principal's Representative believes to be then payable by the Tunnelling Contractor to the Principal, including details of the calculation of the progress amount.

In issuing a payment schedule the Principal's Representative:

(i) may deduct from the amount which would otherwise be payable to the Tunnelling Contractor any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed, including any amount which the Principal is entitled to set-off or withhold under clause 20.9; and

(ii) must if the payment schedule shows an amount less than the amount claimed by the Tunnelling Contractor in the progress claim, set out in the payment schedule why the amount is less and if the reason for the difference is that the Principal has retained, deducted withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.

(d) If the Tunnelling Contractor does not give the Principal's Representative a progress claim at a time required by clause 20.2(a), the Principal's Representative may nevertheless (but is not obliged to) issue a payment schedule as if a progress claim was made at the time required.

(e) A payment schedule issued under clause 20.2(c) or 20.2(d) will separately identify the sum of the amounts due on account of the Design Contract Sum, the Construction Contract Sum, the Performance Amount and any other amount payable by the Principal to the Tunnelling Contractor or by the Tunnelling Contractor to the Principal under this deed.

(f) Where the Principal has given notice under clause 21.6(a)(iv), if the amount set out in a payment schedule issued under clause 20.2(c) is different to the amount in the Tunnelling Contractor's progress claim or if the Principal's Representative issues a payment schedule under clause 20.2(d), the Tunnelling Contractor must, within 2 Business Days of receiving the payment schedule, issue a revised tax invoice or adjustment note (as the case may be) to the Principal to reflect the amount in the payment schedule.

(g) Within 15 Business Days of the date of the Tunnelling Contractor's progress claim in accordance with clause 20.2(a) or within 5 Business Days of the issue of a payment schedule in accordance with clause 20.2(d):

(i) where the payment schedule provides that an amount is payable by the Principal to the Tunnelling Contractor, but subject to clauses 20.4, 20.5, 20.6, 20.7 and 25.11 and the Design Payment Schedule, the Construction Payment Schedule and the Performance Incentive Regime Schedule, the Principal must pay the Tunnelling Contractor the progress payment due to the Tunnelling Contractor as certified in the payment schedule; and

(ii) where the payment schedule provides that an amount is payable by the Tunnelling Contractor to the Principal, the Tunnelling Contractor must pay the Principal the amount due to the Principal as certified in the payment schedule.

(h) If the Tunnelling Contractor lodges a progress claim earlier than at the times specified under clause 20.2(a), the Principal's Representative will not be obliged to issue the payment schedule in respect of that progress claim earlier than it would have been obliged had the Tunnelling Contractor submitted the progress claim in accordance with this deed.

(i) Despite any other provisions of this deed to the contrary, the amount of any progress claim to which the Tunnelling Contractor is entitled in relation to this deed and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 20.2(c) as the amount payable to the Tunnelling Contractor arising out of or in any way in connection with this deed will:

(i) not include the following amounts:

(A) any amount which this deed provides cannot be claimed or is not payable because of the failure by the Tunnelling Contractor to take any action (including to give any notice to the Principal or the Principal's Representative);

(B) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);

(C) any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any events identified in the Design Payment Schedule, the Construction Payment Schedule or the Performance Incentive Regime Schedule);

(D) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;

(E) any amount in respect of which the Tunnelling Contractor has failed to provide supporting information as required by this deed; or

(F) any amount for work which is not in accordance with this deed;

(ii) deduct the following amounts:

(A) any amounts which have become due from the Tunnelling Contractor to the Principal under this deed; and

(B) any amounts which the Principal is entitled under this deed to retain, deduct, withhold or set-off against the progress claim, including under clauses 20.4, 20.5 or 20.9;

(iii) in determining amounts to be excluded or deducted under subparagraphs (i) and (ii), have regard to matters or circumstances occurring at any time before the date that the determination is being made; and

(iv) be determined having regard to the Project Contract Sum (with additions or deductions, if any, provided for by this deed).

(j) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount

which would otherwise be payable to the Tunnelling Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.

(k) The Tunnelling Contractor must include in the payment claim lodged by it after:

(i) the issue of a Notice of Substantial Completion for the last Portion to reach Substantial Completion; and

(ii) the issue of a notice of Final Completion under clause 19.17(a),

all Claims that the Tunnelling 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 Tunnelling Contractor's Activities, the Project Works or this deed which occurred:

(iii) in the case of the payment claim referred to in subparagraph (i), prior to the date of that payment claim; and

(iv) in the case of the payment claim referred to in subparagraph (ii), in the period between the date of the payment claim referred to in subparagraph (i) and the date of the payment claim.

The Tunnelling 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 Tunnelling Contractor's Activities, the Project Works or this deed that occurred prior to the date of submission of the relevant payment claim referred to in subparagraphs (i) or (ii), except for any claim which:

(v) has been included in the relevant payment claim which is given to the Principal's Representative within the time required by, and in accordance with, clause 20.2(a); and

(vi) has not been barred under another provision of this deed.

20.3 **Effect of payment schedules and payments**

Neither the issue of a payment schedule under clause 20.2(c), nor the making of any payment pursuant to any such payment schedule, will:

(a) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;

(b) constitute evidence of the value of any work or an admission of liability or evidence that work has been executed or completed in accordance with this deed; or

(c) prejudice the right of either party to dispute under clause 25 whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under clause 25 or as otherwise agreed, of the amount properly due and payable, the Principal or the Tunnelling Contractor, as the case may be, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),

and any payments made pursuant to a payment schedule are payments on account only. [redacted]

20.4 **Provision of documentation and other requirements**

(a) Subject to clause 20.4(c), the Principal is not obliged to pay the Tunnelling Contractor any more than [redacted] of the amount that the Principal's Representative would

otherwise have set out in any payment schedule unless and until the Tunnelling Contractor has:

(i) effected and is maintaining all insurances that the Tunnelling Contractor is required to effect and maintain under clause 23 and has complied with clause 23.15;

(ii) complied with clauses 5.1(c) and 6.1(a);

(iii) complied with its obligations under clause 4.18(a)(i);

(iv) provided a statement by the Quality and Systems Manager in the form of Schedule B13 that the parts of the Tunnelling Contractor's Activities in respect of which any payment is claimed comply with the requirements of this deed;

(v) where clause 20.8(q) applies, provided the Principal's Representative with the statement and evidence (if any) required to be provided by the Tunnelling Contractor pursuant to that clause;

(vi) provided the Principal's Representative with a statutory declaration in the form of Schedule B15 which has been duly executed:

(A) by a representative of the Tunnelling Contractor who is in a position to know the facts declared; and

(B) on the date the relevant payment claim was issued; and

(vii) where the Principal has given notice under clause 21.6(a)(iv), provided the Principal's Representative with a tax invoice, revised tax invoice or adjustment note (as applicable) as required under clause 20.2(b)(i)(B) and clause 20.2(f).

(b) Subject to clause 20.4(c), the Principal is not obliged to pay the Tunnelling Contractor any more than [redacted] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless the Tunnelling Contractor has provided the updated Overall D&C Program required by clause 19.2.

(c) This clause 20.4 does not apply to the Initial Payment.

20.5 **Payment of Subcontractors, workers compensation and payroll tax**

(a) If a worker 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 (including Materials) supplied for, or work performed with respect to, the Tunnelling 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 GST exclusive amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid shall be a debt due from the Tunnelling Contractor to the Principal.

(b) If the Principal receives notices of:

(i) the Tunnelling Contractor being placed under administration, judicial management or receivership; or

(ii) the making of a winding up order in respect of the Tunnelling Contractor,

the Principal will not make any payment to a worker or Subcontractor without the concurrence of the administrator, judicial manager, receiver, receiver and manager provisional liquidator or liquidator, as the case may be.

(c) Nothing in this clause 20.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act* 1987 (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

20.6 **Payment for Key Plant and Equipment**

(a) The Principal is not under any obligation to pay any amount as an advance payment in accordance with this clause 20.6 unless the following conditions precedent have been satisfied:

(i) the Tunnelling Contractor has delivered to the Principal [redacted] that comply with the requirements of clause 6.2;

[redacted]

(iii) the Tunnelling Contractor has done all other things required by clause 20.6(f).

[redacted]

(f) The Tunnelling Contractor must do all things the Principal considers reasonably necessary to ensure that the Principal's Security Interests in the Key Plant and Equipment:

(i) are enforceable, perfected, effective; and

[redacted]

(g) Promptly after:

(i) the Tunnelling Contractor notifies the Principal in writing that an item of Key Plant and Equipment is no longer required and will not further be used by the Tunnelling Contractor in carrying out the Tunnelling Contractor's Activities; and

(ii) the Principal's Representative is satisfied that the item of Key Plant and Equipment is no longer required and will not further be used by the Tunnelling Contractor in carrying out the Tunnelling Contractor's Activities,

the Principal must:

(iii) release the relevant charge in relation to that item of Key Plant and Equipment; and

(iv) take all steps reasonably required in order to remove, from the PPS Register, any registration(s) by the Principal of the Security Interest(s) provided for by this clause 20.6 in respect of that item of Key Plant and Equipment.

(h) Subject to the Principal's rights to have recourse to the unconditional undertakings and to the cash proceeds if one or more of the unconditional undertakings are converted into cash, the Principal's entitlement to the unconditional undertakings provided under clause 20.6(a)(i) will:

(i) be reduced by [redacted] on the date which is 20 Business Days after the date on which the first TBM commences tunnelling; and

(ii) cease on the date which is 20 Business Days after the date on which the second TBM commences tunnelling.

20.7 **Payment for unfixed Materials**

(a) The value of unfixed Materials intended for incorporation in the Project Works but not yet incorporated are not to be included in a payment schedule under clause 20.2(c) and the Principal is under no obligation to pay for such Materials unless the following conditions precedent have been satisfied:

(i) the Tunnelling Contractor:

(A) has provided to the Principal at the same time as its progress claim under clause 20.2(a) an unconditional undertaking that complies with the requirements of clause 6.2, for an amount equal to the payment claimed for the Materials; and

(B) gives the Principal's Representative such evidence as may be required by the Principal's Representative that title to the unfixed Materials will vest in the Principal upon payment;

(ii) the Materials are clearly marked as the property of the Principal and are on the Project Site or Temporary Areas or available for immediate delivery to the Project Site or Temporary Areas;

(iii) the Materials are properly stored in a place approved by the Principal's Representative; and

(iv) there is evidence (in a form satisfactory to the Principal) that the Tunnelling Contractor has registered a Security Interest in favour of the Principal in the unfixed Materials.

(b) Upon payment of a payment schedule which includes an amount in respect of unfixed Materials, title in the unfixed Materials will vest in the Principal.

(c) If the Tunnelling Contractor provides an unconditional undertaking for payment for unfixed Materials, the Principal must release the unconditional undertaking to the Tunnelling Contractor within 5 Business Days of those Materials:

(i) being incorporated into the Project Works; and

(ii) complying with the requirements of this deed.

(d) The parties agree that clause 20.7(a)(i)(A) does not apply to pre-cast tunnel lining segments to be incorporated into the Project Works.

20.8 **SOP Act**

(a) Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).

(b) The Tunnelling Contractor must ensure that a copy of any written communication it delivers or arranges to deliver 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.

(c) In responding to the Tunnelling Contractor under the SOP Act, the Principal's Representative also acts as the agent of the Principal.

(d) 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 Tunnelling Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,

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

(e) Without limiting paragraph (c), 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).

(f) For the purposes of this deed, the amount of the progress payment to which the Tunnelling Contractor is entitled under this deed will be the amount certified by the Principal's Representative in a payment schedule under clause 20.2 less any amount

the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.

(g) The Tunnelling Contractor agrees that:

(i) the date prescribed by clause 20.2(a) as the date on which the Tunnelling Contractor is entitled to make a progress claim is, for the purposes of the SOP Act (including section 13 of the SOP Act), the date on which a payment claim may be served; and

(ii) a progress claim is not a document notifying an obligation on the Principal to make any payment and the Principal will have no liability to make a payment of any amount in respect of a progress claim unless the amount has been included in a payment schedule issued by the Principal's Representative in accordance with clause 20.2(c) or 20.2(d).

(h) Nothing in this deed will be construed to:

(i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a breach of this deed (unless the Principal would have been in breach of this deed if the SOP Act had no application); or

(ii) subject to paragraph (i), give to the Tunnelling Contractor rights under this deed which extend or are in addition to rights given to the Tunnelling Contractor by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.

(i) If the Tunnelling Contractor suspends the whole or part of the Tunnelling Contractor's Activities pursuant to the SOP Act:

(i) the suspension will be an Act of Prevention for the purposes of this deed; and

(ii) except to the extent (if any) expressly provided under the SOP Act and subparagraph (h), the Principal will not be liable for and the Tunnelling Contractor is not entitled to Claim any Loss suffered or incurred by the Tunnelling Contractor as a result of the suspension.

(j) The Tunnelling Contractor must indemnify and keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of:

(i) a suspension by a Subcontractor of work which forms part of the Tunnelling Contractor's Activities pursuant to the SOP Act; or

(ii) a failure by the Tunnelling Contractor to comply with its obligations under paragraph (b).

(k) The Tunnelling Contractor agrees that for the purposes of section 17(3) of the SOP Act:

(i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the Tunnelling Contractor's Activities is to be made; and

(ii) the Tunnelling Contractor must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).

(l) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Tunnelling Contractor:

(i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 20.2(c);

(ii) if it is subsequently determined pursuant to this deed that the Tunnelling Contractor was not entitled under this deed to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by the Tunnelling Contractor to the Principal which the Tunnelling Contractor must pay to the Principal upon demand and in respect of which the Tunnelling Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;

(iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Tunnelling Contractor to the Principal upon demand and in respect of which the Tunnelling Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and

(iv) the Principal's Representative:

(A) is not bound by the adjudication determination;

(B) may reassess the value of the work that was valued by the adjudicator; and

(C) may, if it disagrees with the adjudication determination, express its own valuation in any payment schedule.

(m) Without limiting clause 20.9, 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.

(n) If the Principal withholds from money otherwise due to the Tunnelling 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 Tunnelling Contractor from the Principal; and

(ii) the period during which the Principal retains money due to the Tunnelling 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 Tunnelling Contractor has been unpaid; and

(B) the date by which payment of money owed by the Principal to the Tunnelling Contractor must be made.

(o) The Tunnelling 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.

(p) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Tunnelling Contractor to the Principal.

(q) 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 Tunnelling 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 Tunnelling Contractor must so notify the Principal within 5 Business Days of the occurrence of the event in clause 20.8(n)(i) or 20.8(n)(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).

20.9 Right of set-off

The Principal's Representative may (on behalf of the Principal) in any payment schedule issued under clauses 20.2(c) or 20.2(d) withhold, set-off or deduct from the money which would otherwise be certified as payable to the Tunnelling Contractor or the Principal may at any time withhold, set-off or deduct from moneys otherwise due to the Tunnelling Contractor under this deed:

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

(c) any amount that the Principal is entitled to withhold under clause 20.4; or

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

under or arising out of or in connection with this deed or the Tunnelling Contractor's Activities and the Principal may make such withholding, set-off or deduction whether or not such amounts were included in a payment schedule issued by the Principal's Representative.

This clause 20.9 will survive the termination of this deed.

20.10 Interest

The Principal will pay simple interest at the rate of [redacted] above the Bank Bill Rate on any:

(a) amount which has been set out as payable by the Principal's Representative in a payment schedule under clause 20.2(c), but which is not paid by the Principal within the time required by this deed;

(b) damages; and

(c) amount which is found after the resolution of a Dispute to be payable to the Tunnelling Contractor, and which has not been paid by the Principal,

from the date such amount was first due and payable until the date such amount is paid.

This will be the Tunnelling Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

20.11 **Title**

Title in all items forming part of the Project Works and the Handover Works will pass progressively to the Principal on the earlier of payment for, or installation of, such items to the Construction Site. Risk in all such items remains with the Tunnelling Contractor in accordance with clause 23.

20.12 **Provisional Sum Work & Call-off Services**

(a) For each item of Provisional Sum Work other than the Archaeological Clearance Works (which are subject to clause 20.12(h)), the Principal's Representative will give the Tunnelling Contractor a direction either requiring the Tunnelling Contractor to proceed with the item of Provisional Sum Work or deleting the item of Provisional Sum Work.

(b) Subject to clause 20.12(f), where the Principal's Representative gives the Tunnelling Contractor a notice requiring the Tunnelling Contractor to proceed with an item of Provisional Sum Work, the Project Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:

(i) the amount allowed for the item of Provisional Sum Work in the Design Payment Schedule or the Construction Payment Schedule; and

(ii) any of:

(A) an amount agreed between the Tunnelling Contractor and the Principal's Representative; or

(B) otherwise, an amount determined by the Principal's Representative having regard to:

(aa) where there are relevant rates and prices, the cost estimate provided by the Tunnelling Contractor, the relevant rates and prices included in the Design Payment Schedule or the Construction Payment Schedule and any other relevant market rates and prices plus Overheads and Profit Margin (except to the extent the relevant rates and prices are inclusive of overheads and profit); or

(bb) otherwise, the Tunnelling Contractor's Direct Costs, Overheads and Profit Margin,

and the difference will be added to or deducted from the Project Contract Sum.

(c) Where the Principal's Representative gives the Tunnelling Contractor a direction deleting an item of Provisional Sum Work:

(i) the Project Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in the Design Payment Schedule or the Construction Payment Schedule;

(ii) 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

(iii) the Principal will not be liable upon any Claim by the Tunnelling Contractor arising out of the deletion of the item of Provisional Sum Work.

(d) If the Principal provides the Tunnelling Contractor with such further information as is reasonably required for the Tunnelling Contractor to provide a fixed lump sum price for any relevant item of Provisional Sum Work other than Archaeological Clearance Works, the Tunnelling Contractor must, within 10 Business Days of being requested to do so, submit to the Principal's Representative a fixed lump sum price proposal for the relevant item of Provisional Sum Work which includes a reasonable cost breakdown for the lump sum price (**Lump Sum Price Proposal**).

(e) Following the Tunnelling Contractor's submission of a Lump Sum Price Proposal, the Principal's Representative will adjust the Project Contract Sum by the difference between:

(i) the amount allowed for the item of Provisional Sum Work in the Design Payment Schedule or the Construction Payment Schedule; and

(ii) any of:

(A) an amount agreed between the Tunnelling Contractor and the Principal's Representative; or

(B) otherwise, an amount valued by the Principal's Representative having regard to:

(aa) where there are relevant rates and prices, the Lump Sum Price Proposal, the relevant rates and prices included in the Design Payment Schedule or the Construction Payment Schedule and any other relevant market rates and prices plus Overheads and Profit Margin (except to the extent the relevant rates and prices are inclusive of overheads and profit); or

(bb) otherwise, the Tunnelling Contractor's Direct Costs, Overheads and Profit Margin,

and the difference will be added to or deducted from the Project Contract Sum and thereafter clauses 20.12(b) and 20.12(c) will not apply.

(f) In the case of Call-off Services, the Tunnelling Contractor:

(i) must carry out such services when directed to do so by the Principal's Representative under clause 5.4(aa);

(ii) will, subject to clause 20.12(f)(iii) and clause 20.12(g), be paid for the performance of such services in accordance with the relevant rates set out in the relevant Nominated Subcontract and section 5 of Cost Centre 18 of the Construction Payment Schedule; and

(iii) will be entitled to claim payment under clause 20.2 in respect of such services.

(g) Where the aggregate amount payable by the Principal under this deed in respect of any Call-off Service:

(i) has exceeded in total the provisional sum allowed for that Call-off Service in the Design Payment Schedule or the Construction Payment Schedule, the amount will be added to the Design Contract Sum or Construction Contract Sum (as applicable); or

(ii) is in total less than the relevant provisional sum allowed in the Design Payment Schedule or the Construction Payment Schedule, the difference will be deducted from the Design Contract Sum or Construction Contract Sum (as applicable) and will be a debt due and payable from the Tunnelling Contractor to the Principal.

(h) In the case of an item of Provisional Sum Work that is also Archaeological Clearance Works:

(i) the Tunnelling Contractor must carry out such Archaeological Clearance Works, provided that the Tunnelling Contractor provides to the Principal, on a monthly basis, a forecast of the Archaeological Clearance Works to be performed;

(ii) the Tunnelling Contractor will be paid:

(A) an amount agreed between the Tunnelling Contractor and the Principal's Representative; or

(B) otherwise, an amount determined by the Principal's Representative having regard to:

(aa) where there are relevant rates and prices in the Nominated Subcontract, the cost estimate provided by the Tunnelling Contractor, the relevant rates and prices included in the Nominated Subcontract and any other relevant market rates and prices plus Overheads (calculated on the basis that the relevant rates and prices will be treated as Direct Costs) and Profit Margin; and

(bb) any other Tunnelling Contractor's Direct Costs plus Overheads and Profit Margin on those Direct Costs incurred in the performance of Archaeological Clearance Works; and

(iii) once the Archaeological Clearance Works at an Artefact Risk Area are completed in accordance with clause 12.12(b), the Project Contract Sum will be adjusted for the relevant item of Provisional Sum Work in accordance with clause 20.12(b) (with any amendments necessary taking into account how the Tunnelling Contractor is paid for Archaeological Clearance Works under paragraph (ii) above).

(i) The parties acknowledge and agree that the principles set out in clauses 3(a), (b), (f), (g), (h) and (i) of Schedule E9 will be apply to the valuing of any adjustment to the Project Contract Sum under clauses 20.12(b)(ii)(B), 20.12(e)(ii)(B), 20.12(g) and 20.12(h) by the Principal's Representative (with any consequential changes necessary to take into account the nature of these clauses).

20.13 **Initial Payment**

(a) The Principal will pay to the Tunnelling Contractor the Initial Payment on the later of:

(i) 15 Business Days after the satisfaction (or waiver under clause 2.3) of all Conditions Precedent; and

(ii) receipt by the Principal of the unconditional undertakings in accordance with clause 6.1(a).

(b) The Tunnelling Contractor must submit to the Principal a payment claim for the Initial Payment in accordance with clause 20.2.

(c) The parties acknowledge and agree that:

(i) the Initial Payment:

(A) is an advance payment that is intended to assist the Tunnelling Contractor with its cash-flow during the early stages of the Tunnelling Contractor's Activities;

(B) is made on an on-account basis; and

(C) may be applied by the Principal in satisfaction of the Project Contract Sum and any other amount owed by the Principal to the Tunnelling Contractor under this deed; and

(ii) the payment of the Initial Payment or the application of any part of the Initial Payment by the Principal in accordance with clause 20.13(c)(i)(C) will not:

(A) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;

(B) constitute evidence of the value of any work or an admission of Liability or evidence that work has been executed or completed in accordance with this deed; or

(C) prejudice the right of either party to dispute whether any amount certified as payable in a payment schedule is the amount properly due and payable under this deed.

(d) In each of the [redacted] immediately following the month that the Tunnelling Contractor submits its [redacted] monthly payment claim under clause 20.2 of this deed, the amount payable to the Tunnelling Contractor in connection with the payment claim made by the Tunnelling Contractor under clause 20.2 for that respective month will be reduced by an amount equivalent to [redacted] of the value of the Initial Payment.

(e) If this deed is terminated, for any reason, prior to the date falling [redacted] after the date of payment by the Principal of the Initial Payment in accordance with clause 20.13(a), then the Tunnelling Contractor must repay to the Principal the amount calculated in accordance with paragraph 8 of Cost Centre 1 of Part 2 of the Construction Payment Schedule.

(f) If the Tunnelling Contractor does not pay the amount contemplated in clause 20.13(e) within 5 Business Days of the date of termination of this deed, the Principal may have recourse to any of the unconditional undertakings provided under clause 6.1(a).

20.14 Post-Award Performance Incentive Payment Regime

(a) Without limiting clause 20.15, the Principal's Representative may, after the date of this deed, in its absolute discretion and without being under any obligation to do so, direct the implementation of a performance incentive payment regime by giving written notice to the Tunnelling Contractor.

(b) Any notice issued by the Principal's Representative under clause 20.14(a) will set out detailed particulars of:

(i) the key performance indicators, measurement criteria and benchmarks;

(ii) the calculation of the relevant performance incentive payments and the process for payment; and

(iii) any other information that is necessary for the implementation of the performance incentive payment regime.

(c) Any performance incentive payment regime which is the subject of a notice under clause 20.14(a) will not:

(i) relieve the Tunnelling Contractor from or alter its liabilities or obligations under this deed or otherwise according to Law;

(ii) entitle the Tunnelling Contractor to make (nor will it make the Principal liable upon) any Claim (including any Change) arising out of or in any way in connection with the direction; and

(iii) limit or otherwise affect the Principal's rights against the Tunnelling Contractor, whether under this deed or otherwise according to Law.

(d) No payment made by the Principal, if any, pursuant to a performance incentive payment regime contemplated by this clause 20.14 will:

(i) constitute approval of any work or other activities performed by the Tunnelling Contractor or prejudice any Claim by the Principal whether under this deed or otherwise at Law; or

(ii) constitute evidence of the value of any work or other activities, an admission of liability or evidence that any work or other activities have been performed in accordance with the requirements of this deed.

(e) Any performance incentive payment made by the Principal under this clause 20.14, if any, will be additional to the Project Contract Sum.

20.15 **Performance Amount**

The Tunnelling Contractor will be entitled to claim the Performance Amount, if any, in accordance with the Performance Incentive Regime Schedule.

[redacted]

21. GST

21.1 Interpretation

(a) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 21.

(b) Unless otherwise expressly stated, all consideration to be provided under this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 21.

21.2 GST payable

(a) If GST is or will be payable in relation to a supply made by a party (the **Supplier**) under or in connection with this deed, then the party who is the recipient of the supply (the **Recipient**) must pay an additional amount to the Supplier equal to the amount of GST payable on the supply (**GST Amount**) at the same time as any other consideration is to be first provided for that supply.

(b) Subject to clause 21.6, the Supplier must provide a tax invoice to the Recipient for the supply no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 21.2(a).

21.3 Adjustments

(a) If the GST Amount payable in relation to a supply made under or in connection with this deed varies from the GST Amount paid by the Recipient under clause 21.2(a), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient subject to the issue of an adjustment note (except where the Recipient is required to issue a recipient created adjustment note).

(b) If an adjustment event occurs in relation to a supply made under or in connection with this deed, the Supplier must give the Recipient an adjustment note as soon as reasonably practicable after the Supplier becomes aware of the adjustment event, but no later than 28 days after the adjustment event.

21.4 Non-monetary consideration

(a) To the extent that the consideration provided for a taxable supply to which clause 21.2(a) applies is a taxable supply made by the Recipient to the Supplier in the same tax period (**Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 21.2(a) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

(b) Subject to clause 21.6, the Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 21.2(a).

21.5 Reimbursements

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this deed must exclude the amount of GST referrable to the cost to the extent to which an entitlement arises to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

21.6 **Recipient created tax invoices**

(a) The parties agree that unless and until otherwise agreed in writing, the following will apply to all taxable supplies made by the Tunnelling Contractor to the Principal under or in connection with this deed:

(i) the Principal will issue to the Tunnelling Contractor a recipient created tax invoice (**"RCTI"**) for each taxable supply made by the Tunnelling Contractor to the Principal under this deed;

(ii) the Principal will issue to the Tunnelling Contractor a recipient created adjustment note for any adjustment event;

(iii) the Tunnelling Contractor will not issue a tax invoice or adjustment note in respect of any taxable supply it makes to the Principal; and

(iv) the Principal may notify the Tunnelling Contractor that it will no longer issue a RCTI or recipient created adjustment note for each taxable supply made by the Tunnelling Contractor under this deed, in which case, from that point in time, the Principal will not be required to issue RCTIs and recipient created adjustment notes in respect of such supplies and the Tunnelling Contractor will be required to issue tax invoices and adjustment notes to the Principal in respect of any such taxable supply.

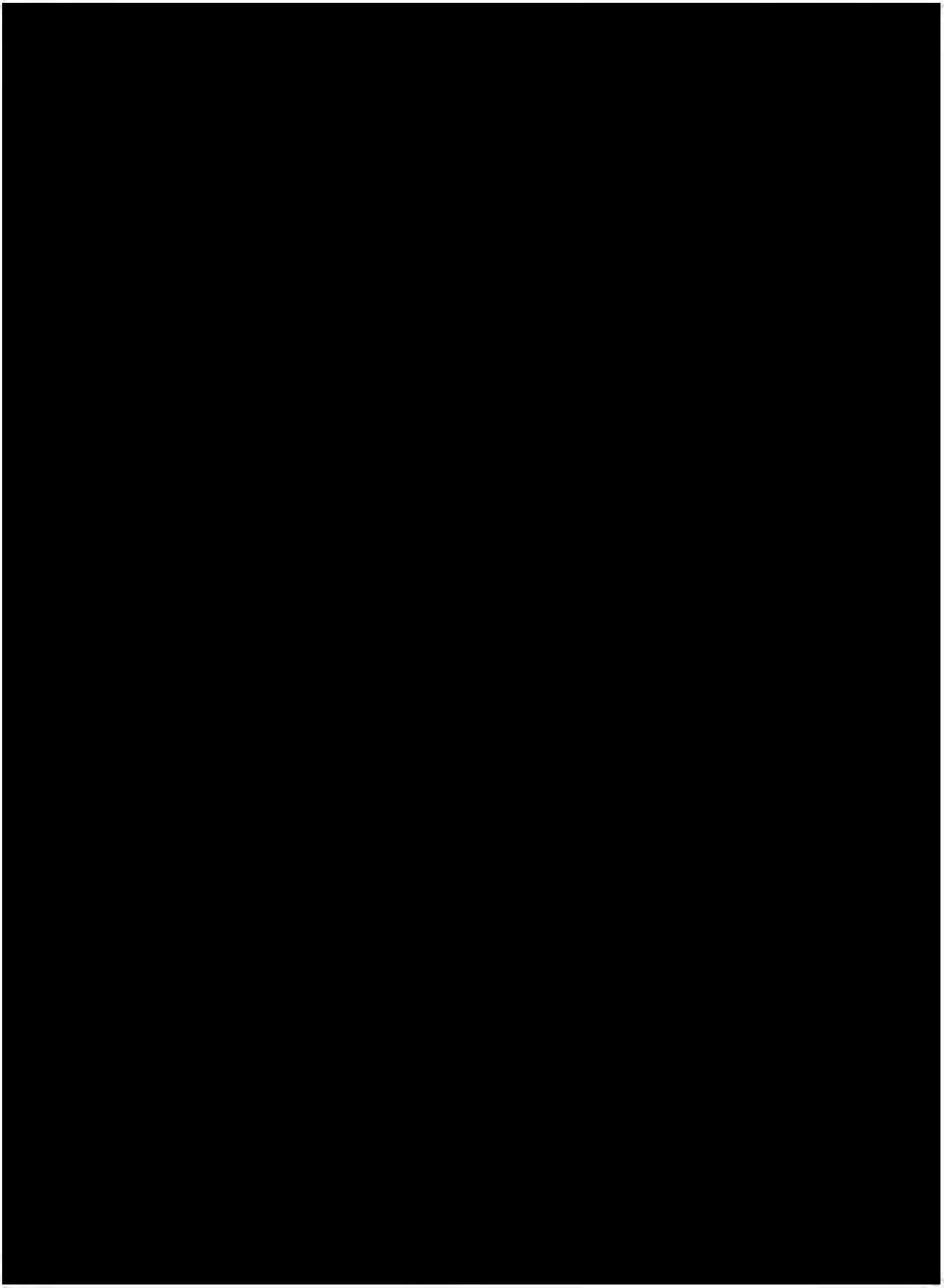
(b) Each party acknowledges and warrants that at the time of entering into this deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

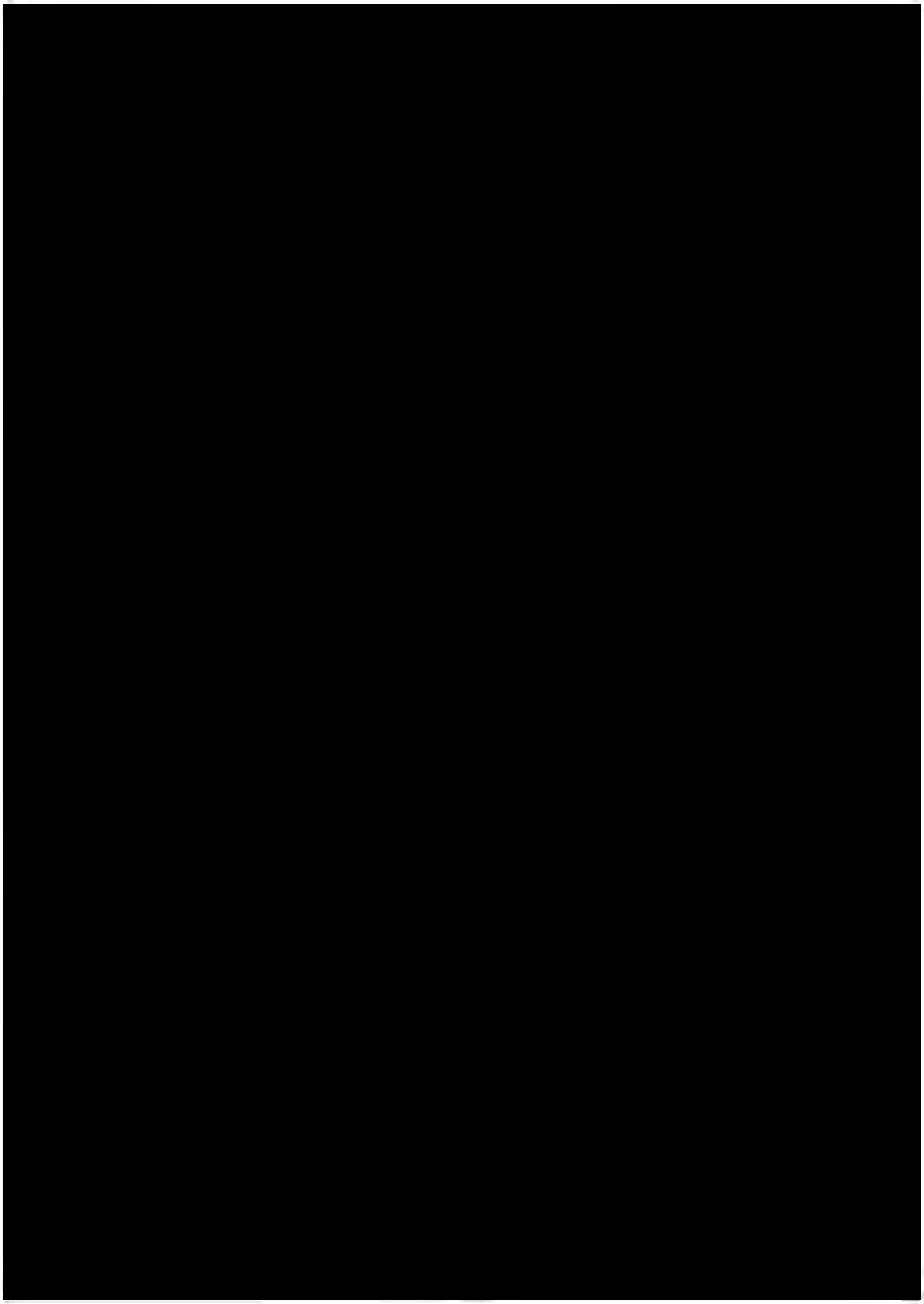
21.7 **No merger**

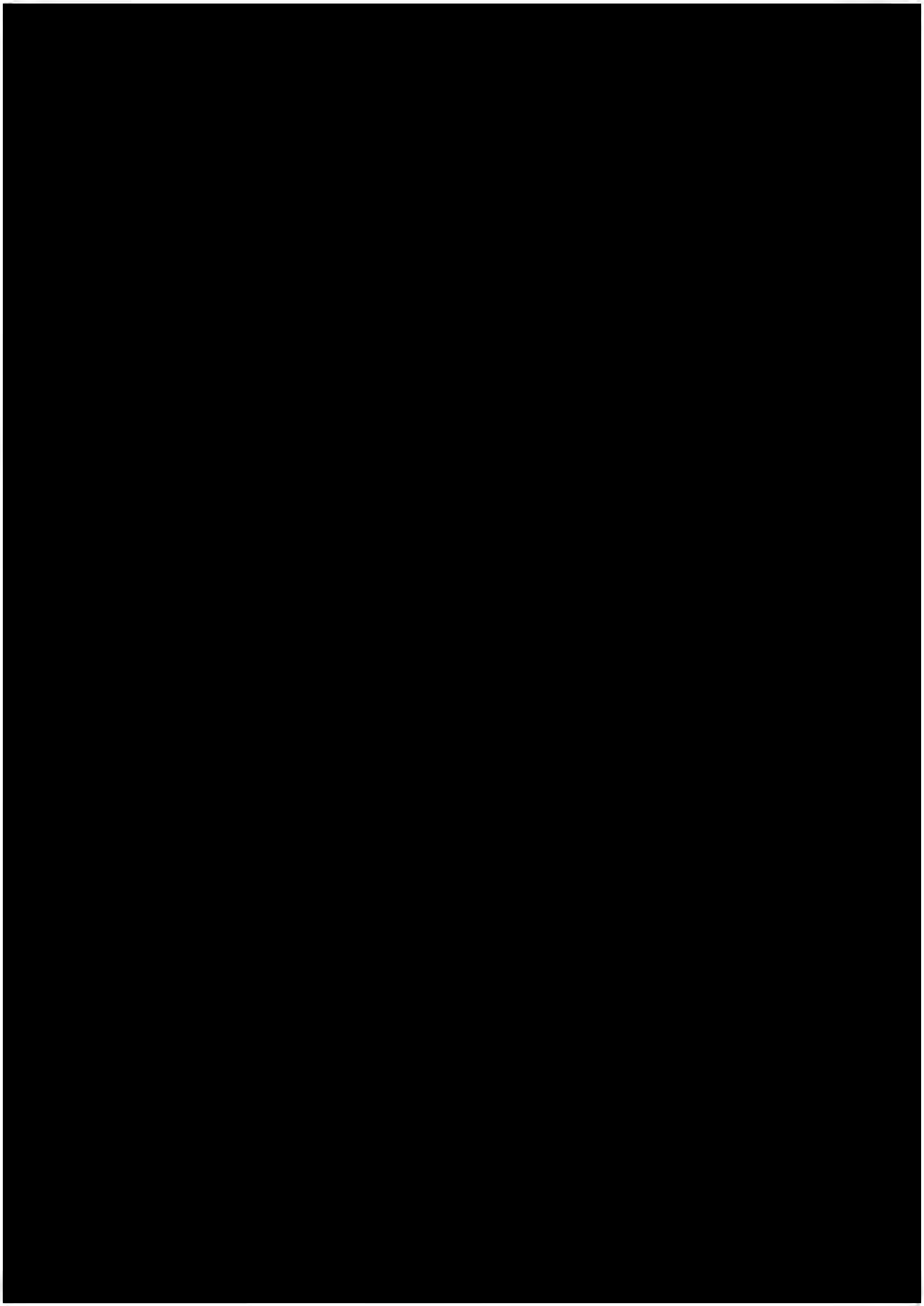
This clause 21 will not merge on completion or termination of this deed.

22. **LIABILITY**

[redacted]







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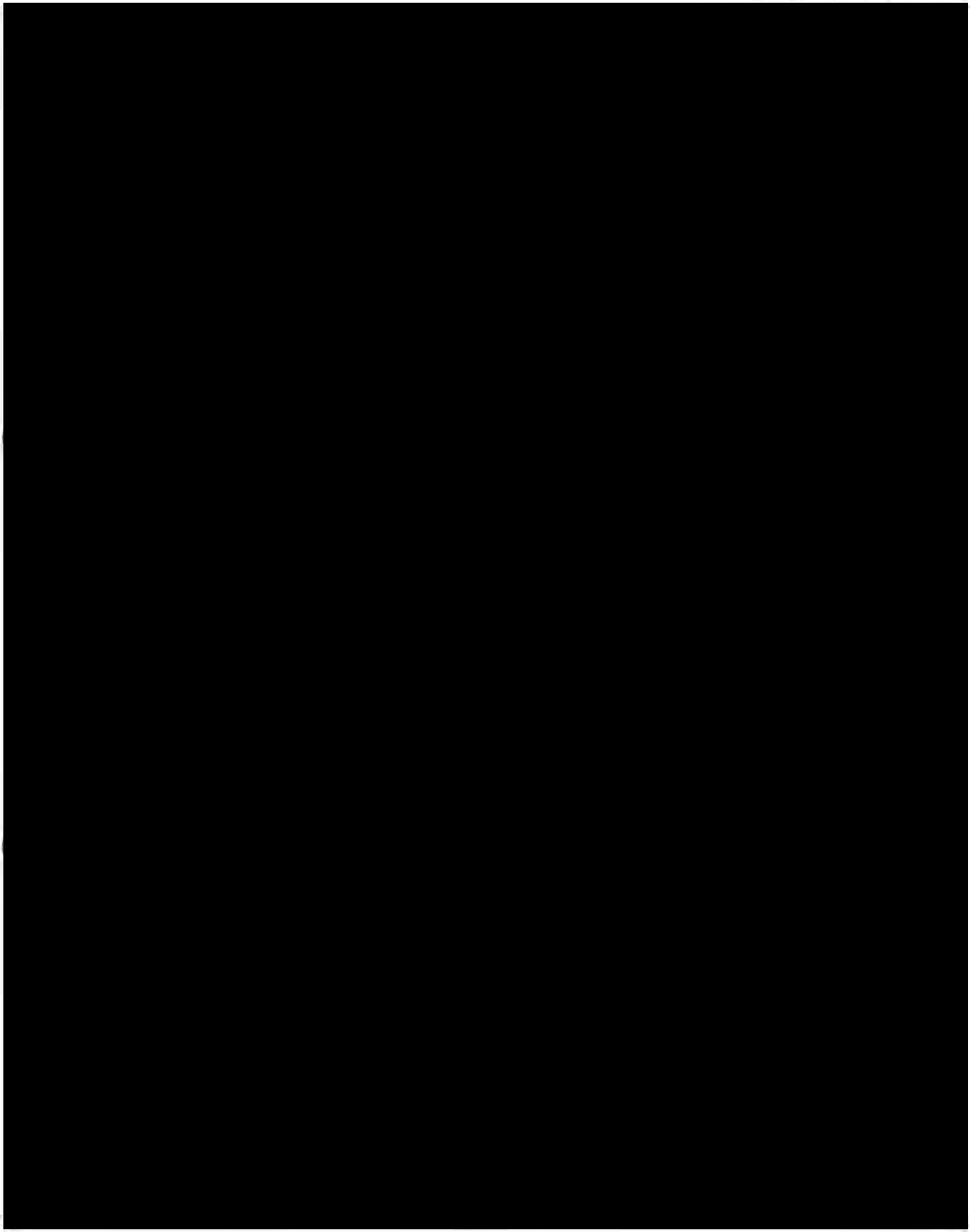


22.8 **Exclusion of proportionate liability scheme**

To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Principal and the Tunnelling Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

22.9 **Tunnelling Contractor not to apply proportionate liability scheme**

To the extent permitted by Law:

(a) the Tunnelling 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 Tunnelling Contractor (whether in contract, tort or otherwise); and

(b) 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 Tunnelling Contractor (whether in contract, tort or otherwise), the Tunnelling Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the Tunnelling Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

22.10 **Insurance requirements**

The Tunnelling Contractor must ensure that all policies of insurance covering third party liability which it is required by this deed to effect or maintain (including the asbestos liability insurance policy referred to in clause 23.7, the motor vehicle policy referred to in clause 23.10 and the marine hull insurance policy referred to in clause 23.12):

(a) cover the Tunnelling Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and

(b) do not exclude any potential liability the Tunnelling Contractor may have to the Principal under or by reason of this deed.

22.11 **Survival**

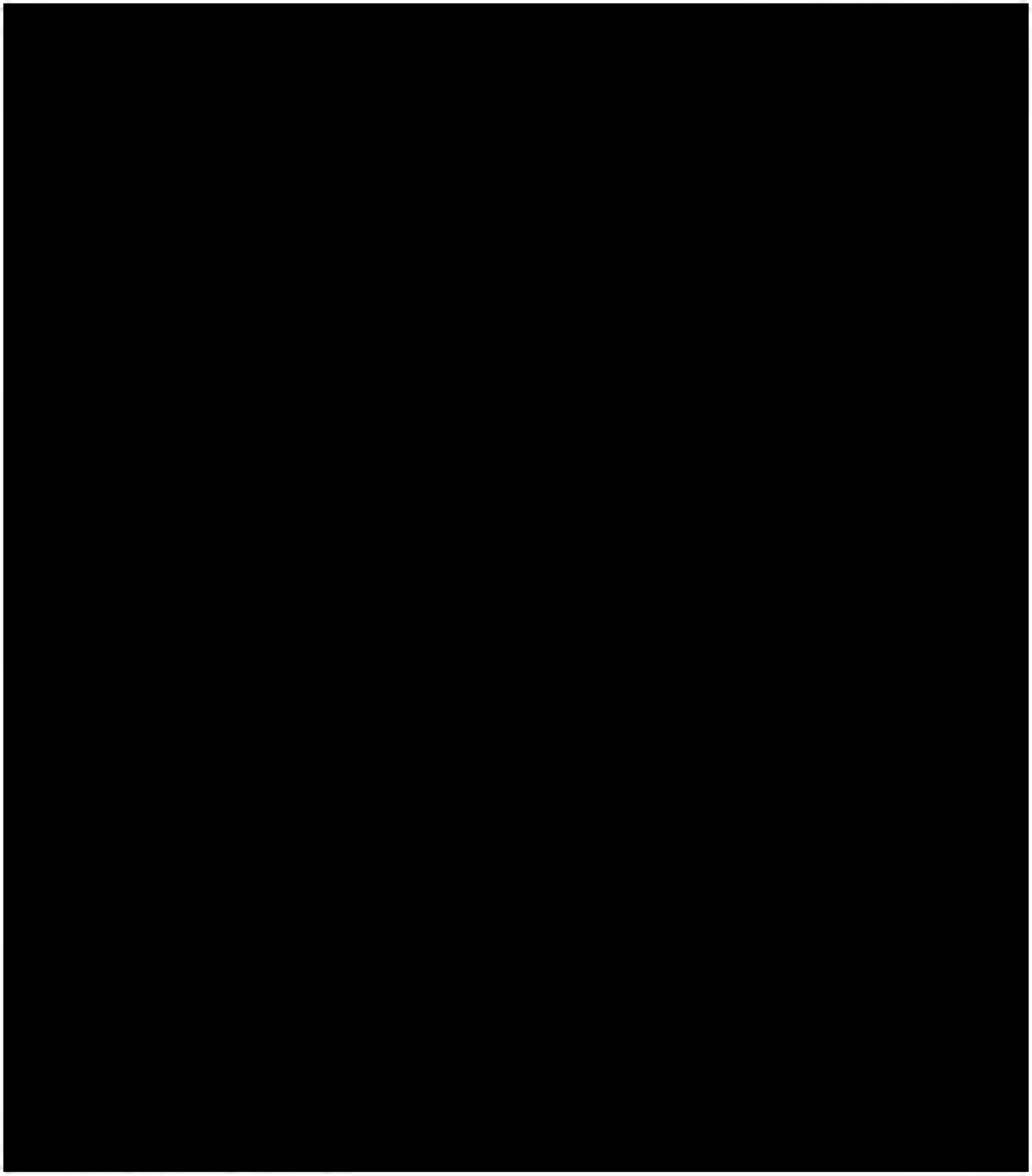
This clause 22 applies:

(a) notwithstanding and survives any termination of this deed (including a termination as result of a default or an Insolvency Event in relation to the Tunnelling Contractor);

(b) notwithstanding any other provision of this deed; and

(c) to the maximum extent permitted by Law (present or future) and subject to clause 32.19.

[redacted]



23. RISKS AND INSURANCE

23.1 Responsibility for care of the Project Works

(a) Subject to clause 23.1(d), the Tunnelling Contractor is, in respect of each Portion, responsible for the care of, and bears the risk of destruction, loss or damage to:

(i) the Tunnelling Contractor's Activities, the Project Works and the Temporary Works and any Extra Land, from the date of this deed; and

(ii) the relevant parts of the Construction Site, from the date on which access is granted under clause 12.1 or 12.2(a)(i),

which occurs up to and including:

(iii) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been completed in accordance with the requirements of this deed;

(iv) otherwise, the Portion Handover Date for the relevant Portion.

(b) Subject to clause 23.1(d), the Tunnelling Contractor will also bear the risk of any destruction, loss of or damage to a part of the Project Works or any other thing referred to in clause 23.1(a) caused by, arising out of, or in any way in connection with the performance of those Tunnelling Contractor's Activities (including the rectification of any Defect) occurring:

(i) in respect of each discrete part of the Third Party Works, after the point in time when the relevant discrete part of the Third Party Works has been completed in accordance with the requirements of this deed; or

(ii) otherwise, after the Portion Handover Date for the relevant Portion.

(c) Subject to clause 23.1(d), the Tunnelling Contractor must:

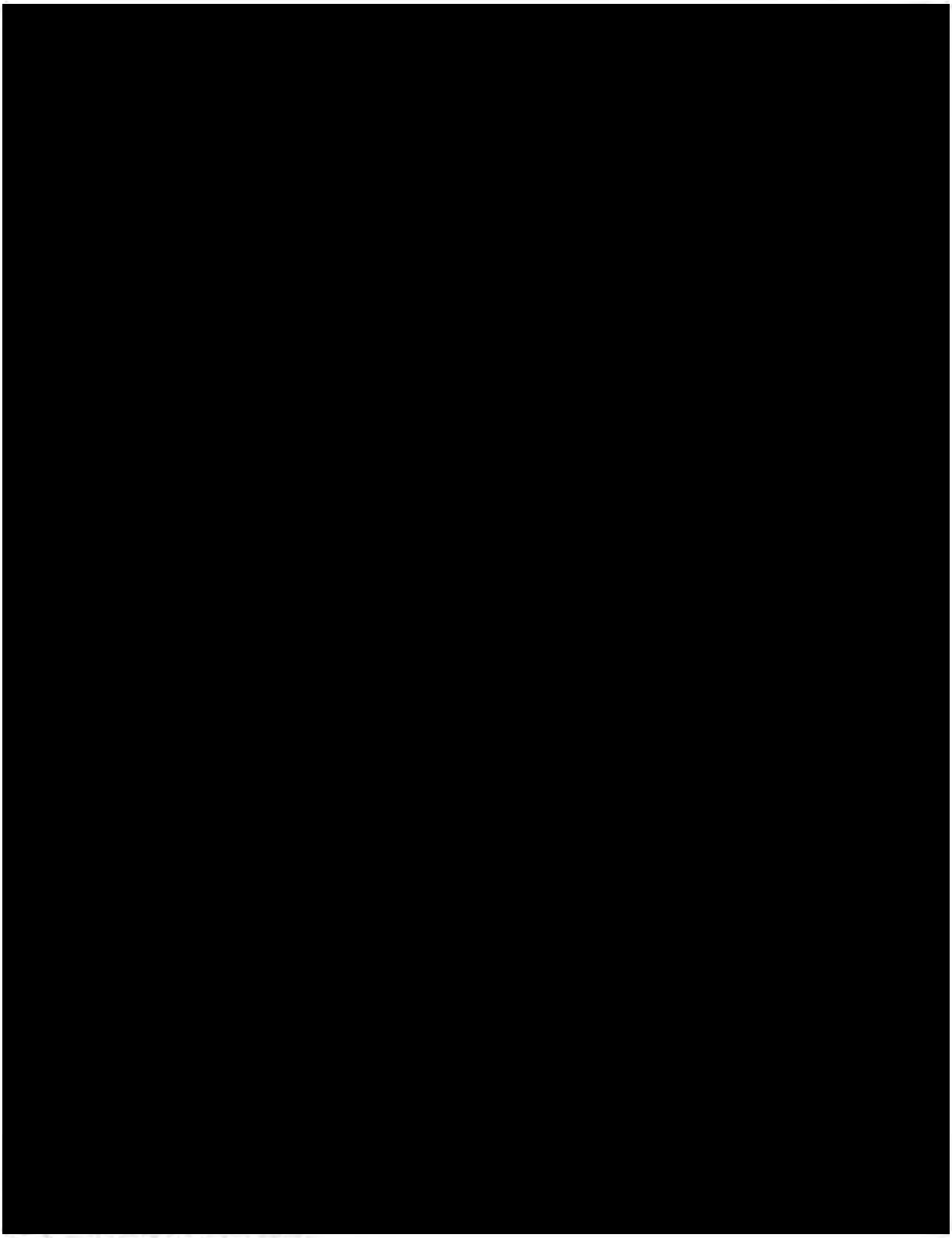
(i) in accordance with clause 23.20, (at its own cost) promptly make good destruction, loss or damage to anything caused during the period the Tunnelling Contractor is responsible for its care; and

(ii) indemnify the Principal against such destruction, loss or damage.

(d) This clause 23.1 does not apply to the extent that any destruction, loss or damage for which the Tunnelling Contractor would otherwise have been responsible or bears the risk of or is obliged to indemnify the Principal against under this clause results from an Excepted Risk.

(e) Where any destruction, loss or damage arises to any extent from an Excepted Risk, the Principal's Representative must direct the Tunnelling Contractor either to make good or repair in whole or in part, or not to make good or repair in whole or in part, the destruction, loss or damage in which event such direction will, to the extent the destruction, loss or damage arises from an Excepted Risk, be treated as if it were a Change the subject of a direction by the Principal's Representative and clause 15 applies.

[redacted]



23.4 **Principal's insurance**

(a) The Principal must, on or before:

(i) in relation to the contract works (material damage) insurance and the public and products liability insurance, the Condition Precedent Deadline Date; and

(ii) in relation to the project specific professional indemnity insurance [redacted],

effect and maintain insurances on the terms of the policies set out in Schedule E6.

(b) Such insurance is subject to the exclusions, conditions, deductibles and excesses noted on the policies and the Tunnelling Contractor must:

(i) satisfy itself of the nature and extent of the cover provided by these insurance policies; and

(ii) acknowledge that the Principal's insurances do not cover every risk to which the Tunnelling Contractor might be exposed and are subject to deductibles and limits and the Tunnelling Contractor may, if it chooses to do so, at its cost effect insurance for any risk or liability which is not covered by the Principal's insurances.

23.5 Tunnelling Contractor's insurance obligations

The Tunnelling Contractor must effect and maintain the following insurance:

(a) workers compensation insurance referred to in clause 23.6;

(b) asbestos liability insurance referred to in clause 23.7;

[redacted]

(d) Construction Plant insurance referred to in clause 23.9;

(e) motor vehicle insurance referred to in clause 23.10;

(f) marine transit insurance referred to in clause 23.11;

(g) marine hull insurance referred to in clause 23.12; and

(h) marine liability insurance referred to in clause 23.13.

23.6 Workers compensation insurance

(a) The Tunnelling Contractor must effect and maintain workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:

(i) for the maximum amount required by Law; and

(ii) in the name of the Tunnelling Contractor and (if legally possible) extended to indemnify the Principal for its statutory liability to persons employed or deemed to be employed by the Tunnelling Contractor.

(b) The Tunnelling Contractor must ensure that each of its Subcontractors effects and maintains workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:

(i) for the maximum amount required by Law; and

(ii) in the name of the Subcontractor and (if legally possible) extended to indemnify the Principal and the Tunnelling Contractor for their statutory liability to persons employed or deemed employed by the Subcontractor.

23.7 **Asbestos liability insurance**

[redacted]

23.9 **Construction Plant insurance**

[redacted]

23.10 **Motor vehicle insurance**

[redacted]

23.11 **Marine transit insurance**

[redacted]

23.12 **Marine hull insurance**

[redacted]

[redacted]

23.13 **Marine liability insurance**

[redacted]

23.14 **Periods of insurance**

[redacted]

23.15 **Evidence of policies**

23.16 **Provisions in policies**

[redacted]

23.17 **Premiums**

[redacted]

23.18 **Undertaking to inform**

[redacted]

[redacted]

23.19 **Notices and requirements of claims**

[redacted]

23.20 **Reinstatement**

If, prior to the time the Tunnelling Contractor ceases to be responsible under clause 23.1(a) for the care of a part of the Project Works or the Temporary Works or any other thing referred to in clause 23.1(a), any destruction, damage or loss occurs to the Project Works or the Temporary Works, the Tunnelling Contractor must:

(a) make secure the Project Works and the Temporary Works and the parts of the Construction Site which are still under the control of the Tunnelling Contractor in accordance with clause 12.5;

(b) notify:

(i) appropriate Authorities, emergency services and the like; and

(ii) the insurers for assessment,

and comply with their instructions; and

(c) promptly consult with the Principal to agree on steps to be taken to ensure:

(i) the prompt repair or replacement of the destruction, loss or damage so that:

(A) it complies with the Tunnelling Specification; and

(B) there is minimal disruption to the Project Works or the Temporary Works; and

(ii) that, to the greatest extent possible, the Tunnelling Contractor continues to comply with its obligations under this deed;

(d) subject to clause 23.1(e), manage all repair and replacement activities so as to minimise the impact on the Project Works or the Temporary Works; and

(e) keep the Principal's Representative fully informed of the progress of the repair and replacement activities.

23.21 **Application of insurance proceeds**

[redacted]

23.22 **Damage to property**

(a) Subject to clause 23.22(c), where any loss of or destruction or damage to real or personal property or the Environment (including any Utility Services but excluding the Project Works or the Temporary Works) occurs arising out of, or in any way in connection with, the carrying out by the Tunnelling Contractor of the Tunnelling Contractor's Activities or a failure by the Tunnelling Contractor to comply with its obligations under this deed, the Tunnelling Contractor must, at its cost, promptly repair and make good any such loss, destruction or damage.

(b) If the Tunnelling Contractor fails to carry out any repair work under clause 23.22(a), the Principal may carry out such work or engage others to carry out such work and any Loss suffered or incurred by the Principal will be a debt due and payable from the Tunnelling Contractor to the Principal.

(c) This clause 23.22 does not apply where the owner of the real or personal property does not agree to the Tunnelling Contractor carrying out the work under clause 23.22(a).

(d) Nothing in this clause 23.22 limits the operation of the indemnity in clause 23.2(a).

23.23 **Risk of deductibles or excesses**

[redacted]

24. TERMINATION BY PRINCIPAL

24.1 Notice of default

The Principal may give a written notice to the Tunnelling Contractor if the Tunnelling Contractor is in breach of this deed in that it:

(a) does not commence the performance of its obligations in accordance with the requirements of this deed;

(b) does not progress the Tunnelling Contractor's Activities in accordance with clause 19.1;

(c) suspends the Tunnelling Contractor's Activities (except to the extent required by this deed or permitted by Law);

(d) fails to provide any unconditional undertaking in accordance with clause 6.1, 20.6(a)(i) or 20.7(a)(i)(A);

(e) not used;

(f) fails to effect and maintain any insurances required to be effected and maintained by the Tunnelling Contractor, or fails to provide evidence of such insurances, in accordance with clause 23;

(g) commits a material breach of clause 7.1, 7.2 or 7.3;

(h) commits a material breach of clause 8.6;

(i) fails to comply with its obligations under the Independent Certifier Deed and this results in the termination of the Independent Certifier Deed;

(j) does not comply with any Direction of the Principal's Representative made in accordance with this deed;

(k) knowingly provides a statutory declaration or documentary evidence which contains a statement that is untrue;

(l) fails to pay a sum of money due and owing to the Principal in accordance with this deed and the sum remains unpaid 20 Business Days after the Principal has made a written demand for payment;

(m) fails to provide access in accordance with clause 12.2(k)(i); or

(n) is otherwise in breach of a material or substantial term of, or obligation under, this deed,

(**Default Notice**).

24.2 **Contents of notice**

The notice under clause 24.1 must state:

(a) that it is a notice under clause 24.1;

(b) the breach relied upon; and

(c) that the Principal requires the Tunnelling Contractor to:

(i) remedy the breach or overcome its effects; or

(ii) where the breach cannot be remedied, make other arrangements to the satisfaction of the Principal,

within a reasonable period of time specified in the notice (which period must not be less than 15 Business Days from the date of the notice).

24.3 **Rights of the Principal following Default Notice**

Subject to clause 24.9, if:

(a) the Tunnelling Contractor fails:

(i) subject to clause 24.4(d), to remedy a breach of this deed the subject of a Default Notice or overcome its effects within the period of time specified in the Default Notice; or

(ii) where a breach of this deed the subject of a Default Notice cannot be remedied, to make other arrangements to the satisfaction of the Principal within the period of time specified in the Default Notice,

then the Principal may, by notice in writing to the Tunnelling Contractor:

(b) take out of the hands of the Tunnelling Contractor the whole or part of the work remaining to be completed; or

(c) terminate this deed.

24.4 **Termination or take out by the Principal for insolvency or breach**

Subject to clause 24.9

(a) if:

(i) an Insolvency Event occurs in relation to the Tunnelling Contractor;

(ii) the Tunnelling Contractor is in fundamental breach as contemplated in clause 4.6(b)(i);

(iii) not used;

(iv) the Tunnelling Contractor is in breach of clause 9;

(v) the Tunnelling Contractor abandons [redacted] its obligations under this deed;

(vi) a Change in Control occurs in respect of the Tunnelling Contractor without the prior written consent of the Principal (other than a Change in Control permitted under clause 26.2(c));

(vii) not used;

(viii) a Restructure Event occurs without the prior written consent of the Principal;

(ix) the aggregate liability of the Tunnelling Contractor under or in connection with the Tunnelling Contract Documents is equal to or exceeds [redacted] of the Project Contract Sum;

(x) the aggregate liability of the Tunnelling Contractor to the Principal under or in connection with any one or more of clauses 19.11(d) and 19.11(i)(ii) is equal to or exceeds [redacted] of the Project Contract Sum; or

(xi) Substantial Completion of a Portion has not occurred by the date that is 9 months after the Date for Substantial Completion of that Portion,

the Principal may, whether or not the Tunnelling Contractor is then in breach of this deed and without giving a notice under clause 24.1, exercise a right under clause 24.3(b) or clause 24.3(c).

(b) Not used.

(c) Not used.

(d) Notwithstanding clause 24.3(a)(i), the Principal may not terminate this deed pursuant to clause 24.3(a)(i) in respect of a breach the subject of a notice under clause 24.1(b), unless the Principal is permitted to do so in accordance with clause 24.4A(e).

24.4A **Due Diligence Breach Corrective Action Plan**

(a) If the Principal issues a written notice to the Tunnelling Contractor under clause 24.3(a)(i) in respect of a breach the subject of a notice under clause 24.1(b) (**Due Diligence Breach**), the Tunnelling Contractor must, within 10 Business Days (or such longer period as the Principal may agree) after receipt of the notice prepare and submit to the Principal a draft plan describing the actions and measures which the Tunnelling Contractor will diligently pursue to remedy the Due Diligence Breach (**Draft Corrective Action Plan**).

(b) Within 10 Business Days after receipt of the Draft Corrective Action Plan, the Principal must, acting reasonably, either:

(i) approve the Draft Corrective Action Plan by notifying the Tunnelling Contractor; or

(ii) reject the Draft Corrective Action Plan by notifying the Tunnelling Contractor and providing reasons to the Tunnelling Contractor for its rejection.

(c) If the Principal approves a Draft Corrective Action Plan pursuant to clause 24.4A(b)(i) (the **Approved Corrective Action Plan**) the Tunnelling Contractor must comply with and implement the Approved Corrective Action Plan in order to remedy the Due Diligence Breach.

(d) If the Principal rejects a Draft Corrective Action Plan pursuant to clause 24.4A(b)(ii), the Tunnelling Contractor, in consultation in good faith with the Principal, must amend the Draft Corrective Action Plan to meet the Principal's requirements and submit the amended Draft Corrective Action Plan to the Principal for its approval, in which case this clause 24.4A will apply to the amended Draft Corrective Action Plan as if it were originally submitted under clause 24.4A(a).

(e) If:

(i) the Principal issues a written notice to the Tunnelling Contractor under clause 24.3(a)(i) in respect of a Due Diligence Breach; and

(ii) the Tunnelling Contractor fails to:

(A) submit a Draft Corrective Action Plan, in accordance with clause 24.4A(a);

(B) if the Principal rejects a Draft Corrective Action Plan pursuant to clause 24.4A(b)(ii), amend the Draft Corrective Action Plan to meet the Principal's requirements and submit the amended Draft Corrective Action Plan in accordance with clause 24.4A(d); or

(C) comply with and implement the Approved Corrective Action Plan,

and such failure is not remedied by the Tunnelling Contractor within 5 Business Days of notice from the Principal regarding that failure, the Principal may terminate this deed by notice in writing to the Tunnelling Contractor.

(f) This clause 24.4A is without prejudice to and will not lessen or otherwise affect any of the Principal's other termination rights under this deed, including the termination rights set out under clauses 24.4(a)(v), 24.4(a)(ix). 24.4(a)(x) and 24.4(a)(xi).

24.5 **The Principal's entitlements after take out or termination**

(a) If the Principal exercises a right under clause 24.3(b) or clause 24.3(c), the Principal:

(i) may without payment of compensation to the Tunnelling Contractor:

(A) take possession of, and use (and permit others to use), the Key Plant and Equipment, the Construction Plant, Materials, Utility Services, the Temporary Works and other things on or in the vicinity of the Construction Site and Extra Land as were used by the Tunnelling Contractor (and, for this purpose, the Tunnelling Contractor must ensure that the Principal has access to the Extra Land in which the Principal has no interest);

(B) contract with such of the Subcontractors; and

(C) take possession of, and use (and permit others to use), such of the Design Documentation and other information in the possession of the Tunnelling Contractor,

as are reasonably required by the Principal to facilitate completion of the Tunnelling Contractor's Activities (as the case may be) remaining to be completed under this deed as at the date of termination (**Remaining Work**);

(ii) may engage third parties to carry out and complete the whole or any part of the Remaining Work;

(iii) may exclude from the Construction Site the Tunnelling Contractor and any other person concerned with the carrying out and completion of the Tunnelling Contractor's Activities;

(iv) will be entitled to have recourse to any unconditional undertaking held under clause 6.1, 20.6 or 20.7; and

(v) may give a Direction requiring, in a relation to a Significant Subcontract, the Tunnelling Contractor and the relevant Subcontractor to promptly (and in any case within 5 Business Days) execute a deed of novation in the form of Schedule A18.

(b) If the Principal takes possession of Construction Plant and Materials, the Principal must maintain them in good working order and, subject to paragraph (c), on completion of the Remaining Work, the Principal shall return the Construction Plant and Materials that are surplus.

(c) If the Principal exercises a right under clause 24.3(b) or clause 24.3(c) and the Tunnelling Contractor is indebted to the Principal, the Tunnelling Contractor grants to the Principal a lien over the Key Plant and Equipment, Construction Plant, Temporary Works or other things taken under clause 24.5(a)(i)(A) such that the Principal may retain that property until the debt is met. If after reasonable notice, the Tunnelling Contractor fails to pay the debt, the Principal may sell the Key Plant and Equipment, 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 Tunnelling Contractor.

(d) The Tunnelling Contractor must do all things (including executing all documents) reasonably required by the Principal to enable the Principal to lawfully register any Security Interest in the Construction Plant or other things taken under paragraph (a) so as to ensure the Principal's rights under this clause 24.5 are not adversely affected.

(e) If the Principal terminates this deed under clause 24.3(c), the Principal will be entitled to recover from the Tunnelling Contractor any Loss suffered or incurred by the Principal arising out of or in any way in connection with the breach, Insolvency

Event or termination of this deed and until the Principal's rights in this regard are satisfied, the Principal will not be obliged to make any further payments to the Tunnelling Contractor, including any money the subject of a progress claim under clause 20.2(a) or a payment schedule under clause 20.2(c) or 20.2(d).

24.5A **The Principal's entitlements after take-out**

(a) If the Principal exercises the right under clause 24.3(b), the Tunnelling Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Tunnelling Contractor unless a payment becomes due to the Tunnelling Contractor under this clause 24.5A.

(b) When all of the work taken out of the hands of the Tunnelling Contractor under clause 24.3(b) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate to the Tunnelling Contractor certifying the amount. If the cost incurred by the Principal is greater than the amount that would have been paid to the Tunnelling Contractor if the Tunnelling Contractor had completed the work, the difference will be a debt due from the Tunnelling Contractor to the Principal.

(c) Without limiting clause 24.5A(b), if the Principal exercises the right under clause 24.3(b), the Principal will be entitled to recover from the Tunnelling Contractor any Loss 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.

24.6 **Tunnelling Contractor's rights after repudiation or wrongful termination**

(a) If the Principal:

(i) repudiates this deed and the Tunnelling Contractor terminates this deed; or

(ii) wrongfully:

(A) exercises or attempts to exercise any right or power conferred on it by clause 24.4; or

(B) determines or purports to determine this deed at common law,

then the:

(iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 24.7 and the Tunnelling Contractor's sole rights in such circumstances will be those set out in clause 24.8; and

(iv) the Tunnelling 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 24.6 will survive the termination of this deed.

24.7 **Termination for convenience**

Without prejudice to any of the Principal's other rights or entitlements or powers under this deed, the Principal may:

(a) at any time for its sole convenience, and for any reason, by written notice to the Tunnelling Contractor terminate this deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Tunnelling Contractor; and

(b) thereafter either itself or by a third party complete the uncompleted part of the Tunnelling Contractor's Activities.

24.8 **Cost**

If the Principal terminates this deed under clause 24.7, without prejudice to any of the Principal's other rights, entitlements or powers under this deed (including its right of set-off under clause 20.9), the Tunnelling Contractor will be entitled to payment of the following amounts:

(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 Tunnelling Contractor had been entitled to submit a payment claim under clause 20.2 for work carried out to the date of termination;

(b) the cost of Materials or other items reasonably ordered by the Tunnelling Contractor for the Tunnelling Contractor's Activities and for which it is legally bound to pay provided that:

(i) the value of the Materials and other items have not been previously paid or included in the amount payable under clause 24.8(a); and

(ii) title in the Materials will vest in the Principal upon payment;

(c) the reasonable cost of making the Project Site safe and removing from the Project Site and the Temporary Areas all Construction Plant, Materials and Temporary Works and other things used in the performance of the Tunnelling Contractor's obligations;

(d) the reasonable costs incurred by the Tunnelling Contractor as a result of terminating Subcontracts;

(e) where termination occurs prior to Substantial Completion of the last Portion to achieve Substantial Completion, [redacted] of the unpaid balance (if any) of the Construction Contract Sum (after taking into account the amount payable under clause 24.8(a)) as that balance stands at the date of termination; and

(f) the costs reasonably incurred by the Tunnelling Contractor in the expectation of completing the whole of the Tunnelling Contractor's Activities and not included in any other payment by the Principal,

such amounts to be as stated by the Principal's Representative.

The Tunnelling Contractor must:

(g) take all reasonable steps to mitigate the costs referred to in clauses 24.8(b), 24.8(c), 24.8(d) and 24.8(f); and

(h) hand over to the Principal's Representative all information, documents and records (including all Design Documentation) and do all other reasonable things to enable the Principal to complete the design and construction of the Project Works and the Temporary Works.

The Tunnelling Contractor and each of its Subcontractors may retain one copy of the information, documents and records referred to in clause 24.8(h).

To the extent it has not had recourse to them, the Principal will, subject to clause 6.4(c), return the unconditional undertakings then held by it under clauses 6.1, 20.6 or 20.7 (or the remaining proceeds of the unconditional undertakings if they have been converted into cash) when the Tunnelling Contractor has complied with its obligations under this clause.

Upon payment of the amount payable under this clause 24.8 title in the Materials referred to in clause 24.8(b) will vest in the Principal.

The amount to which the Tunnelling Contractor is entitled under this clause 24.8 will be a limitation upon the Principal's liability to the Tunnelling 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 Tunnelling 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 24.8.

This clause 24.8 will survive the termination of the deed under clause 24.7.

24.9 **Preservation of rights**

Nothing in this clause 24 or that the Principal does or fails to do pursuant to this clause 24 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 20.9) which it may have, including where the Tunnelling Contractor breaches (including repudiates) this deed.

24.10 **Termination by Frustration**

If under the Law this deed is frustrated:

(a) the Principal will:

(i) pay the Tunnelling Contractor the following amounts as determined by the Principal's Representative:

(A) an amount calculated in accordance with clause 24.8(a) for work carried out prior to the date of frustration;

(B) the costs calculated in accordance with the terms of, and subject to the conditions in, clause 24.8(b); and

(C) the costs calculated in accordance with the terms of clauses 24.8(c) and 24.8(f); and

(ii) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 6.1, 20.6 or 20.7 (or the remaining proceeds of the unconditional undertakings if they have been converted into cash) when the Tunnelling Contractor has complied with its obligations under this clause; and

(b) the Tunnelling Contractor must:

(i) take all reasonable steps to mitigate the costs referred to in clause 24.10(a)(i)(B) and clause 24.10(a)(i)(C); and

(ii) hand over to the Principal's Representative all information, documents and records (including all Design Documentation) and do all other things to enable the Principal to complete the design and construction of the Project Works and the Temporary Works.

(c) Upon payment of the amount payable under this clause 24.10, title in the Materials the subject of the costs payable in respect of clause 24.10(a)(i)(B) will vest in the Principal.

(d) The amount to which the Tunnelling Contractor is entitled under this clause 24.10 will be a limitation upon the Principal's liability to the Tunnelling Contractor arising out of, or in any way in connection with, the frustration of this deed and the Principal will not be liable to the Tunnelling Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this deed other than for the amount payable under this clause 24.10.

(e) Without limiting any other provision of this deed, this clause 24.10 will survive the frustration of this deed.

24.11 Codification of Tunnelling Contractor's entitlements

This clause 24 is an exhaustive code of the Tunnelling Contractor's rights arising out of or in any way in connection with any termination and the Tunnelling Contractor:

(a) cannot otherwise terminate, rescind or treat this deed as repudiated; and

(b) waives all rights at Law to terminate, rescind or treat this deed as repudiated,

otherwise than in accordance with this clause 24.

25. DISPUTE RESOLUTION

25.1 Disputes generally

Subject to clause 25.14, any dispute, difference, controversy or any dispute in relation to a Claim (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with the Project Works, the Temporary Works, the Tunnelling Contractor's Activities, Sydney Metro West, this deed (including any questions relating to the existence, validity or termination of this deed), but excluding a failure by a party to comply with a final and binding decision of the Expert, must be resolved in accordance with this clause 25.

25.2 Independent Dispute Avoidance and Resolution Panel

(a) The IDAR Panel will be constituted under the IDAR Panel Agreement.

(b) The Tunnelling Contractor must, within 5 Business Days of receipt of a request from the Principal, execute the IDAR Panel Agreement Accession Deed Poll.

(c) Each party must:

(i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;

(ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this deed; and

(iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of the Tunnelling Contractor's Activities, including providing all information it reasonably requests.

25.3 Consultation

(a) The Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute (**"Notice of Issue"**) from the dissatisfied party (**"Party A"**) to the IDAR

Panel and the other party (**"Party B"**). The Notice of Issue must provide brief particulars of the issues in Dispute.

(b) Within 2 Business Days of the Notice of Issue, the parties must agree upon a member of the IDAR Panel (**"Nominated Member"**) to review the Dispute. If:

(i) the parties fail to reach such agreement within 2 Business Days; or

(ii) the Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the chairperson of the IDAR Panel, as appointed under the IDAR Panel Agreement from time to time (**"Chair"**) must, based on the nature of the issue in Dispute, nominate a suitable replacement Nominated Member within a further 2 Business Days.

(c) If a replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further replacement Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.

(d) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 25.3(c) will be reapplied until there are no IDAR Panel members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.

(e) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting (**"Consultation"**) to facilitate genuine and good faith negotiations with a view to:

(i) resolving the Dispute; and

(ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.

(f) Each Consultation will be attended by:

(i) the Nominated Member;

(ii) the Principal's Representative;

(iii) the Tunnelling Contractor's Project Director; and

(iv) other persons as agreed between the Principal's Representative and the Tunnelling Contractor's Project Director.

(g) The Consultation process must conclude within 15 Business Days of the first Consultation, or such other period as the parties may agree. The Nominated Member will advise the parties in writing when the Consultation process has concluded.

(h) A failure to comply with clause 25.3(a) will be treated as a breach of this deed by the relevant party.

25.4 **Recommendation**

(a) Within 5 Business Days of the conclusion of Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:

(i) the formulation of the issues in Dispute;

(ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 25.5; and

(iii) whether the Dispute is not suitable for expert determination and should be determined in accordance with clause 25.8,

("**Recommendation**").

(b) Subject to clause 25.4(d), if the Dispute is not resolved within the later of:

(i) 5 Business Days of the Recommendation; and

(ii) 15 Business Days of the Notice of Issue,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) within 20 Business Days after the later of (i) and (ii) above or such other period of time as agreed between the parties ("**Notice of Dispute**").

(c) The Notice of Dispute must:

(i) be in writing;

(ii) state that it is a Notice of Dispute under this clause 25.4(c);

(iii) include or be accompanied by reasonable particulars of those parts of the Dispute including:

(A) references to any:

(aa) provisions of this deed;

(bb) acts or omissions of any person,

relevant to the Dispute;

(B) the relief sought and the basis for claiming the relief sought; and

(C) copies of, or relevant extracts from, any documents in support of the claim.

(d) If the Nominated Member makes a Recommendation:

(i) under clause 25.4(a)(ii), the parties may accept the recommendation or clause 25.5(a) will apply; or

(ii) under clause 25.4(a)(iii) that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined in accordance with clause 25.8, however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 25.5 will apply.

25.5 **Expert determination**

(a) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule A19.

(b) Both parties must promptly make available to the Expert all such additional information, access to the Construction Site and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.

(c) The parties agree that, to the extent permitted by law:

(i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and

(ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute 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 expert determination.

(d) Within:

(i) in respect of any Dispute referred to expert determination in accordance with clause 5.3(b) or 5.3(c) of Schedule A26, 20 Business Days after the Expert has been appointed (or such longer period as the Expert (acting reasonably) considers is necessary having regard to the scope and complexity of the Dispute); or

(ii) in respect of all other Disputes referred to expert determination, 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 25.5. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 25.

25.6 **Notice of dissatisfaction**

(a) If:

(i) either party is dissatisfied with a determination made by an Expert under clause 25.5, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or

(ii) an Expert fails to give its decision within a period referred to in clause 25.5(d) (or within such other period as may be proposed by the Expert and approved by both parties) then either party may, within 10 Business Days after this period has expired, give a notice to the other party of its dissatisfaction,

(**Notice of Dissatisfaction**).

(b) A Notice of Dissatisfaction issued under this clause 25.6 must:

(i) state that it is given under this clause 25.6; and

(ii) set out the matter in Dispute and the reason(s) for dissatisfaction.

(c) Except as stated in clause 25.4(d), neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 25.6.

25.7 **Final and binding decision**

(a) If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 25.6, within 10 Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.

(b) Once a decision of an Expert has become final and binding under clause 25.7(a), neither party will be entitled to challenge the determination on any basis.

25.8 **Litigation or arbitration**

Where this clause applies, the Principal in its absolute discretion, may within 5 Business Days:

(a) after issuing or receiving a Notice of Dissatisfaction; or

(b) of reaching an agreement under clause 25.4(d)(ii),

(as applicable) issue a notice to the Tunnelling Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

25.9 **Arbitration rules**

(a) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.

(b) The seat of the arbitration will be Sydney, Australia.

(c) The language of the arbitration will be English.

(d) The parties agree:

(i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

(ii) that any arbitration conducted pursuant to this clause shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;

(iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:

(A) the number of written submissions that will be permitted;

(B) where appropriate, the length of written submissions;

(C) the extent of document discovery permitted, if any;

(D) the consolidation of proceedings, when requested;

(E) the joinder of parties, when requested;

(F) the length of any hearing, if any; and

(G) the number of experts, if any, each party is permitted to appoint.

(e) The parties agree that:

(i) subject to clause 25.10, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and

(ii) section 24 of the *International Arbitration Act* 1974 (Cth) will apply in an international arbitration context.

(f) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

(g) Any award of the arbitral tribunal will be final and binding upon the parties.

(h) This arbitration agreement is governed by and must be construed according to the Law applying in New South Wales.

25.10 **Exclusion from determination or award**

(a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act* 2002 (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 25.

(b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a Dispute 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 arbitral tribunal.

25.11 **Payments**

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

25.12 **Tunnelling Contractor to continue performing obligations**

Despite the existence of any Dispute the Tunnelling Contractor must:

(a) continue to perform the Tunnelling Contractor's Activities; and

(b) perform its other obligations under this deed.

25.13 **Urgent relief**

Nothing in this clause 25 will prejudice:

(a) the right of a party to seek urgent injunctive or declaratory relief from a court; or

(b) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, when enacted, or an equivalent provision under any Law.

25.14 **Dispute under related contracts**

The parties acknowledge and agree that:

(a) the provisions of this clause 25 will not apply to any dispute, difference, controversy or claim between the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed;

(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; and

(c) where the Dispute is a "Common Dispute" as that term is defined in clause 11 of Schedule D5 or clause 3 of Schedule D6, this clause 25 will apply subject to the provisions of clause 11 of Schedule D5 or clause 3 of Schedule D6 (as relevant).

25.14A **Dispute avoidance**

The parties acknowledge and agree that:

(a) they will seek to minimise the incidence of Disputes;

(b) in order to achieve this, at any time prior to a Dispute arising and provided that a Notice of Issue has not been issued in respect of the Potential Matter:

(i) a party may notify the IDAR Panel and the other party; or

(ii) a Member of the IDAR Panel may notify the parties (acting in accordance with the IDAR Panel Agreement),

of a matter which it considers may, or has the potential to, give rise to a Dispute (**Potential Matter**). The notice of a Potential Matter must be in writing and provide brief particulars of the Potential Matter;

(c) within 10 Business Days after a notice of a Potential Matter has been issued by either a party or a member of the IDAR Panel, the parties may elect to participate in the Dispute Avoidance Process with the IDAR Panel in order to seek to avoid a Dispute arising from or in connection with the Potential Matter;

(d) the IDAR Panel shall not proceed with the Dispute Avoidance Process under this clause 25.14A in respect of a Potential Matter unless both parties have elected to participate in it;

(e) the role of the IDAR Panel under this clause 25.14A is purely consultative and advisory, and no advice, view, direction, statement or comment by a Member as part of the Dispute Avoidance Process under this clause 25.14A shall be binding on the parties unless and until it is incorporated into a written agreement between the parties for the purpose of avoiding the occurrence of a Dispute;

(f) nothing in this clause 25.14A shall in any way effect the operation or effect of any other provision in clause 25. For the avoidance of doubt, engaging in the clause 25.14A Dispute Avoidance Process:

(i) is voluntary; and

(ii) shall not be a precondition to the issue of a Notice of Issue, Notice of Dispute or the commencement of expert determination, litigation or arbitration under clause 25 in respect of a Dispute that is the subject of a Potential Matter; and

(g) notwithstanding clause 25.14A(f), with respect to a Potential Matter identified under this clause 25.14A, where a party:

(i) elects not to participate in the Dispute Avoidance Process; or

(ii) elects to participate in the Dispute Avoidance Process but fails to participate in the Dispute Avoidance Process in good faith,

and the Potential Matter subsequently becomes a Dispute, the other party may disclose these matters to the IDAR Panel, an Expert, an arbitral tribunal, a court or other tribunal with respect to any such Dispute.

25.15 **Survive termination**

This clause 25 will survive termination of this deed.

26. CHANGE IN CONTROL AND RESTRUCTURE EVENT

26.1 Not used

26.2 Change in control of the Tunnelling Contractor

(a) Subject to the terms of this clause 26.2, the Tunnelling Contractor must ensure that there is no Change in Control of the Tunnelling Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).

(b) The Tunnelling Contractor must notify the Principal in writing of any Change in Control of the Tunnelling 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 26.2(d) and 26.2(e), in relation to the Change in Control of the Tunnelling 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 Tunnelling 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 the Tunnelling Contractor where the Principal is of the reasonable opinion that:

(i) the person or entity which will exercise Control of the Tunnelling 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 West; or

(ii) as a result of the Change in Control, the Tunnelling 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 Tunnelling Contractor under this deed.

(e) If a Change in Control of the Tunnelling Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 26.2(c)), the Tunnelling Contractor acknowledges that the Principal may terminate this deed by notice in writing to the Tunnelling Contractor.

(f) The Principal's approval of a Change in Control of the Tunnelling Contractor will not relieve the Tunnelling Contractor of any of its obligations under this deed.

26.3 **Not used**

26.4 **Restructure Event**

(a) Subject to the terms of this clause 26.4, the Tunnelling Contractor must ensure that there is no Restructure Event without the prior written consent of the Principal (which must not be unreasonably withheld).

(b) The Tunnelling Contractor must notify the Principal in writing of any Restructure Event that is proposed, and provide:

(i) full details of the Restructure Event, 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 necessary for the Principal to determine whether to exercise its rights under clauses 26.4(c) and 26.4(d), in relation to the Restructure Event.

(c) The Principal will be deemed to be acting reasonably if it withholds its approval to a Restructure Event where the Principal is of the reasonable opinion that:

(i) the person or entity which will exercise Control of the Tunnelling Contractor following the Restructure Event:

(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 West; or

(ii) as a result of the Restructure Event, the Tunnelling Contractor will no longer:

(A) have sufficient expertise and ability; or

(B) be of sufficiently high financial and commercial standing,

to properly carry out its obligations under the Tunnelling Contract Documents.

(d) If a Restructure Event occurs without the permission of the Principal, the Tunnelling Contractor acknowledges that the Principal may terminate this deed by notice in writing to the Tunnelling Contractor.

(e) The Principal's approval of a Restructure Event will not relieve the Tunnelling Contractor of any of its obligations under this deed.

27. FINANCIAL REPORTING AND NOTIFICATIONS

27.1 Financial reporting

(a) At the end of March and September of each year, the Tunnelling Contractor must give the Principal its most recent audited annual, or half-year, financial statements (as applicable), or where audited financial statements are not available for the relevant period, give management accounts including profit and loss, balance sheets and cash flow statements for:

(i) the Tunnelling Contractor; and

(ii) when requested by the Principal, each Designated Significant Subcontractor.

(b) The Tunnelling Contractor must prepare (or procure the preparation of) the accounts and financial statements required under clause 27.1(a) 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.

(c) Without limiting its obligations under clause 27.1(a), on the last Business Day of March, June, September and December, the Tunnelling Contractor must also provide a document in the form set out in Schedule E8 setting out the information required by that Schedule.

(d) Each of the documents to be provided to the Principal in accordance with clauses 27.1(a) and 27.1(c) must be accompanied by a certificate signed by two authorised officers of the relevant entity certifying that the information provided is accurate, complete and correct in all respects.

(e) The Tunnelling Contractor must provide the documents required under clauses 27.1(a) and 27.1(c):

(i) from the date of this deed 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 27.1(a) or 27.1(c), as relevant.

(f) The Tunnelling Contractor is not required to provide any documents under this clause 27.1 once Final Completion has been reached.

27.2 Financial Assessment

Without limiting or otherwise restricting clauses 18.17, 27.1 and 27.3, the Tunnelling 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 ongoing financial assessments (**Financial Assessment**) of the Tunnelling Contractor and any Designated Significant Subcontractor;

(b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the date of this deed; 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 reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment. 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 Tunnelling Contractor under this clause 27.

27.3 **Financial Reporting Events**

(a) Notwithstanding any other clause of this deed, but subject to the requirements of all applicable laws and the listing rules of any recognised stock exchange, the Tunnelling Contractor must notify the Principal as soon as the Tunnelling Contractor becomes aware that any Financial Reporting Event has occurred.

(b) Subject to clause 32.7(b), the Principal must keep confidential any information provided by the Tunnelling Contractor pursuant to clause 27.3(a), except for any information:

(i) which is in the public domain through no default of the Principal;

(ii) 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

(iii) the disclosure of which is:

(A) required by Law or to obtain legal advice in relation to this deed;

(B) made following the written consent of the Tunnelling Contractor;

(C) given to a court in the course of proceedings to which the Principal is a party; or

(D) for the purposes of performing the Principal's obligations under this deed.

27.4 **Financial Mitigation Plan**

(a) Subject to the requirements of all applicable laws, the Principal may notify the Tunnelling 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 Tunnelling Contractor under this clause 27 and any other information it considers relevant in its absolute discretion.

(b) Following the occurrence of a Financial Capacity Event, the Tunnelling Contractor must meet with the Principal within 5 Business Days of the date of the notice provided pursuant to clause 27.4(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 Tunnelling Contractor under the Tunnelling Contract Documents. The Tunnelling Contractor must also procure the attendance at such meeting of any Designated Significant Subcontractor specified by the Principal.

(c) The meeting shall also be for the purpose of:

(i) discussing any effect of the Financial Capacity Event on the ability of:

(A) the Tunnelling Contractor to continue to perform its obligations and meet its liabilities under this deed, including the timely performance and delivery of the Project Works and how any adverse effect will be mitigated;

(B) not used; or

(C) any Designated Significant Subcontractor to meet its liabilities under the relevant Designated Significant Subcontract, including the timely performance and delivery of the works under the relevant Designated Significant Subcontract and how any adverse effect will be mitigated;

(ii) identifying the information relating to the Tunnelling Contractor and each Designated Significant Subcontractor that the Principal reasonably requires in order to better understand the risk to the Project Works and the timing for the provision of that information; and

(iii) specifying the form, duration and content of the Financial Mitigation Plan required to be prepared by the Tunnelling Contractor (if the Principal requires a Financial Mitigation Plan to be prepared in response to the Financial Capacity Event) which must include details of the measures the Tunnelling Contractor proposes to take to avoid, mitigate or minimise any adverse effect of the Financial Capacity Event on the ability of the Tunnelling Contractor or any Designated Significant Subcontractor affected by the Financial Capacity Event to perform its other obligations and meet its liabilities under the Tunnelling Contract Documents.

(d) If a Financial Mitigation Plan is required by the Principal, the Tunnelling Contractor must prepare and submit the Financial Mitigation Plan to the Principal's Representative within 10 Business Days of the meeting held pursuant to clause 27.4(a).

(e) The Principal's Representative may:

(i) review any Financial Mitigation Plan submitted under clause 27.4(d); and

(ii) if the Financial Mitigation Plan submitted does not, in the opinion of the Principal (acting reasonably), satisfy the requirements of clause 27.4 for the avoidance, mitigation or minimisation of any adverse effect of a Financial Capacity Event, notify the Tunnelling Contractor within 10 Business Days of the date of submission of the Financial Mitigation Plan, providing written reasons.

(f) If the Tunnelling Contractor receives a notice under clause 27.4(e)(ii), the Tunnelling Contractor must within 5 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 and clause 27.4(e) shall again apply. If following its re-submission the Financial Mitigation Plan is still not acceptable in the opinion of the Principal (acting reasonably), the Principal and the Tunnelling Contractor must meet within 5 Business Days with a view to resolving why the proposed Financial Mitigation Plan is not acceptable to the Principal. The Tunnelling Contractor must also procure the attendance at such meeting of any Designated Significant Subcontractor specified by the Principal. If following such meeting no agreement has been reached on an acceptable form of Financial Mitigation Plan the Principal's Representative may, acting reasonably, direct the form, duration and content of the Financial Mitigation Plan in respect of those matters that have not been agreed.

(g) If the Tunnelling Contractor has submitted the Financial Mitigation Plan to the Principal's Representative and:

(i) it has been approved in writing by the Principal's Representative;

(ii) it has not been the subject of a notice under clause 27.4(e)(ii) within the 10 Business Day time period; or

(iii) the content of the Financial Mitigation Plan has been determined by the Principal's Representative in accordance with clause 27.4(f),

the Tunnelling Contractor must regularly and diligently progress the Financial Mitigation Plan (or to the extent that only a part or component of the Financial Mitigation Plan has been approved or has not been the subject of a notice under clause 27.4(e)(ii) within the 10 Business Day time period, the relevant part or component).

(h) The Tunnelling Contractor:

(i) must continue to develop and promptly amend or update the Financial Mitigation Plan in consultation with the Principal in order 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, or may have, any effect on the continued performance and delivery of the Project Works; and

(ii) must promptly submit each further Financial Mitigation Plan to the Principal's Representative as it is further developed, amended or updated, in which case clauses 27.4(e) and 27.4(f) shall again apply. Until such time as any updated Financial Mitigation Plan is approved, the Tunnelling Contractor must comply with the then current approved Financial Mitigation Plan.

(i) The Tunnelling Contractor may notify the Principal's Representative at any time if the Tunnelling 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.

(j) If the Tunnelling Contractor gives a notice under clause 27.4(i) and the Principal's Representative agrees 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 Tunnelling Contractor confirming this; and

(ii) the Tunnelling Contractor will be relieved of its obligation to comply with the relevant Financial Mitigation Plan under this deed from the date of such notice.

(k) This clause 27 is without prejudice to and will not lessen or otherwise affect:

(i) the Tunnelling Contractor's obligations or liabilities under this deed or otherwise according to Law; or

(ii) any of the Principal's rights against the Tunnelling 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 27, including any rights arising under clause 24.

(l) The Tunnelling 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 27.

(m) The Tunnelling Contractor must (unless otherwise approved in writing by the Principal's Representative) ensure that each Designated Significant Subcontract that it enters into in connection with the Tunnelling Contractor's Activities includes provisions that will enable the Tunnelling Contractor to comply with this clause 27.

28. TRANSPORT FOR NSW STATEMENT OF BUSINESS ETHICS

(a) The Tunnelling Contractor must at all times comply with the Transport for NSW 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 Tunnelling Contractor, the Tunnelling Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with the Transport for NSW Statement of Business Ethics.

29. NSW INDUSTRIAL GUIDELINES: BUILDING AND CONSTRUCTION PROCUREMENT

29.1 NSW Guidelines

In addition to terms defined in this deed, terms used in this clause 29 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

29.2 Primary Obligation

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

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

(c) Where the Tunnelling Contractor engages a Subcontractor, the Tunnelling Contractor must ensure that the contract with the Subcontractor imposes on the Subcontractor equivalent obligations to those in this clause 29, including that the Subcontractor must at all times comply with, and meet any obligations imposed by the NSW Guidelines.

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

29.3 Access and information

(a) The Tunnelling Contractor must maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors and related entities.

(b) The Tunnelling 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 Tunnelling Contractor, including but not limited to the Construction 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 Tunnelling Contractor's Activities;

(v) have access to personnel; and

(vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines by the Tunnelling Contractor, its Subcontractors and related entities.

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

29.4 **Sanctions**

(a) The Tunnelling Contractor warrants that at the time of entering into this deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.

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

(c) Where a sanction is imposed:

(i) it is without prejudice to any rights that would otherwise accrue to the parties; and

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

(A) record and disclose details of non-compliance with the NSW 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 Tunnelling Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.

29.5 **Compliance**

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

(b) Compliance with the NSW Guidelines does not relieve the Tunnelling Contractor from responsibility to perform the Tunnelling Contractor's Activities or any other obligation under this deed, or from liability for any Defect in the Project Works or Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.

(c) Where a Change is proposed, and that Change may, or may be likely to, affect compliance with the NSW Guidelines, the Tunnelling 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 Guidelines will be, or is likely to be, affected by the Change;

(iii) what steps the Tunnelling Contractor proposes to take to mitigate any adverse impact of the Change (including any amendments it proposes to the Workplace Relations Management Plan or the Project Health & Safety Risk Governance Plan),

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

29.6 **Workplace Relations Management Plan**

The Tunnelling Contractor must, within 20 Business Days of the date of this deed:

(a) prepare a Workplace Relations Management Plan which addresses the matters set out in section 6 of the NSW Guidelines; and

(b) submit the Workplace Relations Management Plan to the Principal's Representative for review in accordance with clause 11.3.

30. **AUSTRALIAN GOVERNMENT REQUIREMENTS**

(a) The Tunnelling Contractor:

(i) declares as at the date of this deed; and

(ii) must ensure during the term of this deed,

that, in relation to the Project Works and Temporary Works, it and its Subcontractors, consultants and each related entity:

(iii) complies with, and acts consistently with, the Building Code;

(iv) meets the requirements of section 11 of the Building Code;

(v) is not subject to an Exclusion Sanction or a formal warning that any further failure to comply with the Building Code may result in the imposition of an Exclusion Sanction;

(vi) has not been the subject of an adverse decision, direction or order, or failed to comply with a decision, direction or order, made by a court or tribunal for a breach of the BCIIP Act, a designated building law, work health and safety law, competition and consumer law or the *Migration Act 1958* (Cth) (other than a decision, direction or order that is stayed or has been revoked);

(vii) has not been required to pay any amount under an adjudication certificate or owed any unsatisfied judgement debts to a building contractor or building industry participant (as those terms are defined in the BCIIP Act);

(viii) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;

(ix) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and

(x) will comply with any Workplace Relations Management Plan which has been approved by the ABCC in accordance with Part 6 of the Building Code.

(b) The Tunnelling Contractor acknowledges and agrees that compliance with the Building Code does not relieve the Tunnelling Contractor from any responsibility or obligation under this deed, or from liability for any Defect arising from compliance with the Building Code.

(c) The Tunnelling Contractor must promptly:

(i) notify the ABCC of:

(A) any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC of the steps proposed to be taken by the Tunnelling Contractor to rectify the breach; and

(B) the steps taken to rectify any breach of the Building Code within 14 days of providing a notification under clause 30(c)(i)(A); and

(ii) give the Principal a copy of any notification given by the Tunnelling Contractor to the ABCC under clause 30(c)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.

(d) The Tunnelling Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIP Act and the Building Code and must ensure that it (and must procure that its Subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:

(i) for entry under section 72 of the BCIIP Act;

(ii) to interview any person under section 74 of the BCIIP Act;

(iii) to produce records or documents under sections 74 and 77 of the BCIIP Act; and

(iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.

(e) The Tunnelling Contractor must not enter into a Subcontract for any aspect of the Project Works, the Temporary Works or the Tunnelling Contractor's Activities unless:

(i) the Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Tunnelling Contractor agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and

(ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 30.

(f) The Tunnelling Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 30(e) promptly upon request.

(g) The Tunnelling Contractor must maintain adequate records of the compliance with the Building Code by:

(i) the Tunnelling Contractor;

(ii) the Subcontractors;

(iii) the Tunnelling Contractor's consultants; and

(iv) any related entity of the Tunnelling Contractor.

(h) For the purposes of this clause 30, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

31. NOTIFICATION OF CLAIMS

31.1 Notice of other claims

If the Tunnelling Contractor wishes to make a Claim (other than an Excluded Claim) against the Principal in respect of any Direction of the Principal or the Principal's Representative or other event, circumstance, act, omission, fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in any way in connection with, this deed, the Tunnelling Contractor's Activities or the Project Works, including anything in respect of which:

(a) the Tunnelling Contractor is otherwise given an express entitlement under this deed; or

(b) this deed expressly provides that:

(i) costs are to be paid to the Tunnelling Contractor, or

(ii) the Project Contract Sum, the Design Contract Sum or the Construction Contract Sum will be increased or adjusted,

by an amount stated by the Principal's Representative,

the Tunnelling Contractor must give the Principal's Representative the notice required by clause 31.2(a) and a Claim in accordance with clause 31.2(b).

31.2 Prescribed notices

(a) Any written notice referred to in clause 31.1 must:

(i) be provided not later than 15 Business Days after the later of:

(A) the first occurrence of; or

(B) when the Tunnelling Contractor first became aware of, or ought reasonably to have first become aware 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 Tunnelling 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) Subject to clause 31.3, any written Claim referred to in clause 31.1 must:

(i) be provided not later than 20 Business Days after giving the written notice under clause 31.2(a); and

(ii) include:

(A) detailed particulars, including the date or dates, of the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;

(B) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;

(C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and

(D) details of the amount claimed and how it has been calculated.

31.3 **Temporary waiver of notification requirements**

(a) Within 5 Business Days after receipt of a written notice referred to in clause 31.2(a) or 15.4(a)(i) (as applicable), the Principal's Representative may notify the Tunnelling Contractor in writing that the Principal wishes to temporarily waive the requirements of clause 31.2(b) or clauses 15.4(a)(ii) and 15.4(c) (as applicable) in relation to the proposed Claim that is the subject of the Tunnelling Contractor's notice.

(b) If the Principal's Representative issues a notice under clause 31.3(a), the parties must within 2 Business Days (or such longer period agreed between the parties) meet to discuss the proposed Claim and seek to agree:

(i) the period for which the requirements of clause 31.2(b) or clauses 15.4(a)(ii) and 15.4(c) (as applicable) will not apply in relation to the proposed Claim; and

(ii) the next steps (if any) that the parties wish to take in relation to the proposed Claim.

(c) If, at a meeting under clause 31.3(b), the parties agree a period for which the requirements of clause 31.2(b) or clauses 15.4(a)(ii) and 15.4(c) (as applicable) will not apply, the Principal's Representative will promptly confirm such period by notice in writing to the Tunnelling Contractor.

(d) A meeting under clause 31.3(b) may be held in person, by phone, by video conference or by any other means of instantaneous communication agreed between the parties.

(e) Where the Principal's Representative has given a written notice under clause 31.3(a):

(i) in response to a notice from the Tunnelling Contractor referred to in clause 31.2(a), if the parties:

(A) agree a period for which the requirements of clause 31.2(b) will not apply, the Tunnelling Contractor must provide a written Claim including the details required by clause 31.2(b)(ii) no later than 20 Business

Days after the expiry of that period as stated in a notice issued by the Principal's Representative under clause 31.3(c) (or such longer period as the parties may subsequently agree in writing); or

(B) fail to agree such period, the Tunnelling Contractor must provide a written Claim including the details required by clause 31.2(b)(ii) no later than 20 Business Days after the date of the meeting held under clause 31.3(b); or

(ii) in response to a notice from the Tunnelling Contractor referred to in clause 15.4(a)(i), if the parties:

(A) agree a period for which the requirements of clauses 15.4(a)(ii) and 15.4(c) will not apply, the Tunnelling Contractor must provide a written Claim under clause 15.4(a)(ii) no later than 10 Business Days after the expiry of that period as stated in a notice issued by the Principal's Representative under clause 31.3(c) (or such longer period as the parties may subsequently agree in writing) and the parties may thereafter exercise their respective rights under clause 15.4(c); or

(B) fail to agree such period, the Tunnelling Contractor must provide a written Claim the Tunnelling Contractor must provide a written Claim under clause 15.4(a)(ii) no later than 10 Business Days after the date of the meeting held under clause 31.3(b) and the parties may thereafter exercise their respective rights under clause 15.4(c).

(f) The Tunnelling Contractor must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the Principal under clause 31.3(c) and provide a copy of this register to the Principal's Representative at least 3 Business Days in advance of each meeting of the Management Review Group. This register must be in a form acceptable to the Principal and must include, for each potential Claim, the claim number, a brief description, the date of the potential Claim, the date of the Principal's notice under clause 31.3(a), the date of the meeting under clause 31.3(b), the expiry date of the period notified under clause 31.3(c), any agreed next steps and the status of such next steps.

(g) A notice under clause 31.3(a) does not constitute acceptance that the relevant notice given under clause 31.2(a) or 15.4(a)(i) (as applicable) is valid and does not prejudice in any way the Principal's rights under clause 31.5 in respect of any notice under clause 31.2(a) or 15.4(a)(i) (as applicable).

31.4 **Continuing events**

If the Direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim referred to in clause 31.1 is based, is continuing, or if the consequences of the Direction, event, circumstance, act, omission, fact matter or thing are continuing, the Tunnelling Contractor must continue to give the information required by clause 31.2(b) every 20 Business Days after the written Claim under clause 31.2(b) was submitted or given, until after the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

31.5 **Bar**

If the Tunnelling Contractor fails to comply with clauses [redacted], 7.1, 7.2, 7.3, 7.4, 7.5, [redacted], 12.10, 12.11, 15.4,16.2, 19.6, 19.9(b), 19.9(j), 31.1, 31.2, 31.4 [redacted]:

(a) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Tunnelling Contractor; and

(b) the Tunnelling Contractor will be 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.

31.6 **Other provisions unaffected**

Nothing in clauses 31.1 to 31.5 will limit the operation or effect of any other provision of this deed which requires the Tunnelling Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

32. GENERAL

32.1 Notices

(a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.

(b) At any time and from time to time the Principal's Representative may notify the Tunnelling Contractor that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:

(i) the name of the relevant PDCS;

(ii) the commencement date for use of the PDCS;

(iii) any password, login details or similar information required for the Tunnelling Contractor to use the PDCS; and

(iv) any other information reasonably necessary for the use and service of Notices via the PDCS.

(c) Each Notice must:

(i) before the date referred to in clause 32.1(b)(ii):

(A) be in writing;

(B) be addressed:

(aa) in the case of a Notice from the Tunnelling Contractor, to the Principal's Representative; or

(bb) in the case of a Notice from the Principal, to the Project Director;

(C) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

(D) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

(aa) to the Principal's Representative:

Address: Level 43, 680 George Street, Haymarket, Sydney NSW 2000

Email: [redacted]

Attention: [redacted]

(bb) to the Tunnelling Contractor:

Address: Suite 26.01,100 Miller Street, North Sydney, NSW 2060

Email: [redacted]

Attention: [redacted]

(cc) to the Process Agent:

Name: [redacted]

Address: [redacted]

Attention: [redacted]

(ii) on and from the commencement date for use of the PDCS referred to in clause 32.1(b)(ii):

(A) be sent through the PDCS in accordance with the requirements set out in clause 32.1(e) and:

(aa) in the case of a Notice from the Tunnelling Contractor, be addressed to the Principal's Representative; or

(bb) in the case of a Notice from the Principal, be addressed to the Project Director; or

(B) in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 32.1(c)(i);

(d) Subject to clause 32.1(d)(v), a communication is taken to be received by the addressee:

(i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;

(ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;

(iii) (in the case of international post) 7 Business Days after the date of posting;

(iv) (in the case of delivery by hand) on delivery;

(v) (in the case of email):

(A) if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or

(B) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and

(e) With respect to Notices sent through the PDCS:

(i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

(ii) only the text in any Notice, or subject to paragraph 32.1(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and

(iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:

(A) pdf format;

(B) a format compatible with Microsoft Office; or

(C) such other format as may be agreed between the parties in writing from time to time.

(f) The Tunnelling Contractor warrants that it will:

(i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;

(ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;

(iii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the Tunnelling Contractor from time to time;

(iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;

(v) advise the Principal's Representatives of which personnel require access to the PDCS;

(vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and

(vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 32.1(c)(ii)(B) to the Principal's Representative through the PDCS.

(g) Not used.

(h) The Principal has no liability for any Losses the Tunnelling Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Tunnelling Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the Tunnelling Contractor's access to or use of the PDCS or any failure of the PDCS.

(i) Wherever this deed requires the Tunnelling Contractor to provide any documents, notices or other communications to an Interface Contractor, the Tunnelling Contractor must address such communications to the relevant Interface Contractor:

(i) at the address notified to the Tunnelling Contractor by the Principal; or

(ii) if required by the Principal, by way of the PDCS.

32.1A **Appointment of a process agent**

(a) Without prejudice to any mode of service allowed under any relevant law, the Tunnelling Contractor:

(i) irrevocably appoints [redacted] in relation to proceedings in the State of New South Wales as its process agent to receive any document in an action in connection with this deed;

(ii) agrees that service of documents on its process agent at the address set out in clause 32.1(c)(i)(D)(cc) (or any new address notified to other parties in writing) is sufficient service on it; and

(iii) agrees that failure by a process agent to notify it of any document in an action in connection with this deed, will not invalidate the action concerned.

(b) The parties acknowledge and agree that the service of any documents to the process agent appointed by the Tunnelling Contractor in accordance with this clause 32.1A must be at the physical address set out in clause 32.1(c)(i)(D)(cc) and must not be via email.

(c) If for any reason the person named above as process agent ceases to be able to act as process agent, the Tunnelling Contractor must promptly appoint another person as its process agent in Australia, ensure that the replacement process agent accepts is appointment, and promptly provides the Principal with notice of the appointment of the replacement process agent.

32.2 **Governing Law and Jurisdiction**

(a) This deed is governed by and must be construed according to the law applying in New South Wales.

(b) Where the Principal issues a notice under clause 25.8 referring to a Dispute to litigation or where clause 25.13 applies, each party irrevocably:

(i) 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 action or proceedings which may be brought at any time relating in any way to this deed; and

(ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 32.2(b)(i).

32.3 **Cost**

(a) Subject to clause 32.3(b), a party which has an obligation to do anything under this deed must perform that obligation at its cost, unless expressly provided for otherwise.

(b) The Tunnelling Contractor must:

(i) pay all stamp duties and any related fines and penalties and any other fees payable in respect of this deed, the performance of this deed and each transaction effected by or made under this deed; and

(ii) indemnify the Principal against any liability arising from failure to comply with clause 32.3(b)(i).

(c) The Tunnelling Contractor is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

32.4 **Taxes**

(a) Without limiting clauses 7.1, 7.2 or 7.3, the Tunnelling Contractor must pay all Taxes which may be payable in respect of the Tunnelling Contractor's Activities, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant.

(b) The Tunnelling Contractor indemnifies the Principal against, and must pay on demand the amount of, all Losses, liabilities and Taxes incurred as a result of the Tunnelling Contractor, any subcontractor or any person engaged by the Tunnelling Contractor or any subcontractor being deemed to be an employee of the Principal (including but not limited to payroll taxes, fringe benefits taxes, superannuation guarantee charge liabilities, and any related interest or penalties).

32.5 **Indemnities to survive**

(a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligation of the parties, and survives termination, completion or expiration of this deed.

(b) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

(c) A party must pay on demand any amount it must pay under an indemnity in this deed.

32.6 **Amendment**

Subject to clause 15, this deed may only be amended or varied by a written agreement executed by or on behalf of both the Principal and the Tunnelling Contractor.

32.7 **Permitted disclosure**

(a) Subject to any express provisions otherwise in this deed, the Principal may publish (on the internet or otherwise) or disclose, including to its Associates, any Interface Contractor:

(i) the terms and conditions of any Tunnelling Contract Document, including this deed; and

(ii) any document or information arising under, out of or in connection with any Tunnelling Contract Document, including this deed, or relating to the performance of any Tunnelling Contract Document, including this deed.

(b) The Tunnelling Contractor acknowledges and agrees that disclosures regarding the Project Works by the Principal, the State of New South Wales or any Authority may be required:

(i) under the GIPA Act or any similar or replacement legislation;

(ii) by Law; or

(iii) to satisfy the disclosure requirements of the Auditor General or to satisfy the requirements of Parliamentary accountability,

(**Public Disclosure Obligations**).

(c) The Tunnelling Contractor must, at its own cost and expense, use all reasonable endeavours to assist the Principal, the State of New South Wales or an Authority in meeting its Public Disclosure Obligations.

(d) Subject to clause 32.7(e), the Tunnelling Contractor must:

(i) keep confidential the Tunnelling Contract Documents and any information relating to the Project Works, the Tunnelling Contractor's Activities and any discussions concerning the Tunnelling Contract Documents; and

(ii) ensure that each of its Associates comply with the terms of clause 32.7(d)(i).

(e) The Tunnelling Contractor is not obliged to keep confidential any information:

(i) which is in the public domain through no default of the Tunnelling Contractor; or

(ii) the disclosure of which is:

(A) required by any applicable law;

(B) given with the written consent of the Principal; or

(C) given to a court in the course of proceedings to which the Tunnelling Contractor is a party.

(f) The parties acknowledge that:

(i) the Principal will notify the Tunnelling Contractor of any proposed disclosure of the Tunnelling Contract Documents by the Principal under the GIPA Act no later than 15 Business Days before the proposed date of disclosure;

(ii) following notification by the Principal in accordance with clause 32.7(f)(i), the Principal will take reasonable steps to consult with the Tunnelling Contractor before disclosing any part of the Tunnelling Contract Documents that the Tunnelling Contractor considers to be commercial-in-confidence (as defined in the GIPA Act); and

(iii) nothing in this clause 32.7 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

32.8 **Vienna Convention**

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this deed.

32.9 **The Principal may act**

(a) If the Tunnelling Contractor fails to perform an obligation under this deed, then, subject to clause 32.9(b), the Principal may take such action as may be necessary to remedy the failure by the Tunnelling Contractor and the Principal may for this purpose enter the Construction Site, any Extra Land and any other land upon which the Tunnelling Contractor's Activities are being carried out.

(b) Except where the Principal is taking action in the circumstances referred to in clause 16.7, the Principal may only take action as referred to in clause 13.6(c) or clause 32.9(a) where the Principal's Representative has given the Tunnelling Contractor 5 Business Days' prior written notice of the Tunnelling Contractor's failure to perform an obligation under this deed and that the Principal intends to take action to remedy the failure.

(c) The Loss suffered or incurred by the Principal in so performing such an obligation of the Tunnelling Contractor will be a debt due and payable from the Tunnelling Contractor to the Principal.

(d) Where the Principal or the Principal's Representative is entitled under this deed to exercise any right or power to:

(i) direct or instruct the Tunnelling Contractor to; or

(ii) itself step in to,

take any action or omit to take any action, it is not obliged to exercise that power or issue that Direction or instruction and it may do so in its absolute discretion.

(e) Where the Principal or the Principal's Representative does exercise any such right or power, the Tunnelling Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Tunnelling Contractor's Activities, the Project Works and the Temporary Works.

32.10 **Non reliance**

Without limiting clauses 12.8 and 12.9, the Tunnelling Contractor:

(a) warrants that it did not in any way rely upon any information, representation, statement or documentation, whether forming part of this deed or not, made by or provided to the Tunnelling Contractor by the Principal or anyone on behalf of the Principal for the purposes of entering into this deed;

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

(c) acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties in clauses 32.10(a) and 32.10(b).

32.11 **Entire agreement**

To the extent permitted by Law, this deed and the other Tunnelling Contract Documents:

(a) embody the entire understanding of the parties and constitute the entire terms agreed upon between the parties; and

(b) supersede any prior written or other agreement of the parties,

in relation to the subject matter of this deed.

32.12 **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.

32.13 **Unlimited discretion**

(a) Except as expressly otherwise provided in this deed (including in clause 32.13(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this deed.

(b) Without limiting clause 32.13(a):

(i) except as expressly provided in this deed (including in clause 32.13(c)), neither the Principal nor the Principal's Representative will be:

(A) constrained in the manner in which it exercises; or

(B) under any obligation to exercise,

any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement;

(ii) any approval or consent referred to in, or required under, this deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise;

(iii) a Direction (including an absolute or sole discretion) or power of the Principal's Representative is validly and properly exercised or made for the purposes of this deed if exercised or made (or if it is not exercised or made) by the Principal's Representative whether it is exercised or made:

(A) independently;

(B) after consultation with the Principal and its advisers; or

(C) as directed by the Principal;

(iv) any control or influence exercised by the Principal over the Principal's Representative does not:

(A) affect the valid and proper exercise of any power or Direction (including an absolute or sole discretion) by the Principal's Representative; or

(B) entitle the Tunnelling Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the Direction (including an absolute or sole discretion) or power; and

(v) subject to any express provision in this deed to the contrary, a provision of this deed which says that the Principal or the Principal's Representative may do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing.

(c) Nothing in this clause 32.13 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

32.14 **Joint and several liability**

(a) The obligations of the Tunnelling Contractor, if more than one person, under this deed, are joint and several and each person constituting the Tunnelling Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Principal may proceed against any one or all of them.

(b) The rights of the Tunnelling Contractor, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting the Tunnelling Contractor (and not severally or jointly and severally).

(c) Any payment by the Principal under this deed to any account nominated in writing by the Tunnelling Contractor, or failing such nomination, to any one or more persons constituting the Tunnelling Contractor, will be deemed to be payment to all persons constituting the Tunnelling Contractor.

(d) The Tunnelling Contractor may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the Tunnelling Contractor.

32.15 **Assignment**

(a) Without limiting clause 32.22, the Principal may:

(i) assign, novate or otherwise transfer all or any part of its rights under this deed without the Tunnelling Contractor's prior approval, provided that the assignee, novate or transferee (as applicable) is an authority of the State, a Minister or a government entity including a wholly owned State corporation or any other entity that is whole owned or controlled by the State;

(ii) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the Tunnelling Contractor's prior written consent (which must not be unreasonably withheld or delayed); and

(iii) disclose to a proposed assignee, novate or transferee any information in the possession of the Principal relating to the Tunnelling Contractor.

(b) In the case of a novation by the Principal under this clause:

(i) the Principal will be released from its obligations under this deed and the respective rights of the Principal and the Tunnelling Contractor against one another under this deed will cease;

(ii) the novated deed will be on the same terms as this deed, such that the incoming party and the Tunnelling Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 32.15(b)(i), except that the incoming party replaces the Principal for all purposes under the deed; and

(iii) the Tunnelling Contractor consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.

(c) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

(d) The Tunnelling Contractor must not assign, novate or otherwise transfer any of its rights, interests, liabilities or obligations under this deed without the prior written consent of the Principal.

32.16 **No agency, partnership, joint venture or other fiduciary relationship**

Nothing in this deed will be construed or interpreted as:

(a) conferring a right in favour of either the Principal or the Tunnelling Contractor to enter into any commitment on behalf of the other or otherwise to act as the other's agent; or

(b) constituting the relationship between the Principal on one hand and the Tunnelling Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

32.17 **Waiver**

(a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this deed.

(b) Any waiver or consent given by the Principal under this deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.

(c) No waiver by the Principal of:

(i) a breach of any term of this deed; or

(ii) any other failure by the Tunnelling Contractor to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of:

(iii) another breach of that term or of a breach of any other term of this deed; or

(iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this deed.

32.18 **Further acts and documents**

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

32.19 **Provisions limiting or excluding liability**

Any provision of this deed which seeks to limit or exclude a liability of the Principal or the Tunnelling Contractor, is to be construed as doing so only to the extent permitted by Law.

32.20 **Survival of certain provisions**

(a) Any provision of this deed which expressly or by implication from its nature is intended to survive the termination of this deed and any rights arising on termination shall survive, including any caps on or exclusions of liability, warranties, guarantees, licences or indemnities given under this deed.

(b) No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

32.21 **PPS Act**

The Tunnelling Contractor acknowledges and agrees that:

(a) if and to the extent that the Principal at any time forms a belief on reasonable grounds that the Principal is, or will become, a secured party arising out of or in connection with this deed or any transaction contemplated by this deed, the Principal may at the Tunnelling Contractor's expense take all steps that the Principal considers advisable to:

(i) perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any relevant personal property that is the subject of this Security Interest (relevant personal property); and

(ii) better secure the Principal's position in respect of the relevant personal property under the PPS Act;

(b) it will do all things reasonably necessary to assist the Principal to take the steps described in paragraph (a) above;

(c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in the relevant personal property;

(d) if, and only if, the Principal is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in relevant personal property, the Tunnelling Contractor and the Principal agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115: section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;

(e) subject to section 275(7) of the PPS Act, it will not disclose the contents of this deed, the amount or performance obligation secured by the Principal's Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;

(f) it must immediately notify the Principal if the Tunnelling Contractor becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to relevant personal property; and

(g) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's interest in relevant personal property.

For the purposes of this clause 32.21, registration, secured party, verification statement, financing statement, personal property and financing change statement each have the meaning given to those terms in the PPS Act.

32.22 **Transfer of functions or Public Transport Agency assets**

(a) The parties acknowledge that:

(i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;

(ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

(iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.

(b) The Tunnelling Contractor acknowledges and agrees that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.

(c) The Tunnelling Contractor will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 32.22.

(d) For the purposes of this clause 32.22, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

EXECUTED as a deed.

SIGNED for **SYDNEY METRO** ABN 12 354 063 515 by its duly authorised delegate, in the presence of:

[redacted]

[redacted]

SIGNED, SEALED AND DELIVERED on behalf of **GAMUDA BERHAD (COMPANY REGISTRATION NO 197601003632 (29579-T))** by its duly appointed representatives being duly authorised in this behalf under the Deed of Authorisation dated 7 May 2021 (registered on 28 May 2021 in New South Wales, Australia with the registration number Bk 4787 No 643) (**DOA**) in the presence of:

[redacted]

Gamuda Berhad by its authorised representatives

Seal

[redacted]

SCHEDULE A1

Conditions Precedent

(Clauses 1.1 and 2)

No.	Condition Precedent	Benefiting Party
1.	The following documents have been executed by all parties to them in a form satisfactory to the Principal: (a) this deed; (b) the Independent Certifier Deed (and all conditions precedent to its effectiveness have been satisfied or waived by the relevant parties); and (c) the Master Interface Deed.	The Principal and the Tunnelling Contractor
2.	The following documents have been executed by all parties to them in a form satisfactory to the Principal: (a) the Delivery Partner Deed (and all conditions precedent to its effectiveness have been satisfied or waived by the relevant parties); [redacted]	The Principal
3.	The Tunnelling Contractor has provided the unconditional undertakings required by clause 6.1 of the deed.	The Principal
4.	The Principal has effected the policies of insurance required by clause 23.4 of the deed (other than the project specific professional indemnity insurance referred to in clause 23.4(a)(ii).	The Principal and the Tunnelling Contractor
5.	The Tunnelling Contractor has effected the policies of insurance required by clause 23.5 of the deed (other than the insurances referred to in clauses 23.7, 23.12 and 23.13 of the deed).	The Principal and the Tunnelling Contractor

No.	Condition Precedent	Benefiting Party
6.	[redacted]	
7.	[redacted]	

No.	Condition Precedent	Benefiting Party
	[redacted]	[redacted]
8.	[redacted]	[redacted]

No.	Condition Precedent	Benefiting Party
	[redacted]	
9.	[redacted]	

SCHEDULE A2

Portions and Milestones

(Clauses 1.1 and 19.11(d)(i)-(ii))

1. **GENERAL**

(a) Unless the context requires otherwise, terms which are defined in the Particular Specification or the General Specification have the same meaning where used in this Schedule A2.

(b) Areas that are referred to in this Schedule A2 by an individual area number are references to the areas so numbered and described in the drawings described in Table 1 of Schedule D1.

(c) The parts of the Construction Site that are related to:

(i) a Portion for the purposes of clause 12.2(g) of the deed are, for each Portion identified in the column headed "Portion", the parts of the Construction Site described in the corresponding column headed "Part of Construction Site"; and

(ii) a Milestone for the purposes of clause 12.2(h) of the deed are, for each Milestone identified in the column headed "Milestone", the parts of the Construction Site described in the corresponding column headed "Milestone Area".

2. **PORTIONS**

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 19.11(d)(i)) $/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[redacted]					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 19.11(d)(i)) $/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[redacted]					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 19.11(d)(i)) $/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[redacted]					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 19.11(d)(i)) $/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[redacted]					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 19.11(d)(i)) $/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[redacted]					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 19.11(d)(i)) $/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[redacted]					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 19.11(d)(i)) $/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[redacted]					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 19.11(d)(i)) $/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[redacted]					

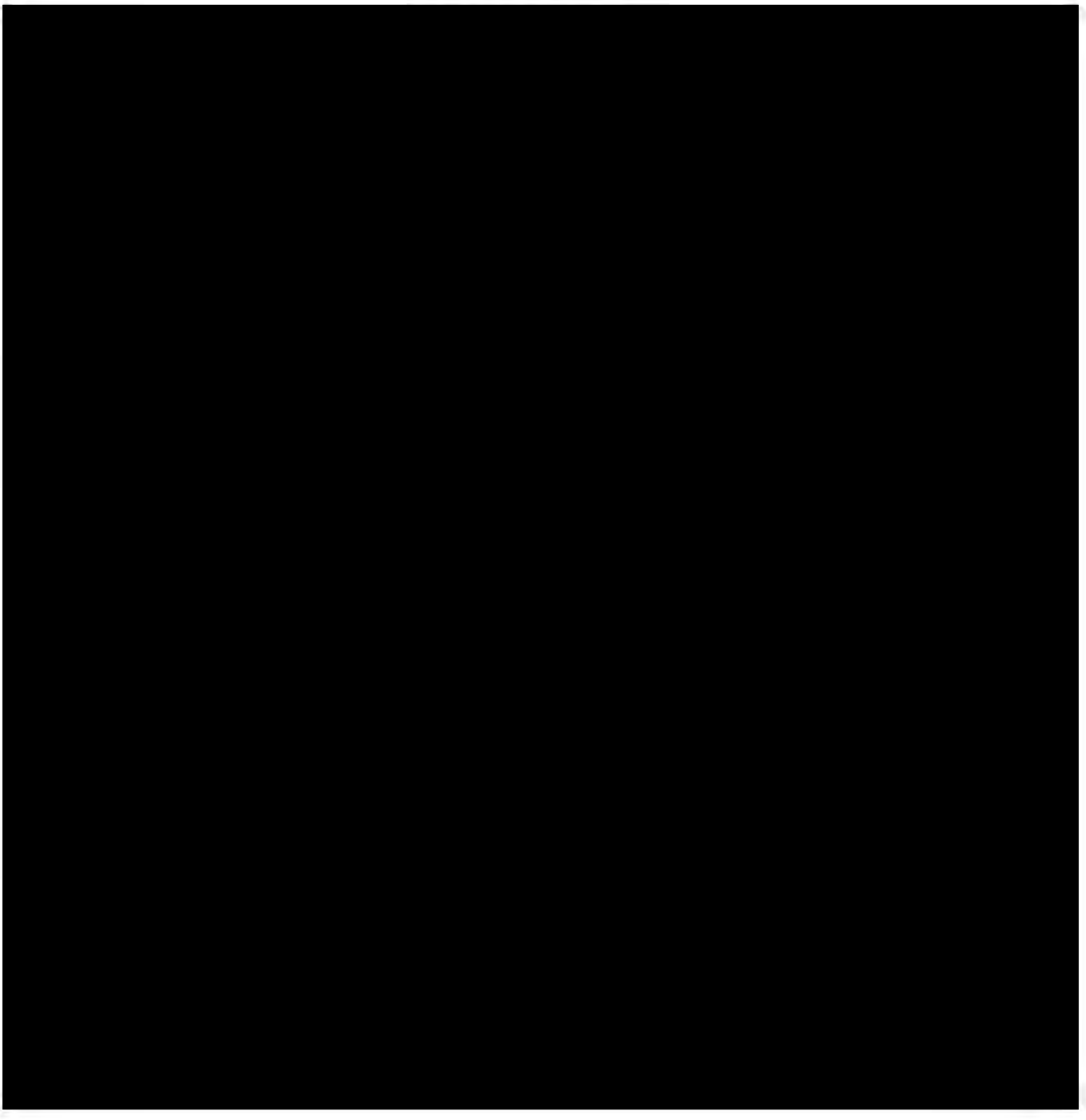
Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 19.11(d)(i)) $/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[redacted]					

3. **MILESTONES**

Milestone	Description	Date for Milestone Achievement	Liquidated damages $ / day	Milestone Area (Where applicable)
N/A	N/A	N/A	N/A	N/A

SCHEDULE A3

Pre-Agreed Changes



SCHEDULE A4

Transitional Handover Services

(Clauses 1.1 and 19.16)

Where the Principal's Representative gives a notice under clause 19.16(a) for a Portion or Milestone Area, the Transitional Handover Services to be performed by the Tunnelling Contractor in respect of that Portion or Milestone Area (as applicable) comprise the general Transitional Handover Services described in clause 1 of this Schedule A4 .

1. **General Transitional Handover Services**

(a) Continuing to comply with the obligations under clause 8.2 of this deed.

(b) The Tunnelling Contractor continuing to fulfil the role of "principal contractor" (as that term is defined in clause 8.3(a) of this deed).

(c) Any activities required to ensure that:

(i) the Portion or Milestone Area (as applicable) itself, and the Portion together with any previously completed Portions will, upon the completion of the Transitional Handover Services:

(A) be fit for their intended purposes; and

(B) be capable of remaining at all relevant times fit for their intended purpose; and

(ii) the Portion or the Milestone Area (as applicable) remains ready for an Interface Contractor to take over the Portion.

(d) Continuing to comply with all obligations of the Tunnelling Contractor that relate to access to the relevant parts of the Construction Site, including the obligations under clause 12.5 of this deed and any relevant obligations under the Site Access Schedule.

(e) Without limiting clause 12.5 of this deed or any obligations under the Site Access Schedule:

(i) securing and protecting all relevant areas of the Portion or the Milestone Area (as applicable); and

(ii) keeping all relevant areas of the Portion or the Milestone Area (as applicable) clean, including removing rubbish, litter, graffiti and surplus material.

(f) Maintaining and (to the extent applicable) operating any Handover Works related to the Portion.

(g) Regular inspection, lubrication, adjustment, cleaning, replacement of parts (including drains, screens and filters).

(h) Any activities provided for in the relevant Asset Management Information that must be carried out at a time that occurs before the relevant Portion Handover Date or the relevant Milestone Area Handover Date (as applicable).

(i) Continuing to comply with, carry out and fulfil the conditions and requirements of all relevant Approvals (including, including, where relevant, ongoing monitoring).

(j) All activities required to obtain and maintain any Approval required for the performance of the Transitional Handover Services and complying with, carrying out and fulfilling the conditions and requirements of any such Approval.

(k) Payment of any costs in connection with Utility Services associated with the performance of the Transitional Handover Services.

(l) Replacement of parts and consumables, including water treatment chemicals and supplies, used during the performance of the Transitional Handover Services.

(m) Providing safe and convenient access to the relevant parts of the Construction Site to the Principal's Representative and any person authorised by the Principal.

(n) Providing a monthly report, in which the Tunnelling Contractor must provide an overview of to the general Transitional Handover Services described in this clause 1 of Schedule A4 and confirm compliance with its obligations under paragraph (m) above specifically.

SCHEDULE A5

Subcontract Requirements

(Clause 5.3)

Item	Requirement
1.	***Subcontracts and Significant Subcontracts***
(a)	Each Subcontract must contain 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 each Subcontract whether these rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
(b)	Each Subcontract must contain a requirement that in any further contract that a Subcontractor enters into with a third party for the performance of the Tunnelling Contractor's Activities, 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 each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
(c)	Each Subcontract must include provisions expressly requiring the Subcontractor to comply with the Chain of Responsibility Provisions and each further Subcontract that a Subcontractor enters into must also contain a clause to the same effect which is binding on the Subcontractor.
(d)	Each Subcontract must contain provisions equivalent to clauses 4.20 (*Australian Jobs Act*) and 4.21 (*Workforce development and industry participation*), and each further Subcontract that a Subcontractor enters into must also contain clauses to the same effect which are binding on the Subcontractor.
(e)	Each Subcontract must contain provisions equivalent to clause 8.1 (*Care of people, property and Environment*), clause 8.2 (*Work health and safety*) and clause 8.3(d) (*Principal contractor*).
(f)	Each Subcontract must contain provisions equivalent to clause 9 (*Engineering Authorisation and ASA Compliance)*.
(g)	Each Subcontract must contain provision equivalent to clause 13.7 (*Monitoring and audits by the Principal's Representative*).
(h)	Each Subcontract which involves the performance of design work must contain provisions equivalent to clauses 14.4(c)(ii) and 14.4(d).
(i)	Each Subcontract must contain provision requiring the Subcontractor attend, upon request, the meetings contemplated in clauses 18.4(b), 18.5(d) and 18.18(c)(ii) of the deed.
(j)	Each Subcontract with Subcontractor that prepared Design Documentation must contain provisions equivalent to clauses 2(a)(ii) and 2(b)(i)(B) of Schedule A26

Item	Requirement
	with respect to certification requirements that are relevant to the Subcontractor's scope of work.
(k)	Each Subcontract with Subcontractor that prepared Work as Executed Design Documentation must contain provisions equivalent to clauses 16.14(b)(ii) with respect to the preparation of a certificate in the form of Schedule B19.
(l)	Each Subcontract must contain provisions equivalent to clause 28 (*Transport for NSW Statement of Business Ethics*), clause 29 (*NSW Industrial Guidelines: Building and Construction Procurement*) and clause 30 (*Australian Government Requirements*).
2. Significant Subcontracts	
(a)	Each Designated Significant Subcontract must contain provisions equivalent to clause 5.1(c), expressly requiring each Designated Significant Subcontractor to execute a deed in form of Schedule A14 and provide this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor.
(b)	Each Significant Subcontract must contain provisions recognising the Principal's rights under clause 16.5 (*Principal's right to inspect and seek comments*).
(c)	Each Significant Subcontract must contain provisions that require the Tunnelling Contractor's consent to any assignment or subcontract proposed by the Subcontractor.
(d)	Each Significant Subcontract must include a clause providing that if this deed is terminated for any reason or the Principal takes over the Tunnelling Contractor's work, the Tunnelling Contractor and the Subcontractor must, after the Principal has given a Direction to do so, promptly (and within 5 Business Days) execute a deed of novation in the form of Schedule A18.
(e)	Each Significant Subcontract which involves the performance of design work or other professional services must include provisions requiring the Significant Subcontractor to effect and maintain professional indemnity insurance which: • covers liability arising from a breach of a duty owed in a professional capacity, whether owed in contract or otherwise, by any act or omission of the Significant Subcontractor or its Associates in relation to the carrying out of its obligations under the relevant Significant Subcontract; and • are equivalent to the terms of clauses 23.15, 23.16(c), 23.16(d) and 23.18, unless such insurance has been arranged for the relevant Significant Subcontractor under the project specific professional indemnity insurance policy procured by the Principal in accordance with clause 23.4 and Schedule E6.
(f)	The Tunnelling Contractor must (unless otherwise approved in writing by the Principal's Representative) ensure that each Designated Significant Subcontract that it enters into in connection with the Tunnelling Contractor's Activities includes

Item	Requirement
	provisions that will enable the Tunnelling Contractor to comply with clause 27 of the deed.
(g)	Each Significant Subcontract must contain provisions requiring that all documentation and information provided by the Significant Subcontractor under its Significant Subcontract be provided on an Open Book Basis.

SCHEDULE A6

Significant Subcontractors

(Clause 5.2(a))

Significant Subcontract Work	Significant Subcontractor
TBM supply.	[redacted]
Segment manufacture.	
Concrete supply.	
Design of any part of the Project Works or the Temporary Works.	

Significant Subcontract Work	Significant Subcontractor
	[redacted]
Geotechnical design or consultancy services.	
Demolition works	
Civil works	
Mined tunnel and caverns	
Delivery Partner services	

SCHEDULE A7

Subcontractors to provide warranties

(Clause 17.11)

Subcontract Work	Warranty Period

SCHEDULE A8

Form of Warranty

(Clause 17.11)

THIS DEED POLL is made the day of 20

TO: **Sydney Metro** ABN 12 354 063 515 a New South Wales agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and

[***Insert name of relevant beneficiary***] ABN [***Insert ABN***] of [***Insert address***] (**Beneficiary**)

BY: That person described in Item 1 of the Schedule (**Warrantor** which expression will include its successors and assigns).

BACKGROUND

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 (**Tunnelling Contractor**) for the tunnel and station excavation works component of the Sydney Metro West (**Project**) being carried out by the Tunnelling Contractor under the deed described in Item 4 of the Schedule (**Deed**) with the Principal.

B. It is a requirement imposed by the Principal under the Deed that the Tunnelling Contractor procures the Warrantor to give the following warranties in favour of the Beneficiaries with respect to the Equipment.

OPERATIVE

1. The Warrantor:

   (a) warrants to the Beneficiary that the Equipment will be to the quality and standard stipulated by the Deed and will be of merchantable quality and fit for the purpose for which it is required; and

   (b) gives the warranty more particularly set out in Item 5 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. The Warrantor warrants to the Beneficiary that it will replace so much of the Equipment as:

   (a) is found to be of a lower quality or standard than that referred to in clause 1; or

   (b) shows deterioration of such extent that in the opinion of the 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,

   within the period described in Item 6 of the Schedule.

3. The Warrantor covenants to the Beneficiary that it will bear the cost of any work necessary to any part of the Project to enable the requirements of clause 2 to be carried out or to make good the Project afterwards.

4. The Warrantor acknowledges to the Beneficiary that nothing contained in this Deed Poll is intended to nor will render the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.

5. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.

6. The Warrantor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

SCHEDULE

Item 1: *Name and address of Warrantor*

Item 2: *Details of the Equipment*

(Background clause A)

Item 3: *The Tunnelling Contractor*

(Background clause A)

Item 4: *The deed titled "Sydney Metro West, Western Tunnelling Works Design and Construction Deed"*

(Background clause A)

Item 5: *Detailed warranty of Warrantor*

(Clause 1)

Item 6: *Period of years*

[ ] years from the date of the Final Certificate issued pursuant to clause 19.17(b) of the Deed.

(Clause 2)

Executed as a deed poll.

Executed by [ ] in the presence of:	
_____	_____
Signature of Director	Signature of Secretary/other Director
_____	_____
Name of Director in full	Name of Secretary/other Director in full

SCHEDULE A9

Tunnelling Contractor's Personnel

(Clauses 4.18(b), 13.4 and 18.2)

Project Director

(a) The Project Director must possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and be experienced in the design, construction and project management of large projects similar to the Project Works and Temporary Works.

(b) The Project Director must at all times have authority to act on behalf of and bind the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities.

(c) The Project Director must be engaged full-time during the design phase of the Project Works and the Temporary Works and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works.

(d) At the date of this deed, the Project Director is [redacted]

Design Manager

(a) The Design Manager must possess a recognised engineering qualification relevant to the position and the Tunnelling Contractor's Activities and have at least fifteen years' experience in the overall management and co-ordination of multi-disciplinary design teams on large projects similar to the Project Works and Temporary Works.

(b) The Design Manager must manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of this deed (including the Overall D&C Program and any other Programs).

(c) The Design Manager must be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works up until six months after the completion of the design review process for Design Stage 3, as set out in Schedule A26.

(d) The Design Manager must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities.

(e) At the date of this deed, the Design Manager is [redacted]

Construction Manager

(a) The Construction Manager must possess a recognised engineering qualification relevant to the position and the Tunnelling Contractor's Activities and have at least fifteen years' experience in the overall management of construction on large projects similar to the Project Works and Temporary Works.

(b) The Construction Manager must be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works and must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities.

(c) At the date of this deed, the Construction Manager is [redacted]

Quality and Systems Manager

(a) The Quality and Systems Manager must:

(i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in quality management on projects similar to the Project Works and the Temporary Works;

(ii) have at least fifteen years' quality management experience, with extensive experience in the development and implementation of quality management systems and plans;

(iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on quality matters;

(iv) give the Principal's Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels;

(v) be responsible for an induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;

(vi) be responsible for and have the authority to develop the Quality Plan;

(vii) be responsible for the Tunnelling Contractor's requirements management tool in accordance with section 3.3 of the General Specification;

(viii) be given authority by the Tunnelling Contractor to act freely and independently and to stop the progress of the relevant part of the Tunnelling Contractor's Activities when any non-conformance with the quality requirements of this deed is identified and at specified Hold Points; and

(ix) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to quality management of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Quality and Systems Manager is [redacted]

Commercial Manager

(a) The Commercial Manager must:

(i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and be experienced in the management of commercial issues on major civil construction projects;

(ii) have at least ten years commercial management experience on major civil construction projects;

(iii) have recent relevant experience in effectively negotiating and communicating at a senior level with clients on major civil construction projects;

(iv) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on contractual and commercial matters; and

(v) must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of contractual and commercial matters.

(b) At the date of this deed, the Commercial Manager is [redacted]

Stakeholder and Community Engagement Manager

(a) The Stakeholder and Community Engagement Manager must:

(i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in community involvement on projects similar to the Project Works and Temporary Works and have an understanding of stakeholder and community attitudes and needs in relation to the Project Works and Temporary Works;

(ii) have at least ten years' communications and community relations experience, with extensive experience in the management of community liaison, consultation and communications on major infrastructure projects;

(iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on stakeholder and community relations matters;

(iv) be experienced in the development and implementation of community involvement strategies and plans;

(v) be experienced in and have an understanding of NSW government public affairs processes;

(vi) be responsible for a stakeholder and community relations induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;

(vii) be responsible for and have the authority to develop and implement the Community Liaison Plan; and

(viii) be engaged full-time by the Tunnelling Contractor during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to stakeholder and community relations management of the Tunnelling Contractor's Activities and be available at all times:

A. to take a proactive role in the stakeholder and community relations processes relating to the Tunnelling Contractor's Activities as set out in this deed; and

B. for contact by stakeholders and the community to answer questions and deal with complaints relating to the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Stakeholder and Community Engagement Manager is [redacted]

Public Affairs and Events Manager

(a) The Public Affairs and Events Manager must:

(i) have a recognised and appropriate public affairs qualification, ten years of active industry experience and demonstrated competence in public affairs management (with a background in journalism or public relations);

(ii) commence within 14 Business Days of the date of this deed and continue until the Date of Completion of the last Portion to achieve Completion;

(iii) be engaged full-time by the Tunnelling Contractor during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works; and

(iv) have comprehensive knowledge of the Tunnelling Contractor's Activities, have access to key personnel and on-site information, and be authorised to prepare and issue media and other urgent copy to the Principal's Representative on a 24 hour a day, seven day a week basis.

(b) At the date of this deed, the Public Affairs and Events Manager is [redacted]

Environmental Manager

(a) The Environmental Manager must:

(i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in environmental management on projects similar to the Project Works and Temporary Works;

(ii) have at least fifteen years' environmental management experience, with extensive experience in the preparation and implementation of environmental management systems and plans;

(iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on environmental matters;

(iv) be experienced in regulatory liaison and consultation;

(v) be responsible for all environmental compliance matters associated with the Tunnelling Contractor Activities;

(vi) be responsible for an environmental management induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;

(vii) be responsible for and have the authority to develop and implement the Construction Environmental Management Plan;

(viii) be given authority by the Tunnelling Contractor to act freely and independently, to require all reasonable steps to be taken to achieve environmental compliance, to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Project Works, Temporary Works and the Tunnelling Contractor's Activities when any non-conformance with the environmental requirements of this deed is identified; and

(ix) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the

construction phase of the Project Works and Temporary Works with responsibilities limited to environmental management of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Environmental Manager is [redacted]

Sustainability Manager

(a) The Sustainability Manager must:

(i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in sustainability management on projects similar to the Project Works and Temporary Works;

(ii) have at least five years' sustainability management experience, with previous experience in the provision of sustainability advice on the design and construction of engineering;

(iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on sustainability matters;

(iv) be responsible for a sustainability induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;

(v) be responsible for ensuring the Tunnelling Contractor's Activities meet the requirements of section 2.8 of the General Specification and section 3.4 of the Particular Specification; and

(vi) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to sustainability management of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Sustainability Manager is [redacted].

Work Health and Safety Manager

(a) The Work Health and Safety Manager must:

(i) possess a bachelor's degree in health and safety or equivalent and have recent relevant work health and safety management experience on major infrastructure projects similar to the Project Works and Temporary Works;

(ii) have "Chartered" status with the Safety Institute of Australia or international equivalent (e.g. ASSE, IOSH etc);

(iii) have at least ten years' experience in work health and safety management on major infrastructure projects, with extensive experience in the preparation and implementation of work health and safety management systems and plans;

(iv) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on work health and safety matters;

(v) be responsible for a work health and safety induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;

(vi) be responsible for and have the authority to develop and implement the Project Health & Safety Management Plan;

(vii) be given authority by the Tunnelling Contractor to act freely and independently, to direct that all reasonable steps be taken where safety compliance is at risk and to stop the progress of the relevant part of the Project Works, the Temporary Works or the Tunnelling Contractor's Activities when any non-conformance with the work health and safety requirements of this deed is identified; and

(viii) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to work health and safety management of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Work Health and Safety Manager is [redacted]

Traffic Manager

(a) The Traffic Manager must:

(i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant work experience in a traffic management position on large projects similar to the Project Works and Temporary Works in a confined CBD environment;

(ii) have a minimum of 10 years traffic management experience, with extensive experience in the preparation and implementation of construction traffic management plans and traffic control plans;

(iii) have experience in regulatory liaison and consultation;

(iv) be given authority by the Tunnelling Contractor to act freely and independently, to require all reasonable steps be taken to avoid or minimise adverse traffic impacts and to stop the progress of the relevant part of the Project Works, the Temporary Works or the Tunnelling Contractor's Activities when any non-conformity with the traffic management requirements of this deed is identified; and

(v) be full-time on or around the Construction Site during the construction phase of the Tunnelling Contractor's Activities with responsibility for the management of traffic and must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities and be available at all times for matters regarding road occupancy licences.

(b) At the date of this deed, the Traffic Manager is [redacted]

Workforce Development and Industry Participation Manager

(a) The Workforce Development and Industry Participation Manager must:

(i) be responsible for the overall delivery and reporting of all requirements of workforce development and industry participation;

(ii) possess a degree, diploma or advanced diploma in adult education, vocational education, organisational development, education or human resources and a "Certificate IV" or equivalent in "Training and Assessment";

(iii) possess the following skills, competencies and experience:

(A) demonstrated and appropriate learning and development work experience in a similar role within the rail or civil construction industry;

(B) demonstrable and significant experience dealing at a strategic level with stakeholders, including but not limited to education providers, registered training organisations, skill services organisations and procurement;

(C) excellent communication and leadership skills;

(D) experience in managing or delivering nationally accredited programs within recognised industry training packages;

(E) experience in delivering workforce development and industry participation within infrastructure or construction projects; and

(F) experience working with the implementation and delivery of Aboriginal participation programs; and

(iv) be full-time on or around the Construction Site during the delivery of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Workforce Development and Industry Participation Manager is [redacted]

Interface and Integration Manager

(a) The Interface and Integration Manager must:

(i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in interface management on projects similar to the Project Works and Temporary Works;

(ii) have at least 15 years' professional experience in a similar role within the rail industry or on other large, high profile, multi-package projects; and

(iii) have demonstrable and significant experience dealing at a senior level with third parties and/or interface contractors and the management of stakeholders and key interface risk on major infrastructure projects.

(b) At the date of this deed, the Interface and Integration Manager is [redacted]

Delivery Partner Deed Key Personnel

Any Key Personnel (as that term is defined in the Delivery Partner Deed) under the Delivery Partner and not otherwise included in this Schedule A9, which as at the date of this deed includes the following personnel:

(a) Stations Safety Manager: [redacted]

(b) Station Box Construction Manager: [redacted]

(c) Structures Design Manager: [redacted]

(d) Design Assurance Manager: [redacted]

(e) Logistic Manager: [redacted].

(f) Aboriginal Program Manager: [redacted].

SCHEDULE A10

Form of Independent Certifier Deed

(Clause 1.1 and 13.2)

[redacted]

SCHEDULE A11

Form of Master Interface Deed

(Clause 1.1 and 4.18)

Execution Version

Sydney Metro West
Master Interface Deed

Sydney Metro
ABN 12 354 063 515

[insert]
[ACN/ABN] [insert]

Sydney Metro West – Master Interface Deed

THIS DEED is made at on [year]

BETWEEN THE FOLLOWING PARTIES:

(1) **Sydney Metro** (ABN 12 354 063 515) a New South Wales 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

(2) [name(s) of initial Project Contractor(s)] ([ABN/ACN] [insert]) whose registered office is at [insert address] (**[Initial Contractor]**); and

(3) from each Accession Date, each person who accedes to this deed under clause 3, being the person identified as the "Acceding Party" in an Accession Deed Poll.

RECITALS:

(A) The Principal is responsible for delivering the Sydney Metro West project (**Project**).

(B) The Project involves the design, construction, operation and maintenance of a metro railway line from Westmead to [Sydney CBD], comprising multiple works packages to be undertaken by different contractors (some of which will be undertaken contemporaneously), and including stations, precinct developments, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock, stabling facilities and ancillary infrastructure.

(C) The Principal will progressively engage or enter into contracts with Project Contractors. As each Project Contract is entered into, the relevant Project Contractor will execute an Accession Deed Poll substantially in the form set out in Schedule 1 and will thereby accede to the terms of this deed.

(D) Each Project Contractor:

(1) is responsible for the delivery of a Contract Package for the Project;

(2) recognises the need to cooperate, collaborate, coordinate and integrate its activities in relation to the Project with the Parties to enable the Project's successful implementation; and

(3) acknowledges that the interface between certain activities of the Project Contractor and the other Parties will be governed by the Framework Principles.

(E) By entering into or acceding to this deed (as applicable), each Project Contractor agrees to comply with this deed and the Framework Principles for the benefit of each other Party.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Acceding Party means a person engaged by the Principal to carry out any part(s) of the Contract Packages (including any Incoming Project Contractor) and who accedes to this deed in accordance with clause 3.

Accession Date has the same meaning as given to the term "Effective Date" in the Accession Deed Poll, being the date from which each Acceding Party accedes to this deed.

Accession Deed Poll means the deed poll substantially in the same form as Schedule 1 (with relevant details duly completed) which is to be executed by each Acceding Party in accordance with clause 3.

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 the same).

Approval means any licence, permit, consent, approval, determination, certificate 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):

(a) to perform the relevant Project Contractor's activities under its Project Contract;

(b) for the use and occupation of the relevant Project Contractor's Works under its Project Contract; or

(c) otherwise to comply with Law,

and for the avoidance of doubt includes:

(d) planning approvals; and

(e) any environment protection licence issued in relation to the relevant Project Contractor's activities,

but does not include:

(f) any direction given by the Principal or its representative pursuant to this deed or the relevant Project Contract; or

(g) the exercise by the Principal of its rights under this deed or the relevant Project Contract.

ASA or Asset Standards Authority means the independent unit of that name established within Transport for NSW whose functions include setting, controlling, maintaining, owning and publishing the network and asset standards for transport assets for the asset lifecycle.

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of public transport agencies and authorised engineering organisations in relation to the ASA (as amended from time to time), a copy of which can be found on www.asa.transport.nsw.gov.au.

Business Day means any day other than a Saturday, Sunday or public holiday in Sydney, or 27, 28, 29, 30 and 31 December.

Claim includes any claim, action, demand or proceeding including for payment of money (including damages) or for an extension of time:

(a) under, arising out of, or in any way in connection with, this deed or any Project Contract;

(b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Project or a Party's conduct prior to the date of this deed; or

(c) otherwise at Law including:

(i) under or for breach of any statute;

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

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

Confidential Information means information that:

(a) relates to a Party's business, computer systems or affairs and includes information relating to this deed, the Framework Principles or the relevant Project Contract;

(b) is made available by or on behalf of a Party to a Project Contractor, or is otherwise obtained by or on behalf of the Project Contractor; and

(c) is by its nature confidential or a Project Contractor knows, or ought to know, is confidential.

Continuing Parties has the same meaning as given to the term "Continuing Parties" in the Accession Deed Poll, being those parties to this deed at the Accession Date, excluding the Principal.

Contract Packages means the following major contract packages to be procured by the Principal in relation to the Project:

(a) central tunnelling package;

(b) western tunnelling package;

(c) eastern tunnelling package;

(d) station packages;

(e) line-wide contract package;

(f) trains, signalling, maintenance, integration and operations package; and

(g) any other packages as may be notified by the Principal to the other Parties from time to time, which may include development packages,

any elements of which may be grouped, amended or disaggregated by the Principal in its absolute discretion.

Delivery Site Integration Group means a group established by the Principal under clause 9 of the Framework Principles.

Dispute means any dispute, difference, controversy or Claim.

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) (inclusive) of this definition.

EPA means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991* (NSW).

Exiting Contractor means a Project Contractor, as nominated in an Exiting Contractor Notice, that is party to a Project Contract that has completed, been novated or terminated (as applicable).

Exiting Contractor Notice means a notice in the form of Schedule 2 served by the **SMW Project Director** on the Project Contractors, which advises the Project Contractors that a Project Contractor is no longer a Party to this deed.

Framework Principles means the Framework Coordination and Interface Principles in Schedule 3, as amended in accordance with clause 10.5(b).

Good Faith means acting fairly, reasonably, honestly and with integrity at all times.

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably be expected from time to time of a skilled and experienced person, engaged in the same or similar type of undertaking as that of the relevant Project Contractor or its Subcontractors in Australia, as the case may be, under the same or similar circumstances as the performance of the relevant activities and which includes compliance with all Laws relating to the Environment and all guidelines made or approved by the EPA.

Governance Forum means each of the Project Integration Group, each Delivery Site Integration Group, the System Integration Working Group and each Sub-Group established under clause 8.2(b), 9.2(b) or 10.2(b), as applicable.

IDAR Panel means the Independent Dispute Avoidance and Resolution Panel constituted under the IDAR Panel Agreement.

IDAR Panel Agreement means the agreement for the establishment of an independent dispute avoidance and resolution panel in respect of the Project dated [on or about the date of this deed].

Incoming Project Contractor means a person replacing a Project Contractor (or an entity comprising part of the Project Contractor) under a Project Contract and to whom the Project Contract will be or has been novated in accordance with the terms of the Project Contract.

Integrated Program means the integrated program prepared by the Principal in accordance with clause 11.2(a)(i) of the Framework Principles, as updated from time to time in accordance with clause 11.2(a)(ii) and clause 11.2(a)(iii) of the Framework Principles.

Integration means the activities and tools to ensure that ultimately all systems, including sub-system components, contractors and other third parties are aligned and work together to design, construct, commission, operate, maintain and hand over an operational, fit for purpose railway, that meets the requirements of the Principal.

Interfaces means points where two or more systems, Project Contractor's Works (or any part of them), Contract Packages or Project Contractors meet or interact.

Joint Project Committee means the committee referred to in clause 7.1(b) of the Framework Principles.

Law means:

(a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;

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

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

Liability includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and including any claim for an increase in contract payments, for payment of money, for an extension of time, or for a reduction of a Project Contractor's obligations or the Principal's rights and whether:

(a) liquidated or not;

(b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);

(c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;

(d) present, prospective or contingent;

(e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others;

(f) under, arising out of, or in any way in connection with, a Project Contract or this deed, including any direction under them;

(g) arising out of, or in any way in connection with the Works or a Party's conduct before or after the date of this deed; and

(h) otherwise at Law including:

(i) by statute;

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

(iii) for restitution (as a result of unjust enrichment or otherwise).

Loss means any cost, expense, loss, damage, Liability, fine, penalty or other amount, whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes consequential loss.

Material Impact means, in respect of any amendment to or replacement of the Framework Principles, a material adverse or beneficial impact on:

(a) the ability of a Project Contractor to comply with its obligations under the relevant Project Contract; or

(b) the quantity of work or resources required by a Project Contractor to comply with its obligations under the relevant Project Contract.

NSW Trains means NSW Trains a body corporate constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

ONRSR means the Office of the National Rail Safety Regulator constituted under the Rail Safety National Law.

Party or **Parties** (as applicable) means the Principal and each Project Contractor.

Program means the Project Contractor's program for the Project Contractor's Works, as amended from time to time, under the relevant Project Contract.

Project has the meaning given in Recital A.

Project Completion Date means the date as advised by the Principal to each Project Contractor as being the date upon which a certificate or equivalent documentation certifying that final completion of the Works (including, where applicable, expiry of all defects correction periods) under all Project Contracts has been achieved.

Project Contract means any contract in respect of a Contract Package pursuant to which a Project Contractor is engaged.

Project Contractor means:

(a) an Initial Contractor; and

(b) an Acceding Party, from the relevant Accession Date.

Project Contractor's Representative means a single representative appointed by each Project Contractor from time to time as its representative in respect of this deed, as notified in writing to each Party.

Project Integration Group means the group established under clause 8 of the Framework Principles.

Public Transport Agency means the Principal, TfNSW (and each of its divisions), Transport Asset Holding Entity, Sydney Trains and NSW Trains.

Rail Safety National Law means the *Rail Safety National Law 2012 No. 82a* (NSW).

Site means, in respect of a Project Contractor, the lands and other places that are made available to the Project Contractor by the Principal in accordance with the relevant Project Contract for the purpose of carrying out the Project Contractor's Works.

Site Access Deed Poll means a deed poll substantially in the form of Schedule 4 to this deed given by a Project Contractor in favour of another Project Contractor.

SMW Deputy Project Director means the person notified as such by the Principal to the other Parties from time to time.

SMW Deputy Project Director Rail Systems means the person notified as such by the Principal to the other Parties from time to time.

SMW Director Engineering & Design means the person notified as such by the Principal to the other Parties from time to time.

SMW Project Director means the person notified as such by the Principal to the other Parties from time to time.

SMW Senior Project Manager means, in respect of each Delivery Site Integration Group, the person notified as such by the Principal to the other Parties from time to time.

State means the State of New South Wales.

Subcontractor means any person, including a consultant, engaged by the Project Contractor to execute any Works, (but does not include an employee of the Project Contractor).

Sydney Trains means Sydney Trains a body corporate constituted by Part 2A of the *Transport Administration (General) Regulation 2005* (NSW).

System Integration Working Group means the group established under clause 10 of the Framework Principles.

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

Transport Asset Holding Entity means Transport Asset Holding Entity of New South Wales as constituted by Part 2 of the *Transport Administration Act 1988* (NSW).

Wilful Misconduct means any malicious conduct or any breach of this deed which results from a conscious and intentional indifference and disregard to the relevant provisions of this deed and the risk of causing the Loss claimed by the relevant Party in respect of the breach but does not include errors of judgement, mistakes, errors or acts or omissions made in Good Faith.

Works means the whole of the works, the provision of any materials, plant, equipment, machinery, systems or other infrastructure and the provision of any operation or maintenance activities required to be undertaken by the Project Contractors for the Project as set out in the Project Contracts and includes any Contract Package or any part of such work.

1.2 **Rules for interpreting this document**

In this deed:

(a) headings are for convenience only and do not affect the interpretation of this deed,

and unless the context indicates a contrary intention:

(b) "person" includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(c) a reference to a person includes that person's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(d) "includes" in any form is not a word of limitation;

(e) 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 object as that authority, institute, association or body;

(f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code or standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;

(g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

(h) a reference to a party, clause or schedule is a reference to a party, clause or schedule to or of this deed;

(i) a reference to this deed includes all schedules;

(j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes any other gender;

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

(l) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;

(m) a reference to a "month" is a reference to a calendar month;

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

(o) a reference to a court or tribunal is to an Australian court or tribunal.

1.3 **Contra proferentem**

In the interpretation of this deed, no rule of construction applies to the disadvantage of one Party on the basis that the Party (or its representative) put forward or drafted this deed or any provision in it.

1.4 **Resolution of ambiguities**

(a) If the Principal considers, or if a Project Contractor notifies the Principal in writing that it considers, that there is an ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed (including in any schedules), the Principal will, subject to clause 1.5, direct the interpretation of this deed which the Parties must follow.

(b) The Principal, in giving a direction in accordance with clause 1.4(a), is not required to determine whether or not there is an ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed.

(c) Any direction which the Principal gives in accordance with clause 1.4(a):

(i) will not relieve the Project Contractors from or alter their liabilities or obligations under this deed, their Project Contract or otherwise according to Law;

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

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

(iv) will, in respect of a notice given by a Project Contractor under clause 1.4(a), be given within 20 Business Days of receipt of that notice.

1.5 **Order of precedence**

The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:

(a) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:

(i) this deed excluding the schedules; and

(ii) the schedules;

(b) to the extent paragraph (a) does not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to a Project Contractor's obligations, the Project Contractor must comply with the highest quality or standard specified or perform the more onerous obligation.

1.6 **Severability**

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, then:

(a) that will not affect or impair:

(i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or

(ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and

(b) the provision will be construed in a manner which:

(i) avoids the provision being void, illegal, invalid or unenforceable; and

(ii) subject to clause 1.6(b)(i), preserves to the maximum possible extent:

(A) the enforceability of the provision and the provisions of this deed; and

(B) the original effect and intent of this deed.

1.7 **Authorities**

(a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:

(i) the Principal to exercise any of its functions and powers pursuant to any Law; or

(ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter.

(b) Each Project Contractor acknowledges and agrees that, without limiting clause 1.7(a), anything which the Principal or the ASA does, fails to do or purports to do pursuant to their respective functions and powers either as an authorised engineering organisation or under any Law or under the ASA Charter will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with this deed or its Project Contract and will not entitle the Project Contractor to make any Claim against the Principal.

(c) The Parties agree that clauses 1.7(a) and 1.7(b) are taken not to limit any liability which the Principal would have had to the Project Contractor under this deed as a result of a breach by the Principal of a term of this deed but for clauses 1.7(a) and 1.7(b) of this deed.

2. PRIMARY COVENANTS

2.1 Framework Principles

Each Project Contractor undertakes to the other Parties to comply with and procure that its representatives on the Governance Forums comply with the Framework Principles:

(a) from:

(i) in respect of an Initial Contractor, the date of this deed; or

(ii) in respect of an Acceding Party, the relevant Accession Date; and

(b) until the earliest of:

(i) the Project Completion Date;

(ii) the date of expiry of the final defects correction period under the relevant Project Contractor's Project Contract; and

(iii) the date on which the Project Contractor's rights and obligations under this deed are terminated in accordance with clause 7(a) of this deed.

2.2 Damage

(a) Each Project Contractor (**Acknowledging Contractor**) acknowledges and agrees that:

(i) without limiting its obligations under its Project Contract and its other obligations under this deed, it must not (and must procure that its Subcontractors and personnel do not) damage any other Project Contractor's works or plant or equipment; and

(ii) if another Project Contractor suffers or incurs any cost or expense in rectifying any damage occurring which amounts to a breach of clause 2.2(a)(i) by an Acknowledging Contractor, that Acknowledging Contractor must, subject to clause 2.2(b), reimburse those costs and expenses to that other Project Contractor within 20 Business Days of a demand for them.

(b) The Acknowledging Contractor's responsibility to reimburse another Project Contractor in accordance with clause 2.2(a)(ii) will be reduced proportionally to the extent that an act or omission by that other Project Contractor contributed to the damage.

2.3 **Restriction on contracting**

Other than as expressly required under this deed, the Project Contractors must not enter into any contract, arrangement or other understanding with each other in connection with the Project without the prior written approval of the Principal.

3. **ACCESSION BY PROJECT CONTRACTORS**

(a) The Principal will procure that each contractor who enters into a Project Contract after the date of this deed (including any Incoming Project Contractor) accedes to this deed.

(b) The Acceding Parties may accede to this deed by execution of an Accession Deed Poll without the Continuing Parties' prior approval.

(c) Upon accession of any Project Contractor to this deed, as referred to in clause 3(a), the rights and liabilities of the Parties will be as set out in this deed and each Party acknowledges and agrees that the Acceding Party:

(i) is entitled to exercise all the rights and benefits conferred on a Project Contractor under this deed; and

(ii) is bound by the obligations of a Project Contractor under this deed.

(d) The Principal will provide the Continuing Parties with a copy of the Accession Deed Poll duly executed by the Project Contractor.

4. **PROJECT CONTRACTS NOT AFFECTED**

Despite anything to the contrary in this deed, the Parties acknowledge and agree that:

(a) nothing contained in this deed will limit or otherwise affect the duties, rights, liabilities and obligations of any Party pursuant to the relevant Project Contract to which it is a party; and

(b) where there is any conflict, ambiguity, discrepancy or inconsistency between this deed and a Project Contract, the terms of the relevant Project Contract take precedence over this deed to the extent of any such conflict, ambiguity, discrepancy or inconsistency.

5. **LIABILITY**

5.1 **Release**

(a) Despite anything else in this deed and to the maximum extent permitted by Law:

(i) each Project Contractor (**Releasing Party**) releases each other Project Contractor (**Released Party**) from all Liability arising in connection with this deed:

(A) as a result of any breach of this deed by, or any other act or omission of, the Released Party; or

(B) otherwise at Law or in equity,

except for any Liability:

(C) which cannot be limited at Law;

(D) is due to Wilful Misconduct, fraud or criminal conduct by the Released Party or any of its personnel or Subcontractors;

(E) arising under the indemnity in clause 2 of any Site Access Deed Poll given by the Released Party in favour of the Releasing Party; or

(F) arising under clause 2.2(a)(ii) in respect of damage to the Releasing Party's works or the Releasing Party's plant and equipment; and

(ii) subject to clause 4(a), each Project Contractor releases the Principal from all Liability to that Project Contractor arising out of or in any way in connection with this deed, including as a result of the Principal entering into this deed or as a result of any breach by the Principal of any of the Principal's obligations under this deed except for any Liability:

(A) which cannot be limited at Law; or

(B) is due to Wilful Misconduct, fraud or criminal conduct by the Principal.

(b) This clause 5.1 applies:

(i) notwithstanding and survives any termination of this deed;

(ii) despite any other provision of this deed; and

(iii) to the maximum extent permitted by Law.

5.2 **Proportionate Liability**

To the extent permitted by Law:

(a) 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 any Party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise; and

(b) each Project Contractor must not to seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against that Project Contractor (whether in contract, tort or otherwise).

6. ASSIGNMENT AND NOVATION

6.1 Assignment of rights and remedies

(a) Without limiting clause 6.2, the Principal may:

(i) assign, novate or otherwise transfer all or any part of its rights under this deed without the other Parties' prior approval, provided that the assignee, novate or transferee (as applicable) is an authority of the State, a Minister or a government entity including a wholly owned State corporation or any other entity that is whole owned or controlled by the State;

(ii) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the relevant Project Contractor's prior written consent (which must not be unreasonably withheld or delayed); and

(iii) may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the other Parties.

(b) In the case of a novation by the Principal under this clause:

(i) the Principal will be released from its obligations under this deed and the respective rights of the Principal against the Project Contractors and rights of the Project Contractors against the Principal under this deed will cease;

(ii) the novated deed will be on the same terms as this deed, such that the incoming party and the Project Contractors will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 6.1(b)(i), except that the incoming party replaces the Principal for all purposes under the deed; and

(iii) the Project Contractors consent to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.

(c) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

(d) Each Project Contractor must not assign, novate or otherwise transfer any of its rights, interests, liabilities or obligations under this deed without the prior written consent of the Principal.

6.2 **Transfer of functions or Public Transport Agency assets**

(a) The Parties acknowledge that:

(i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;

(ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

(iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.

(b) The Project Contractors each acknowledge and agree that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in Good Faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.

(c) The Project Contractors will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 6.2.

(d) For the purposes of this clause 6.2, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

7. TERMINATION

(a) Each Project Contractor's rights and obligations under this deed will terminate automatically upon termination (including on novation) of that Project Contractor's Project Contract, and subject to clauses 7(d) to 7(f), the terms of this deed will be of no further force and effect in respect of the Exiting Contractor from the date of termination.

(b) If a Project Contractor's rights and obligations under this deed are terminated or novated, the Principal will give to the other Parties an Exiting Contractor Notice in respect of that Project Contractor.

(c) A Project Contractor has no right to terminate, rescind or accept the repudiation of this deed.

(d) The termination or expiry of this deed is without prejudice to the accrued rights, liabilities and obligations of each Party as at the date of termination or expiry.

(e) Any provision of this deed which expressly or by implication from its nature is intended to survive the termination or expiry of this deed and any rights arising on termination or expiry shall survive, including any warranties, guarantees, licences or indemnities given under this deed.

(f) No provision of this deed which is expressed to survive the termination or expiry of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination or expiry of this deed.

8. CONFIDENTIALITY

(a) Subject to clause 8(b), each Project Contractor must:

(i) keep confidential this deed and the Confidential Information; and

(ii) ensure that each person to whom it discloses information complies with the terms of clause 8(a)(i).

(b) A Project Contractor is not obliged to keep confidential any information:

(i) which is in the public domain through no default of that Project Contractor; or

(ii) the disclosure of which is:

(A) required by Law;

(B) given with the written consent of the Principal; or

(C) given to a court in the course of proceedings to which that Project Contractor is a party.

(c) On written request from another Party to a Project Contractor being made to that Project Contractor following termination of this deed in respect of that Project Contractor, such Project Contractor must immediately:

(i) deliver to the requesting Party all documents and other materials containing, recording or referring to Confidential Information of the requesting Party; and

(ii) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information of the requesting Party,

which are in the possession, power or control of the Project Contractor or of any person to whom the Project Contractor has given access.

9. NOTICES

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

(a) must be in writing;

(b) must be addressed as follows (or as otherwise notified by that Party to each other Party from time to time):

(i) if to the Principal:

Address: Level 43, 680 George Street, Sydney NSW 2000

Email: [redacted]

For the attention of: [redacted]

Any notice in relation to a Dispute must also be addressed to the General Counsel Sydney Metro and sent to [redacted]

(ii) if to [*insert*]: [***Drafting note: insert notice details for Project Contractors entering into this deed directly***]

Address: [insert]

Email: [insert]

For the attention of: [insert]

(iii) if to a Project Contractor other than [the Project Contractor(s)] referred to in clause 9(b)(ii), as set out in the relevant Accession Deed Poll;

(c) must be signed by the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of the Principal or Project Contractor, as the case may be;

(d) must be delivered by hand, posted by prepaid post to the address or sent to the email address, in accordance with clause 9(b); and

(e) is taken to be received by the addressee:

(i) (in the case of prepaid post sent to an address in the same country) two Business Days after the date of posting;

(ii) (in the case of prepaid post sent to an address in another country) seven Business Days after the date of posting;

(iii) (in the case of email):

(A) if it is transmitted by 5.00pm (Sydney time) on a Business Day – on that Business Days; or

(B) if it is transmitted after 5.00pm (Sydney time) on a Business Day, or a day that is not a Business Day, on the next Business Day; and

(iv) (in the case of delivery by hand) on delivery.

10. GENERAL

10.1 Governing law and jurisdiction

(a) This deed is governed by and must be construed according to the law applying in New South Wales.

(b) Each Party irrevocably:

(i) 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 action or proceedings which may be brought at any time relating in any way to this deed; and

(ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.1(b)(i).

10.2 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 another breach of that term or of a breach of any other term of this deed.

10.3 Costs and expenses

(a) Each Project Contractor must, unless this deed expressly provides otherwise:

(i) pay its own costs and expenses in connection with negotiating and preparing this deed; and

(ii) pay its own costs and expenses in connection with performing its obligations under this deed.

(b) Each Project Contractor acknowledges and agrees that the sum payable under its Project Contract for performance of its obligations under the Project Contract

includes allowance for all costs and expenses in connection with performing its obligations under this deed.

10.4 **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.

10.5 **Amendments**

(a) This deed (other than the Framework Principles) may only be amended, varied or replaced by written agreement executed by or on behalf of each Party.

(b) The Framework Principles may be amended or replaced by the Principal, in its absolute discretion, by giving each Project Contractor written notice setting out the amended or replacement Framework Principles and the date on which they are take effect.

(c) The Parties acknowledge and agree that:

(i) any amendments to or replacement of the Framework Principles will be made by the Principal and will be made in consultation with the Project Contractors;

(ii) if:

(A) the Framework Principles are amended or replaced in accordance with clause 10.5(b); and

(B) compliance with the amended or replacement Framework Principles will have a Material Impact on a Project Contractor,

then such amendment will be treated as a Change or Modification (as applicable and as defined in that Project Contractor's Project Contract) directed by the Principal under that Project Contractor's Project Contract; and

(iii) the Framework Principles, as amended or replaced in accordance with clause 10.5(b), take effect on and from the date notified by the Principal under clause 10.5(b) and each of the Project Contractors must comply with such amended or replaced Framework Principles notwithstanding the existence of any Dispute in relation to them.

10.6 **No agency, partnership, joint venture or other fiduciary relationship**

Nothing in this deed will be construed or interpreted as:

(a) conferring a right in favour of any Party to enter into any commitment on behalf of another Party; or

(b) constituting the relationship between any two or more of the Parties as that of partners, joint venturers or any other fiduciary relationship.

10.7 **Joint and several liability**

(a) Unless expressly stated otherwise in its Accession Deed Poll, the obligations of a Project Contractor, if more than one person, under this deed, are joint and several and each person constituting that Project Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this

deed) of the other as if those acts or omissions were its own and the other Parties may proceed against any one or all of them.

(b) The rights of a Project Contractor, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting that Project Contractor (and not severally or jointly and severally).

(c) Any payment in connection with this deed to any account nominated in writing by a Project Contractor, or failing such nomination, to any one or more persons constituting a Project Contractor, will be deemed to be payment to all persons constituting that Project Contractor.

(d) A Project Contractor may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the Project Contractor.

10.8 **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.

10.9 **Disputes**

The Parties acknowledge and agree that, without limiting clause 13 of the Framework Principles:

(a) any Dispute between the Principal and a Project Contractor is to be resolved under the provisions of the relevant Project Contract; and

(b) the Principal and each Project Contractor will be bound by the outcome of any Dispute between those Parties which is resolved pursuant to the relevant Project Contract.

EXECUTED as a deed.

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

[***Drafting note: Execution page to be updated to reflect execution blocks required for the Project Contractor(s) directly signing this deed.***]

EXECUTED by **[INSERT NAME OF PROJECT CONTRACTOR]** ([ACN/ABN] [insert]) in accordance with s127 of the *Corporations Act 2001* (Cth):

Signature of director	Signature of director / company secretary
Name of director	Name of director / company secretary

SCHEDULE 1

Form of Accession Deed Poll

Accession Deed Poll

THIS DEED POLL is made on [year]

BY: [**insert name of acceding party**] ([ABN/ACN] [insert]) whose registered office is at [insert address] (**Acceding Party**)

IN FAVOUR OF:

(1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and

(2) each Party under the Master Interface Deed as at the Effective Date and each party who accedes to the Master Interface Deed after the Effective Date (together, the **Continuing Parties**).

RECITALS:

(A) This deed poll is supplemental to the agreement titled "Sydney Metro West – Master Interface Deed" between the Principal and the Continuing Parties dated [insert] as amended or acceded to from time to time (**Master Interface Deed**).

(B) The Principal has entered into the [insert name of Project Contract] with the Acceding Party.

(C) By this deed poll, the Acceding Party accedes to the Master Interface Deed.

THE ACCEDING PARTY COVENANTS AS FOLLOWS:

1. INTERPRETATION

Capitalised terms used in this deed poll and not otherwise defined have the same meanings as those given in the Master Interface Deed. The following definitions apply in this deed poll:

Effective Date means the date of execution of this deed poll.

[**Insert short-hand name of Project Contract**] means the contract entered into between the Principal and the Acceding Party titled "[insert long-form name of Project Contract]" and dated [insert].

2. PRIMARY COVENANTS

(a) The Acceding Party:

(i) confirms that it has been supplied with and has reviewed a copy of the Master Interface Deed;

(ii) covenants with each of the Principal and the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of its obligations under the Master Interface Deed; and

(iii) acknowledges that, with effect from the Effective Date, it is entitled in accordance with clause 3(c) of the Master Interface Deed to exercise all the rights and benefits conferred on a Project Contractor under the Master Interface Deed.

(b) For the purposes of the Master Interface Deed, the Acceding Party's representative is as set out below:

[insert]

(c) For the purposes of clause 9 of the Master Interface Deed, the Acceding Party's notice address details are as set out below:

Address: [insert]

Email: [insert]

For the attention of: [insert name] ([insert role])

(d) For the purposes of the Master Interface Deed, the Acceding Party's Project Contractor's Representative and each of its Governance Forum representatives, as at the Effective Date, are as set out below:

(i) Project Contractor's Representative

Name: [insert]

Email: [insert]

(ii) Governance Forum representatives:

Governance Forum	Representative name	Contact details
Project Integration Group	[insert]	[insert]
[Insert names of Delivery Site Integration Groups]	[insert]	[insert]
System Integration Working Group	[insert]	[insert]

(e) Clause 10.1 of the Master Interface Deed applies to this deed poll.

(f) This deed poll is irrevocable.

3. CAPACITY OF TRUSTEES

[***Drafting note: This is an optional clause to be used where the Project Contractor is a trustee entity.***]

(a) Subject to clause 3(e), any obligations imposed on a trustee of a trust under this deed poll and, on and from the Effective Date, under the Master Interface Deed are undertaken only in its capacity as trustee of the relevant trust and not in any other capacity.

(b) A liability arising under or in connection with this deed poll or the Master Interface Deed is limited to, and can be enforced against a trustee of a trust only to, the extent to which it can be satisfied out of the funds of the trust.

(c) The limitation of liability in this clause 3 (Capacity of trustees) applies despite any other provision of this deed poll and the Master Interface Deed and extends to all liabilities and obligations of the trustee that are in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

(d) A party may not sue a trustee of a trust in any capacity except as trustee of the trust, including seeking the appointment of a receiver (except in relation to property of the trust), a liquidator, an administrator, or similar person to the trustee in any liquidation.

(e) The provisions of this clause 3 (Capacity of trustees) do not apply to any obligation or liability of a trustee of a trust to the extent that the right of indemnification out of the funds of the trust is reduced under the relevant trust deed or by law, as a result of the fraud, negligence or breach of trust by the trustee.

EXECUTED as a deed poll.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

[***Note: Execution block to be updated as required for the Acceding Party.***]

EXECUTED by **[INSERT NAME OF ACCEDING PARTY]** ([ACN/ABN] [insert]) in accordance with s127 of the *Corporations Act 2001* (Cth):

Signature of director	Signature of director / company secretary
Name of director	Name of director / company secretary

SCHEDULE 2

Exiting Contractor Notice

[Date]

[Project Contractor]
[Project Contractor's Address]

Exiting Contractor Notice

The SMW Project Director refers to the deed entitled "Sydney Metro West– Master Interface Deed" dated [*insert date*], executed by [*insert the Project Contractor's full name and address details*] in favour of each Party (**Deed**).

Capitalised terms used in this Exiting Contractor Notice and not otherwise defined have the same meanings as those given in the Deed.

The SMW Project Director confirms that [*insert Project Contractor*]'s Project Contract has **Alt**[completed / been terminated / been novated] in accordance with its terms and consequently that, from [*insert date of completion or termination of Project Contract or the date the deed of novation takes effect*] and subject to the terms of the Deed, [*insert Project Contractor*] is no longer a Party for the purposes of the Deed.

Nothing in this notice limits clauses 7(d) to 7(f) of the Deed.

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SMW Project Director

SCHEDULE 3

Framework Coordination and Interface Principles

CONTENTS

1. BEST FOR PROJECT APPROACH
2. COOPERATION AND COORDINATION
3. PROJECT INTERFACES
4. INDUSTRIAL RELATIONS
5. SITE ACCESS
6. RAIL SAFETY
7. INTEGRATION GOVERNANCE STRUCTURE
8. PROJECT INTEGRATION GROUP
9. DELIVERY SITE INTEGRATION GROUPS
10. SYSTEM INTEGRATION WORKING GROUP
11. INTEGRATED PROGRAM
12. SUBCONTRACTORS
13. CONTINUITY

1. BEST FOR PROJECT APPROACH

(a) In performing all undertakings under these Framework Principles, and obligations under the relevant Project Contract, each Project Contractor undertakes to adopt a culture based on a 'Best for Project' approach and to act at all times in a manner consistent with a Best for Project approach (in accordance with clause 1(b) of these Framework Principles).

(b) For the purposes of clause 1(a) of these Framework Principles, adopting a Best for Project approach means to:

(i) cooperate and work with the other Project Contractors in Good Faith to assist in achieving the successful implementation and completion of the Project and resolving any conflict with regard to design, scheduling, access, testing, commissioning, completion and other such Interface issues as may arise;

(ii) perform its obligations in an efficient and prompt manner and in accordance with Good Industry Practice;

(iii) work with the other Project Contractors to mitigate so far as it is reasonably practicable those risks to the Project that are within the Project Contractor's control;

(iv) work with the other Project Contractors to eliminate and reduce, so far as is reasonably practicable, any risks to health, safety and the Environment arising from the Works to the extent that those matters are within that Project Contractor's control; and

(v) cooperate and work with the other Project Contractors to develop a culture for the delivery of the Project of collaboration, transparency in dealings, innovation and outstanding performance.

2. COOPERATION AND COORDINATION

(a) Each Project Contractor (the **Acknowledging Contractor**) must:

(i) notify other Project Contractors (with a copy to the Principal) of any proposed Works that may impact them, prior to the commencement of such Works;

(ii) during any period that the Acknowledging Contractor is responsible for the care of the Acknowledging Contractor's Works (or any part of them) under the relevant Project Contract, protect the Works performed under its Project Contract from accidental damage by other Project Contractors and allow goods and equipment supplied by other Project Contractors to be received and stored by the other Project Contractors on the Site;

(iii) fully cooperate with the other Project Contractors, and do everything reasonably necessary to:

(A) during the period prior to completion of the last portion of the Acknowledging Contractor's Works and during any period while the Acknowledging Contractor is rectifying Defects, facilitate the execution of Works by other Project Contractors, including providing the other Project Contractors with such assistance as may be directed by the Principal;

(B) ensure the effective coordination of the design and construction of the Works to be performed under its Project Contract with the design and

construction of the Works to be performed under the other Project Contracts;

(iv) carefully coordinate and interface its activities with the other Project Contractors' activities and for this purpose:

(A) make proper allowance in all programs for the Works to be performed under the other Project Contracts;

(B) during the period prior to completion of the last portion of the Acknowledging Contractor's Works:

(aa) review all programs provided by other Project Contractors and confirm that they adequately allow for the Acknowledging Contractor's activities and the Interfaces of Works to be performed under the other Project Contracts with the Acknowledging Contractor's activities;

(bb) monitor the progress or conduct of the other Project Contractor's Works;

(cc) notify the Principal and the other relevant Project Contractors of any Interface or sequence of activities that may affect the commencement, progress or completion of any portion of Works; and

(dd) provide the other Project Contractors with sufficient information about the current and expected Acknowledging Contractor's activities to assist them to coordinate their Works with the Acknowledging Contractor's activities;

(v) perform the Acknowledging Contractor's activities so as to minimise any interference with or disruption or delay to the other Project Contractors' Works;

(vi) be responsible for coordinating the Acknowledging Contractor's activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, the other Project Contractors' personnel and work;

(vii) without limiting clauses 7 to 10 of these Framework Principles, attend coordination meetings chaired by the Principal's representative with other Project Contractors and others at such times as may be reasonably required by the Principal, to review current and future issues; and

(viii) when any information is requested by the Principal or the other Project Contractors, including commenting on the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the other Project Contractors' Works with the Acknowledging Contractor's Works or activities:

(A) provide the information to the Principal or the other Project Contractors, with a copy to the Principal (as the case may be), within the time requested by the Principal or the other Project Contractor, provided that this time is reasonable; and

(B) ensure and warrant to the Principal that the information provided is accurate as at the date it is provided.

(b) Each Project Contractor (the **Acknowledging Contractor**) acknowledges and agrees that:

(i) the other Project Contractors may require design and work methodology information from the Acknowledging Contractor to coordinate the design of the Works, and such information must be provided in a timely manner by the Acknowledging Contractor following a written request by a Project Contractor;

(ii) any delay in the performance of the Acknowledging Contractor's Works, or in the Acknowledging Contractor providing information to, or cooperating and coordinating with, other Project Contractors may adversely impact upon, delay or disrupt any one or more of the other Project Contractors or Works; and

(iii) if, during the period prior to completion of the last portion of the Acknowledging Contractor's Works, there is a delay in the performance of another Project Contractor's Works, the Acknowledging Contractor must use reasonable endeavours to overcome any resulting delay, taking a whole of Project perspective.

3. PROJECT INTERFACES

Each Project Contractor acknowledges and agrees that:

(a) there are several Contract Packages for the Project being undertaken at or about the same time and that the Works involve Interfaces;

(b) its Project Contract identifies certain Interfaces and dates for completion of its activities which Interface with other Project Contractors' activities;

(c) it is aware of all of the Interfaces relevant to its Works and will plan, program and carry out its Works in a manner which recognises and allows for those Interfaces to be efficiently managed;

(d) the Interfaces will be further developed and defined throughout the design development process under each Project Contract;

(e) it must attend and participate in all relevant Governance Forums established in accordance with these Framework Principles to discuss, develop and coordinate Interface issues; and

(f) the Interface and Integration obligations, responsibilities and requirements set out in its Project Contract are not necessarily exhaustive.

4. INDUSTRIAL RELATIONS

(a) The Project Contractors must liaise and cooperate with each other in order to maintain a stable industrial relations environment at the Sites and in connection with the Works.

(b) Each Project Contractor must as soon as reasonably practicable notify the chairperson of the Project Integration Group of any actual or potential industrial action that may impede the Works or the Project or compliance with this deed.

5. SITE ACCESS

(a) Each Project Contractor (the **Acknowledging Contractor**) acknowledges and agrees that:

(i) other Project Contractors may require access to the Acknowledging Contractor's Site in order to execute the other Project Contractor's Works in accordance with the other Project Contractor's Project Contract;

(ii) subject to clause 5(b) of these Framework Principles, it must at all times (on a 24 hour per day, 7 day per week basis) permit other Project Contractors to execute those other Project Contractors' Works on the applicable parts of the Acknowledging Contractor's Site or on any adjacent property to the Acknowledging Contractor's Site; and

(iii) for the purpose of clause 5(a)(ii) of these Framework Principles, it must ensure that other Project Contractors have safe, clean and clear access to those parts of the Acknowledging Contractor's Site, or property adjacent to the Acknowledging Contractor's Site, required by the other Project Contractor for the purpose of carrying out the other Project Contractor's Works.

(b) If any other Project Contractor is carrying out construction work on the Acknowledging Contractor's Site during any period in which the Acknowledging Contractor or its nominee has been engaged as principal contractor in respect of that part of the Acknowledging Contractor's Site, that other Project Contractor must execute and provide to the Acknowledging Contractor a deed poll in favour of the Acknowledging Contractor and the relevant appointed principal contractor in the form set out in Schedule 4 of this deed.

(c) In this clause 5, the terms "construction work" and "principal contractor" have the meaning given to those terms in the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

6. RAIL SAFETY

Each Project Contractor agrees that in performing its undertakings under these Framework Principles, and without limiting its obligations under its Project Contract and its other obligations under this deed, it must:

(a) liaise and cooperate with each Party (and with ONRSR); and

(b) provide any reasonable assistance and documentation required by any Party from time to time in relation to safety matters, including in relation to the Principal's Accreditation or any other Project Contractors' Accreditation, including any application for or renewal or extension of such Accreditation.

7. INTEGRATION GOVERNANCE STRUCTURE

7.1 Overview of Governance Forums

(a) These Framework Principles establish the following Governance Forums:

(i) *Project Integration Group (PIG)*: The lead Integration coordination group for the facilitation, implementation and management of Integration and Interface activities across the Project in accordance with the relevant Project Contracts;

(ii) *Delivery Site Integration Groups (DelSIGs)*: Site-specific Integration groups for the facilitation, implementation and day-to-day management of site-specific Integration and Interface activities in accordance with the relevant Project Contracts; and

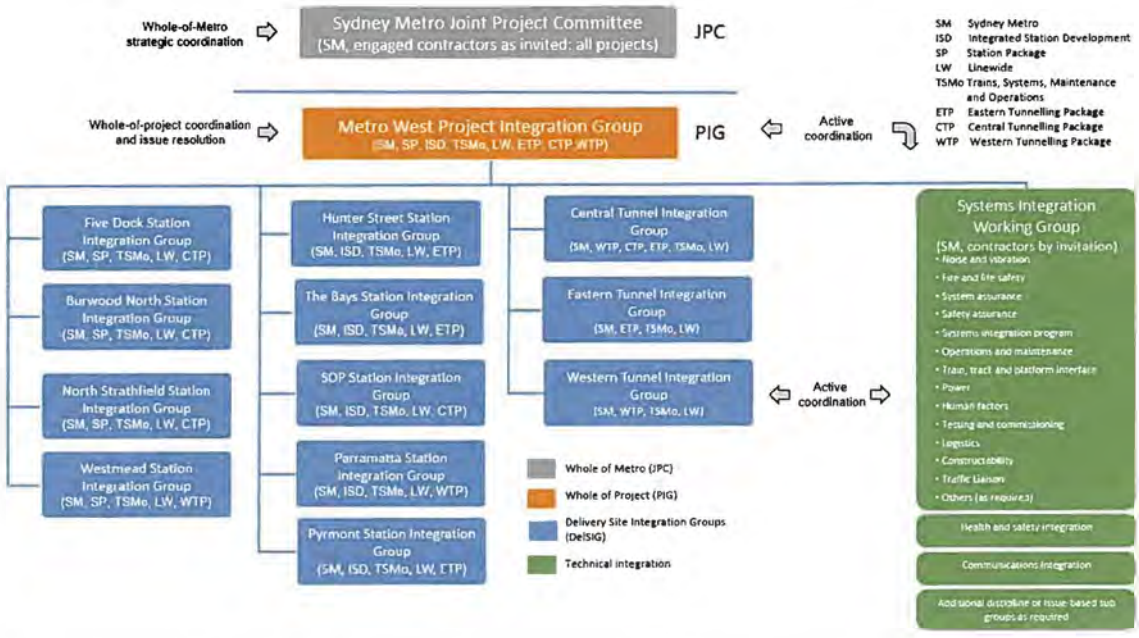
(iii) *System Integration Working Group*: A whole-of-project group (supported by discipline or issue based ad-hoc sub-groups) for the facilitation and

implementation of technical Integration support and Interface activities across relevant Contract Packages in accordance with the relevant Project Contracts.

(b) The Principal has separately established a Joint Project Committee (JPC) to consider whole-of-Metro coordination across all Sydney Metro projects (including the Project) at the senior executive level. The Joint Project Committee will meet on a quarterly basis and at such other times as the Principal requires.

7.2 Structure of Governance Forums

The structure of these Governance Forums, as at the date of this deed, is illustrated in the diagram below:



7.3 Principal may invite persons and require certain representatives to attend

(a) The Principal may invite any person to attend any Governance Forum as a non-member participant or observer from time to time.

(b) At the request of the Principal, each Project Contractor must procure:

(i) the attendance of its Project Contractor's Representative at a meeting of any Governance Forum; and

(ii) that a member of the Project Contractor's executive attend any meeting of the Joint Project Committee as a non-member participant or observer and assist in the functions of the Joint Project Committee.

(c) Each Project Contractor must:

(i) comply with a request under clause 7.3(b) of these Framework Principles if it is made at least 3 Business Days before the meeting of the relevant Governance Forum or Joint Project Committee (as applicable) the subject of the request; and

(ii) promptly following receipt of a request under clause 7.3(b)(ii) of these Framework Principles, provide the Principal with the name and contact details

of the member of the Project Contractor's executive that will attend the relevant meeting of the Joint Project Committee.

7.4 Decisions

(a) Subject to clause 7.4(b) of these Framework Principles, no decision or determination by a Governance Forum or the Joint Project Committee will:

(i) be legally binding on any of the Parties;

(ii) affect the rights or obligations of the Parties under any Project Contract;

(iii) entitle a Project Contractor to make any Claim against the Principal or any other Project Contractors;

(iv) relieve any Project Contractor from, or alter or affect, that Project Contractor's Liabilities or responsibilities whether under this deed or otherwise according to Law;

(v) prejudice any Project Contractor's rights against the Principal or any other Project Contractor whether under this deed or otherwise according to Law; or

(vi) be construed as a direction by any Project Contractor or the Principal to do or not do anything under any Project Contract.

(b) The Principal may, in its absolute discretion, take necessary steps under the relevant Project Contract to implement a decision of the relevant Governance Forum or the Joint Project Committee, which may include, where relevant and if the Principal considers appropriate, issuing a Principal directed Change or Modification (as applicable and as defined in the relevant Project Contract).

7.5 Notice of meetings and minutes

(a) The Principal will provide each Party:

(i) at least 10 Business Days' notice to convene the inaugural meeting of each Governance Forum, excluding any Sub-Group; and

(ii) an agenda for each meeting of each Governance Forum no less than 5 Business Days prior to each meeting.

(b) The Principal will issue to all members of each Governance Forum minutes of the meeting of that Governance Forum within 5 Business Days after the meeting. If a Project Contractor considers that the minutes of any meeting of a Governance Forum are not accurate or correct, it must advise the Principal as soon as possible, and in any case no later than the next meeting of that Governance Forum.

8. PROJECT INTEGRATION GROUP

8.1 Establishment

(a) Each Project Contractor acknowledges and agrees that:

(i) the following persons will form the Project Integration Group:

(A) the SMW Project Director;

(B) SMW Deputy Project Director;

(C) SMW Director Engineering & Design; and

(D) each Project Contractor's Representative; and

(ii) a representative of the IDAR Panel nominated by the Principal may be invited by the Principal to attend any meeting of the Project Integration Group as a non-member observer in the Principal's absolute discretion, having first consulted with each Project Contractor's Representative.

(b) The persons referred to in clause 8.1(a) of these Framework Principles may appoint delegates (of an equivalent level of seniority or experience) to attend Project Integration Group meetings in their absence.

(c) The Principal may replace the representatives specified in clause 8.1(a) (excluding clause 8.1(a)(i)(D)) of these Framework Principles at any time by giving written notice to each other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.

(d) A Project Contractor may, subject to the Principal's prior written approval, replace its Project Contractor's Representative at any time by giving written notice to each of the other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.

8.2 Project Integration Group functions

(a) The role of the Project Integration Group is to:

(i) be the senior body for the facilitation, implementation and management of Integration and Interface issues in accordance with the relevant Project Contracts;

(ii) review Project performance, achievements and upcoming milestone events;

(iii) contribute to the Integrated Program including key Interface activities to be incorporated into each Project Contractor's Program;

(iv) identify new key issues;

(v) review work health and safety performance;

(vi) have regard to the Project delivery objectives;

(vii) provide a collaborative forum through which Parties can review and discuss the progress of the Project;

(viii) determine and implement actions to respond to negative Project performance and/or trends;

(ix) develop and agree strategies to coordinate the management and implementation of Integration across the Project;

(x) ensure the effectiveness of the federated model and other collaboration tools in managing Integration;

(xi) identify any opportunities between Contract Packages to encourage cost savings and innovation and innovative thinking relevant to the delivery of the Project;

(xii) resolve key Integration issues (including considering any recommendations made by, and issues escalated by, a Delivery Site Integration Group or the System Integration Working Group);

(xiii) ensure strategies are used in Delivery Site Integration Group meetings and the System Integration Working Group to ensure good relationships are maintained between the Parties and Integration issues are resolved or elevated to the Project Integration Group;

(xiv) refer matters requiring technical advice to the System Integration Working Group, and take advice from that group;

(xv) share 'lessons learnt' in relation to the delivery of the Project; and

(xvi) make recommendations to the Principal to improve Project delivery.

(b) The chairperson of the Project Integration Group may establish relevant sub-groups from time to time.

8.3 Decisions

Any decision, determination or recommendation of the Project Integration Group:

(a) must be made unanimously (excluding abstentions) at a meeting of the Project Integration Group where each member of the Project Integration Group that is required to attend that meeting is in attendance;

(b) must be documented in the minutes for the relevant meeting of the Project Integration Group; and

(c) will only be binding upon the Principal or a Project Contractor if, in accordance with clause 7.4(b) of these Framework Principles, the Principal takes the necessary steps under the relevant Project Contract to implement the decision.

8.4 Project Integration Group meetings

(a) The Project Integration Group will meet:

(i) on a monthly basis for the duration of the Project;

(ii) in accordance with this clause 8.4 of these Framework Principles; and

(iii) at such other times as the chairperson of the Project Integration Group requires.

(b) Each Project Contractor must ensure that its Project Contractor's Representative attends each Project Integration Group meeting:

(i) during the period from:

(A) in respect of an Initial Contractor, the date of this deed; or

(B) in respect of an Acceding Party, the relevant Accession Date,

until the earlier of:

(C) completion of the last portion of the Project Contractor's Works to achieve completion; and

(D) if applicable, the date on which the Project Contractor's rights and obligations under this deed are terminated in accordance with clause 7(a) of this deed; and

(ii) after completion of the last portion of the Project Contractor's Works to achieve completion, at the request of the Principal.

(c) The chairperson for meetings of the Project Integration Group will be the SMW Project Director (or their appointed delegate pursuant to clause 8.1(b) of these Framework Principles).

9. DELIVERY SITE INTEGRATION GROUPS

9.1 Establishment

(a) The Principal will form Delivery Site Integration Groups, as shown in the diagram in clause 7.2 of these Framework Principles, each of which will comprise:

(i) the relevant SMW Senior Project Manager; and

(ii) a senior site representative of each of the relevant Project Contractors (as nominated by each of them and approved by the Principal).

(b) The persons referred to in clause 9.1(a) of these Framework Principles may appoint delegates (of an equivalent level of seniority, knowledge and experience) to attend Delivery Site Integration Group meetings in their absence.

(c) The Principal may replace the representative specified in clause 9.1(a)(i) of these Framework Principles at any time by giving written notice to each other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.

(d) A Project Contractor may, subject to the Principal's prior written approval, replace the representative specified in clause 9.1(a)(ii) of these Framework Principles at any time by giving written notice to each of the other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.

9.2 Functions

(a) The role of each Delivery Site Integration Group is to:

(i) provide a collaborative forum through which Parties can identify, discuss the progress of and resolve Site specific Integration issues;

(ii) consider work health and safety in all activities;

(iii) consider Environmental management in activities where appropriate;

(iv) provide a forum for the facilitation, implementation and day to day management of Integration at each Site in accordance with the relevant Project Contracts;

(v) review the Project Contractors' weekly Integration progress reports and achievements;

(vi) review actual progress against baseline, identify slippage or negative trends and determine corrective actions;

(vii) review the achievement of Site milestones throughout the delivery of the Project;

(viii) review and confirm status of upcoming milestone events;

(ix) identify and resolve key Site Integration issues, including gaps and overlap in scope;

(x) escalate unresolved Interface issues and make recommendations in respect of them to the Project Integration Group;

(xi) share 'lessons learnt' from the relevant Sites;

(xii) address construction and Interface issues escalated by the Project Contractors or the Principal;

(xiii) resolve technical matters in consultation with the System Integration Working Group where required; and

(xiv) make recommendations to the Project Integration Group to improve Project delivery.

(b) The chairperson of each Delivery Site Integration Group may establish relevant sub-groups from time to time.

9.3 Decisions and recommendations

Any decision, determination or recommendation of a Delivery Site Integration Group:

(a) must be made unanimously (excluding abstentions) at a meeting where each member of the Delivery Site Integration Group that is required to attend that meeting is in attendance;

(b) must be documented in the minutes for the relevant meeting of the Delivery Site Integration Group; and

(c) will only be binding upon the Principal or a Project Contractor if, in accordance with clause 7.4(b) of these Framework Principles, the Principal takes the necessary steps under the relevant Project Contract to implement the decision.

9.4 Meetings

(a) Each Delivery Site Integration Group will meet:

(i) from the date of formation, on a weekly basis for the duration of the Project;

(ii) in accordance with this clause 9.4 of these Framework Principles; and

(iii) at such other times as the chairperson of that Delivery Site Integration Group requires.

(b) Each Project Contractor must, in respect of each applicable Delivery Site Integration Group (as shown in the diagram in clause 7.2 of these Framework Principles), ensure that its representative referred to in clause 9.1(a)(ii) of these Framework Principles attends each Delivery Site Integration Group meeting:

(i) during the period from:

(A) in respect of an Initial Contractor, the date of formation of the relevant Delivery Site Integration Group; or

(B) in respect of an Acceding Party, the relevant Accession Date,

until the earlier of:

(C) completion of the last portion of the Project Contractor's Works to achieve completion; and

(D) if applicable, the date on which the Project Contractor's rights and obligations under this deed are terminated in accordance with clause 7(a) of this deed; and

(ii) after completion of the last portion of the Project Contractor's Works to achieve completion, at the request of the Principal.

(c) The relevant SMW Senior Project Manager (or their appointed delegate pursuant to clause 9.1(b) of these Framework Principles) will have the role of chairperson for meetings of each Delivery Site Integration Group.

10. SYSTEM INTEGRATION WORKING GROUP

10.1 Establishment

(a) The Principal will form the System Integration Working Group, which will comprise:

(i) the SMW Director Engineering & Design;

(ii) such engineering design solutions technical subject matter experts as the Principal may nominate from time to time; and

(iii) a technical subject matter expert from each Project Contractor (as nominated by the relevant Project Contractor and approved by the Principal).

(b) The persons referred to in clause 9.1(a) of these Framework Principles may appoint delegates (of an equivalent level of seniority or experience) to attend System Integration Working Group meetings in their absence.

(c) The Principal may replace the representatives specified in clauses 10.1(a)(i) and 10.1(a)(ii) of these Framework Principles at any time by giving written notice to each other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.

(d) A Project Contractor may, subject to the Principal's prior written approval, replace the representative specified in clause 10.1(a)(iii) of these Framework Principles at any time by giving written notice to each of the other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.

10.2 Functions

(a) The System Integration Working Group will provide technical support to the Project Integration Group and the Delivery Site Integration Groups and its role is to:

(i) ensure informed forward-planning and resolution of Integration issues as they arise;

(ii) review and oversee the design and engineering assurance program to ensure technical Interfaces are successfully managed;

(iii) work closely with the Principal's engineering design solutions team;

(iv) ensure an integrated design and scope allocation, including the resolution of key scope and engineering issues where engaged by the Project Integration Group and the Delivery Site Integration Groups;

(v) contribute to the systems integration, testing, commissioning and operational readiness plans;

(vi) consider the design, delivery and Integration of the Project in all phases including whole-of-life considerations;

(vii) resolve Interface technical issues;

(viii) obtain advice on Interface issues from discipline-based sub-groups to help resolve Interface issues;

(ix) obtain advice on Interface issues from issue-based sub-groups to help resolve Interface issues;

(x) escalate unresolved issues to the Project Integration Group for resolution and make recommendations in respect of them; and

(xi) make recommendations to the Project Integration Group to improve Integration across the Project.

(b) The chairperson of the System Integration Working Group may establish relevant sub-groups to deal with discipline-specific or issue-specific matters.

10.3 Decisions and recommendations

Any decision, determination or recommendation of the System Integration Working Group:

(a) must be made unanimously (excluding abstentions) at a meeting where each member of the System Integration Working Group that is required to attend that meeting is in attendance;

(b) must be documented in the minutes for the relevant meeting of the System Integration Working Group; and

(c) will only be binding upon the Principal or a Project Contractor if, in accordance with clause 7.4(b) of these Framework Principles, the Principal takes the necessary steps under the relevant Project Contract to implement the decision.

10.4 Meetings

(a) The System Integration Working Group will meet:

(i) from the date of formation, on a weekly basis for the duration of the Project;

(ii) in accordance with this clause 10.4 of these Framework Principles; and

(iii) at such other times as the chairperson of the System Integration Working Group requires.

(b) Each Project Contractor must ensure that its technical subject matter expert referred to in clause 10.1(a)(iii) of these Framework Principles attends each System Integration Working Group meeting:

(i) during the period from:

(A) in respect of an Initial Contractor, the date of formation of the System Integration Working Group; or

(B) in respect of an Acceding Party, the relevant Accession Date,

until the earlier of:

(C) completion of the last portion of the Project Contractor's Works to achieve completion; and

(D) if applicable, the date on which the Project Contractor's rights and obligations under this deed are terminated in accordance with clause 7(a) of this deed; and

(ii) after completion of the last portion of the Project Contractor's Works to achieve completion, at the request of the Principal.

(c) The chairperson for meetings of the System Integration Working Group will be the SMW Director Engineering & Design (or their appointed delegate pursuant to clause 10.1(b) of these Framework Principles).

11. INTEGRATED PROGRAM

11.1 Provision of information

(a) Each Project Contractor must prepare and submit to the Principal:

(i) the Project Contractor's Program for the purpose of the Principal preparing the Integrated Program;

(ii) without limiting the Project Contractor's programming obligations under the relevant Project Contract to which it is a party, no later than 5 Business Days prior to each meeting of the Project Integration Group that the Project Contractor is required to attend in accordance with clause 8.4(b) of these Framework Principles, the Project Contractor's then current Program identifying:

(A) Works currently being carried out by the Project Contractor and demonstrating alignment to the Program;

(B) the Works the Project Contractor will be undertaking in the following three month period; and

(C) any likely or potential delay to the Project Contractor's Works in the following three month period and recommendations from the Project Contractor to mitigate the delay,

and in the format required by the relevant Project Contract.

(b) Each Project Contractor must, if requested by the Principal, provide the Principal with any such other information as the Principal considers reasonably necessary to assist in the preparation of the Integrated Program.

11.2 Integrated Program

(a) The Principal will:

(i) prepare the Integrated Program with reference to the Programs provided by the Project Contractors in accordance with clause 11.1 of these Framework Principles;

(ii) regularly update the Integrated Program to reflect any revisions or alterations in the Programs relevant to the Integrated Program; and

(iii) in its absolute discretion, but not less than quarterly until the Project Completion Date, issue an update of the Integrated Program to the Project Integration Group.

(b) Each Project Contractor's Program will be used to prepare the Integrated Program and will be used by the Parties in considering Interface issues.

(c) Each Project Contractor acknowledges and agrees that:

(i) it will inform the Principal of any proposed solutions to ensure timely delivery of the Project;

(ii) nothing contained in the Integrated Program will affect the obligations of any Project Contractor under the relevant Project Contract to which it is a party; and

(iii) any update of the Integrated Program issued by the Principal will not be construed as a direction by the Principal to do or not do anything under any Project Contract.

12. SUBCONTRACTORS

Each Project Contractor must ensure that its Subcontractors work with the Project Contractor to ensure that the Project Contractor is able to comply with its obligations under these Framework Principles.

13. CONTINUITY

Despite the existence of a Dispute between the Parties or the referral of the Dispute for resolution, all of the Parties must continue to perform their obligations under their respective Project Contracts and under these Framework Principles.

SCHEDULE 4

Form of Site Access Deed Poll

THIS DEED POLL is made on [year]

IN FAVOUR OF:

(1) [***Insert details***] (ABN [***Insert details***]) of [***Insert details***] (**[Site] Contractor**);

(2) [***Insert details***] (ABN [***Insert details***]) of [***Insert details***] (**Appointed Principal Contractor**); and

(3) **Sydney Metro** ABN 12 354 063 515 a New South Wales 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**),

(together, the **Beneficiaries**)

GIVEN BY:

(4) [***Insert details***] (ABN [***Insert details***]) of [***Insert details***] (**Accessing Contractor**)

RECITALS:

(A) Pursuant to the deed titled "[***Insert***]" (Contract No: [***Insert***]) dated [***Insert date***] (**Contract**), the [Site] Contractor agreed to, among other things, design and construct certain works and carry out certain activities (**Project Works**), on the land more particularly described in the Contract (the **Construction Site**).

(B) The Accessing Contractor has been appointed under a contract to undertake certain works and activities on the Construction Site (**Construction Site Interface Work**).

(C) For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) (together, the **WHS Legislation**), the Project Works and the Construction Site Interface Work are a 'construction project' within the meaning of the WHS Legislation.

(D) The Appointed Principal Contractor is authorised 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 certain contractors that undertake Construction Site Interface Work.

This deed poll witnesses that the Accessing Contractor hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:

1. In consideration of the [Site] Contractor and the Appointed Principal Contractor accepting this deed poll, the Accessing Contractor agrees that:

   (a) the Accessing Contractor, its subcontractors and their respective personnel while they are on the Construction Site, will comply with Construction Site safety regulations, any Construction Site rules or regulations and with all directions of the [Site] Contractor and the Appointed Principal Contractor with respect to work health and safety;

   (b) the Accessing Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the [Site] Contractor and the Appointed

Principal Contractor so that the Appointed Principal Contractor discharges its obligations as principal contractor;

(c) the Accessing Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the [Site] Contractor, the Appointed Principal Contractor, the Principal and all other persons who have a work health and safety duty in relation to the same matter;

(d) the Accessing Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the [Site] Contractor and the Appointed Principal Contractor while on the Construction Site;

(e) the [Site] Contractor and the Appointed Principal Contractor may exclude the Accessing Contractor, any of its subcontractors and their respective personnel from the Construction Site for work health and safety reasons;

(f) the [Site] Contractor and the Appointed Principal Contractor may direct the Accessing 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, as reasonably determined by the [Site] Contractor or the Appointed Principal Contractor, is to be carried out in the performance of the Construction Site Interface Work, the Accessing 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, the [Site] Contractor and the Appointed Principal 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 [Site] Contractor and the Appointed Principal Contractor, suspend the performance of any high risk construction work;

(h) the Accessing Contractor will in carrying out the Construction Site Interface Work, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and

(i) in its contracts with subcontractors, the Accessing Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Accessing Contractor under this deed poll.

2. The Accessing Contractor indemnifies the [Site] Contractor and the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the [Site] Contractor and the Appointed Principal Contractor as a result of:

(a) any failure by the Accessing Contractor to comply with any direction given by the [Site] Contractor or the Appointed Principal Contractor in accordance with this deed poll; or

(b) any breach by the Accessing 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.

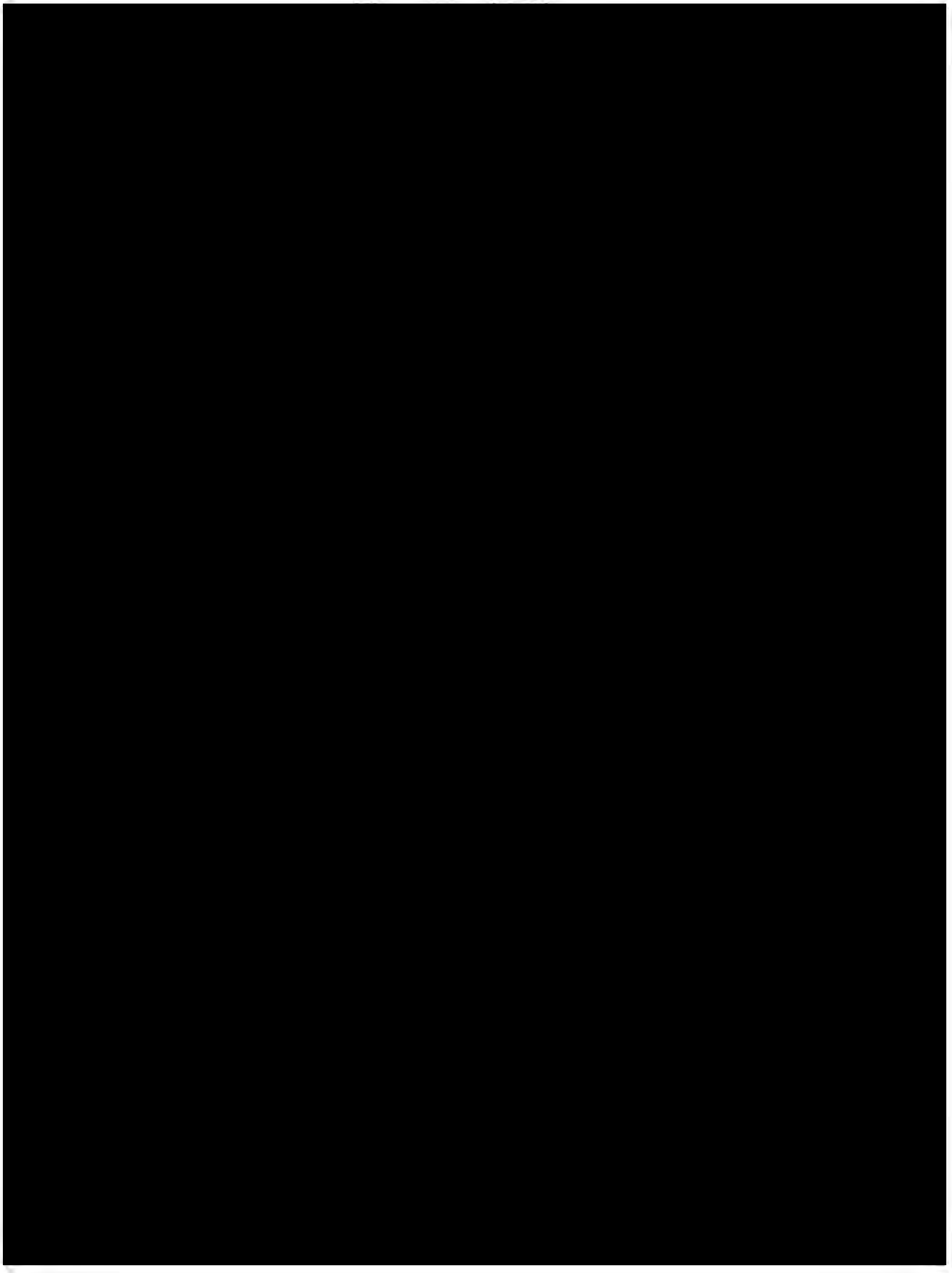
3. This deed poll will be governed by and construed in accordance with the law for the time being of New South Wales.

EXECUTED as a deed poll.

Executed by **[Accessing Contractor]** in accordance with section 127 of the *Corporations Act 2001* (Cth):	
_____	_____
Signature of director	Signature of company secretary/other director
_____	_____
Full name of director	Full name of company secretary/other director

SCHEDULE A12

Form of Collateral Warranty Deed Poll



SCHEDULE A13

NOT USED

SCHEDULE A14

Deed of Covenant

(Clause 5.1(c))

THIS DEED POLL is made the day of 20

TO: **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the Transport Administration Act 1988 (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Beneficiary**)

BY: [ ] (ABN [ ]) of [ ] (**Service Provider**)

BACKGROUND

A. The Beneficiary has engaged [ ] (ABN [ ]) of [ ] (**Tunnelling Contractor**) to carry out certain works on its behalf under the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**).

B. The Tunnelling Contractor has engaged the Service Provider under a deed/agreement dated [ ] (**[Deed/Agreement]**) to carry out the [design work / technical professional services] specified in the Schedule for the purposes of its obligations under the Tunnelling Contract (**Works**).

C. Under the Tunnelling Contract the Tunnelling Contractor is required to procure the Service Provider to execute this deed poll in favour of the Beneficiary.

OPERATIVE

1. DUTY OF CARE

The Service Provider warrants to the Beneficiary that in performing the Works [and in providing any certificate under clause 2(b)(i)(B) of Schedule A26]:

(a) it will owe a duty of care to the Beneficiary;

(b) it will exercise reasonable skill and care; and

(c) it is aware that the Beneficiary will be relying upon the skill and judgement of the Service Provider in performing the Works.

2. GOVERNING LAW AND JURISDICTION

This deed poll will be governed by and construed in accordance with the laws of the State of New South Wales and the Service Provider hereby submits to the non-exclusive jurisdiction of the courts of that State and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed poll, and waives any right it might have to claim that those courts are an inconvenient forum.

3. LIMITATION OF LIABILITY

(a) Subject to clause 3(b), the aggregate of the Service Provider's liability to the Beneficiary under this deed poll and the Service Provider's liability to the Tunnelling Contractor under the [Deed/Agreement] will not exceed the liability that the Service Provider would have had under the [Deed/Agreement] if the [Deed/Agreement] had

of named, in place of the Tunnelling Contractor, the Beneficiary and the Tunnelling Contractor jointly and severally.

(b) Clause 3(a) does not limit the Service Provider's liability:

(i) in respect of any liability that:

(A) cannot be limited at Law; or

(B) is due to the Service Provider's fraud, wilful misconduct or criminal conduct; or

(ii) to the extent that (ignoring the application of clause 3(a)), the Service Provider is entitled to be indemnified for that liability under a policy of insurance required under the [Deed/Agreement] or would have been entitled to be indemnified for that liability under a policy of insurance required under the [Deed/Agreement] but for any act or omission of the Service Provider and, in each case, up to the maximum of the amount of the relevant insurance required under the [Deed/Agreement].

SCHEDULE

[INSERT DESCRIPTION OF DESIGN WORK / TECHNICAL PROFESSIONAL SERVICES]

EXECUTED as a deed poll.

Executed by **[Service Provider]** in accordance with section 127 of the *Corporations Act 2001* (Cth):	
_____	_____
Signature of director	Signature of company secretary/other director
_____	_____
Full name of director	Full name of company secretary/other director

SCHEDULE A15

Significant Subcontractor Side Deed

(Clause 5.2(e))

Sydney Metro West
Significant Subcontractor Side Deed

Sydney Metro
ABN 12 354 063 515

and

[Name of Tunnelling Contractor]
Alt[ABN/ACN**]** [number]

and

[Name of Significant Subcontractor]
Alt[ABN/ACN**]** [number]

and

[Name of Significant Subcontractor Guarantor]
Alt[ABN/ACN**]** [number]

THIS DEED is made on 20

BETWEEN:

(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) **[Name of Tunnelling Contractor]** [ABN] [number] of [address] (**Tunnelling Contractor**);

(3) **[Name of Significant Subcontractor]** [ABN] [number] of [address] (the **Significant Subcontractor**); and

(4) **[Name of Significant Subcontractor Guarantor]** [ABN] [number] of [address] (the **Significant Subcontractor Guarantor**).

RECITALS:

(A) The Principal and the Tunnelling Contractor have entered into the Western Tunnelling Works D&C Deed for the design, construction, testing and commissioning of the Project Works.

(B) The Tunnelling Contractor has subcontracted the Significant Subcontract Work to the Significant Subcontractor pursuant to the Significant Subcontract.

(C) The Significant Subcontractor Guarantor has, pursuant to the Significant Subcontract Guarantee, guaranteed to the Tunnelling Contractor the performance of the Significant Subcontractor's obligations under the Significant Subcontract.

(D) The parties have entered into this deed to set out the terms on which the Significant Subcontractor and Significant Subcontractor Guarantor will grant the Principal certain rights in relation to the Significant Subcontract and the Significant Subcontract Guarantee.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this deed:

Approved Nominee means a person nominated by the Principal as:

(a) having legal capacity, power and authority to become a party to, and perform the obligations of the Tunnelling Contractor under, the Significant Subcontract; and

(b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Tunnelling Contractor under the Significant Subcontract,

and approved by the Significant Subcontractor in accordance with clause 4.9.

Assumption Notice means the notice referred to in clause 4.1.

Default means:

(a) any breach by the Tunnelling Contractor of any of its obligations under the Significant Subcontract; or

(b) any other event or circumstance,

which would entitle the Significant Subcontractor to terminate, rescind, accept the repudiation of, suspend the performance of any or all of the Significant Subcontractor's obligations under the Significant Subcontract.

Default Notice has the meaning given in clause 3.2(a).

Effective Date means the date of the Assumption Notice.

Project Works has the meaning given in the Western Tunnelling Works D&C Deed.

Significant Subcontractor's Activities means all things or tasks which the Significant Subcontractor is, or may be, required to provide, carry out or do to comply with its obligations under the Significant Subcontract (whether or not the performance of such things or tasks is subcontracted by the Significant Subcontractor to another person).

Significant Subcontract means the deed or agreement titled "[***insert***]" dated on or about the date of this deed between the Tunnelling Contractor and the Significant Subcontractor.

Significant Subcontract Guarantee means the deed of guarantee dated on or about the date of the Significant Subcontract from the Significant Subcontractor Guarantor in favour of the Tunnelling Contractor in respect of the obligations of the Significant Subcontractor under the Significant Subcontract and, if the Principal gives an Assumption Notice, the new guarantee entered into pursuant to clause 4.6.

Significant Subcontract Work means the physical works to be designed and constructed by the Significant Subcontractor under the Significant Subcontract.

State means the Crown in right of the State of New South Wales.

Step-in Rights has the meaning given in clause 3.1(a).

Western Tunnelling Works D&C Deed means the deed titled "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) between the Principal and the Tunnelling Contractor dated [***insert***].

1.2 Rules for interpreting this deed

In this deed headings (including headings in parentheses in sub-clauses) are for convenience only and do not affect the interpretation of this deed and unless the context indicates a contrary intention:

(a) "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;

(b) a reference to a "party" to this deed or a "person" or "entity" includes that party's, person's or entity's executors, administrators, successors and permitted substitutes and assigns, including persons taking part by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(c) a reference to a "document", "contract" or "agreement" is to that document, contract or agreement as updated, varied, novated, ratified or replaced from time to time;

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

(i) if that Authority, institute, association or body is reconstituted, renamed, replaced or restructured 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 is dissolved or ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;

(e) a reference to a "statute" includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

(f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(g) a reference to:

(i) a "part" or "schedule" is a reference to a part or schedule to or of this deed; and

(ii) this deed includes all schedules to it;

(h) 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;

(i) "includes" in any form is not a word of limitation;

(j) a reference to "$" or "dollar" is to Australian currency; and

(k) a time of day is a reference to Sydney time.

1.3 **Business Day**

If the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

1.4 **Inconsistency between this deed and the Significant Subcontract**

This deed prevails to the extent of any inconsistency between this deed and the Significant Subcontract.

1.5 **No bias against drafter**

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

1.6 **Aggregate liability**

Despite any other provision of the Significant Subcontract, this deed or the Significant Subcontract Guarantee:

(a) the Significant Subcontractor's liability to the Tunnelling Contractor under or in connection with this deed is limited to the extent described in the Significant Subcontract;

(b) nothing in this deed is intended to make or makes the Significant Subcontractor or the Significant Subcontractor Guarantor liable for the same loss twice for the same breach of an obligation;

(c) neither the Significant Subcontractor nor the Significant Subcontractor Guarantor will have any greater obligations or liabilities to the Principal arising under or in connection with this deed in respect of the performance of their obligations and liabilities under the Significant Subcontract and the Significant Subcontract Guarantee than they would have had if the Principal had been named as principal under the Significant Subcontract; and

(d) the liability of the Significant Subcontractor and the Significant Subcontractor Guarantor arising under or in connection with this deed will not exceed the difference between the maximum liability of the Significant Subcontractor under the Significant Subcontract and the liability incurred (from time to time) by the Significant Subcontractor and the Significant Subcontractor Guarantor to the Tunnelling Contractor under the Significant Subcontract.

2. SIGNIFICANT SUBCONTRACTOR'S WARRANTY

(a) The Significant Subcontractor warrants to the Principal that:

(i) it will carry out its duties and obligations under the Significant Subcontract in accordance with the Significant Subcontract;

(ii) it will in performing its duties and obligations under the Significant Subcontract exercise the level of skill, care and diligence that would be reasonably expected of a qualified and experienced contractor performing the same or similar works and services to the Significant Subcontractor's Activities;

(iii) it will use materials, equipment and goods that are of the quality and standard specified in the Significant Subcontract or, if no quality or standard is specified in the Significant Subcontract, new and of merchantable quality and which are and will be capable of remaining at all relevant times fit for their intended purpose; and

(iv) without limiting the generality of the foregoing, it will carry out and complete the Significant Subcontract Work in accordance with the Significant Subcontract and duly observe and perform all its duties and obligations thereunder.

(b) Without prejudice to any of the Principal's other rights under this deed (including, without limitation, under clause 3 and clause 4, the Principal may only exercise its rights pursuant to this clause 2 upon:

(i) the Principal exercising its step-in rights under the Western Tunnelling Works D&C Deed;

(ii) the termination of the Western Tunnelling Works D&C Deed; or

(iii) the Tunnelling Contractor no longer being responsible for performing the Project Works substantially on the basis set out in the Western Tunnelling Works D&C Deed.

3. PRINCIPAL'S RIGHT TO CURE DEFAULT EVENT

3.1 Principal's Step-in Rights

(a) On becoming aware of any Default, the Principal may (but is not obliged to) cure or remedy, or procure the cure or remedy of, that Default (**Step-in Rights**).

(b) Clause 3.1(a) only applies where the Significant Subcontractor has given a Default Notice in accordance with clause 3.2(a).

(c) Upon the Principal exercising any of its rights under this clause 3.1, the Tunnelling Contractor's obligations under the Significant Subcontract are suspended to the extent and for such period as the Tunnelling Contractor is prevented from performing such obligations by the Principal's exercise of its Step-in Rights.

(d) If the Principal exercises its Step-in Rights, the Principal may, after giving reasonable notice to the Tunnelling Contractor, cease to exercise that right, and in any event, will cease to exercise the Step-in Rights once the relevant Default has been remedied.

3.2 **Restriction on right to terminate or suspend**

The Significant Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Significant Subcontract unless each of the following conditions have been satisfied:

(a) the Significant Subcontractor has given to the Principal prior notice setting out details of the Default giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Significant Subcontract (**Default Notice**), together with the statements referred to in clause 3.3; and

(b) either:

(i) if the Default is capable of cure or remedy within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor), that Default has not been cured or remedied within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor) after the date on which the Default Notice is given to the Principal;

(ii) if the Default is not one described in clause 3.2(b)(i) but is nevertheless capable of cure or remedy, the Principal has not within 20 Business Days after the date on which the Default Notice is given to the Principal notified the Significant Subcontractor that the Principal has elected to make arrangements to cure or remedy the Default. If notified, the Significant Subcontractor agrees:

(A) to use its best endeavours to reach an agreement with the Principal in respect of the arrangements to cure or remedy the Default; and

(B) not to exercise any of its rights in relation to the Default, including any right to terminate the Significant Subcontract, for as long as the Principal is diligently pursuing a cure or remediation for the Default;

(iii) if the Default is not reasonably capable of cure or remedy and the Default Notice contains a claim for reasonable compensation for the Default, the Principal (or another person on behalf of the Principal) has not paid or otherwise provided that compensation within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor) after the date on which the Default Notice is given to the Principal;

(iv) if the Default is not capable of cure or remedy and the Default Notice does not contain a claim for reasonable compensation for the Default, the Principal does not commence and continue to perform the Tunnelling Contractor's obligations under the Significant Subcontract within 20 Business Days (or such

longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor) after the date on which the Default Notice is given to the Principal; or

(v) the Principal notifies the Significant Subcontractor in writing after receipt of the Default Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default.

The parties acknowledge and agree that a failure to pay money is a Default that is capable of cure or remedy.

3.3 **Statements concerning Default**

As part of any Default Notice, the Significant Subcontractor must submit to the Principal statements of:

(a) where the Default is a monetary default, the amount which must be paid to the Significant Subcontractor to remedy the Default; and

(b) where the Default is of a non-monetary nature:

(i) the provisions of the Significant Subcontract alleged to have been breached or not fulfilled;

(ii) sufficient information to enable the Principal to identify the material facts, to the extent these are known to the Significant Subcontractor;

(iii) the steps required to cure or remedy the specified breaches or conditions not fulfilled if capable of cure or remedy; and

(iv) the time within which the specified steps can reasonably be expected to be taken.

3.4 **Warranty of accuracy**

(a) The Significant Subcontractor warrants to the Principal that statements submitted by it under clause 3.3 will be, so far as reasonably practicable, true, complete and accurate statements of the amounts to which the Significant Subcontractor considers itself entitled.

(b) The Significant Subcontractor agrees that it will notify the Principal immediately upon becoming aware that any statements submitted by it under clause 3.3 are not true, complete and/or accurate and that it will, in any such notice, include details of the revised amounts to which the Significant Subcontractor considers itself entitled.

3.5 **Disputes as to statements**

If the Principal disputes the amount of any claim or the existence of any Default referred to in a Default Notice:

(a) the Principal must pay the amount not in dispute;

(b) upon resolution of the dispute in accordance with this deed, the parties must make payments as determined; and

(c) during the period of dispute resolution, all parties must continue to perform their obligations under this deed, the Significant Subcontract and the Tunnelling Contract Documents.

3.6 **Verification**

The Principal may appoint a firm of independent chartered accountants or a firm of technical advisers to verify (at the cost of the Tunnelling Contractor) statements submitted by the Significant Subcontractor to the Principal pursuant to clause 3.3, and the Significant Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement as the Significant Subcontractor may reasonably request) permit that firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

3.7 **No liability**

(a) The Tunnelling Contractor and the Significant Subcontractor acknowledge that, without limiting the liability of the Tunnelling Contractor (which continues to be responsible for the performance of its obligations under the Significant Subcontract), and without limiting the Principal's obligations under clause 4, the Principal will not be liable for any obligation or liability of the Tunnelling Contractor under the Significant Subcontract by reason only of the Principal performing the Tunnelling Contractor's obligations in accordance with the Significant Subcontract.

(b) The Tunnelling Contractor and the Significant Subcontractor each release the Principal from any such liability.

3.8 **Tunnelling Contractor to compensate the Principal**

Any reasonable Loss suffered or incurred by the Principal arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due and payable from the Tunnelling Contractor to the Principal.

3.9 **No limitation on other rights**

The exercise (or failure to exercise) by the Principal of its rights under this clause 3 will not limit the Principal's rights against the Tunnelling Contractor under the Western Tunnelling Works D&C Deed or otherwise according to law.

4. NOVATION OF SIGNIFICANT SUBCONTRACT AND SIGNIFICANT SUBCONTRACT GUARANTEE

4.1 **Option**

(a) If the Western Tunnelling Works D&C Deed is terminated, the Principal may exercise its rights under this clause 4 by giving a notice (**Assumption Notice**) to the Significant Subcontractor and Significant Subcontractor Guarantor.

(b) The Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor:

(i) confirm that each of the Significant Subcontract and the Significant Subcontract Guarantee contains provisions which preserve the terms of the Significant Subcontract and the Significant Subcontract Guarantee (respectively) and the Principal's ability to exercise its rights under clause 4.1(a) upon termination of the Western Tunnelling Works D&C Deed for any reason; and

(ii) acknowledge and agree that, in accordance with clause 1.4, any provision of the Significant Subcontract or the Significant Subcontract Guarantee that allows for the termination of the Significant Subcontract or the Significant Subcontract Guarantee upon termination of the Western Tunnelling Works

D&C Deed will be deemed to have no effect unless and until the Principal gives written notice to the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor confirming that it will not issue an Assumption Notice.

4.2 **Novation of Significant Subcontract**

With effect from the Effective Date:

(a) the Principal and the Tunnelling Contractor novate the Significant Subcontract so that the Principal (or, if applicable, the Approved Nominee) and the Significant Subcontractor are parties to a new contract on the same terms as the Significant Subcontract, as amended by this deed; and

(b) any reference in the Significant Subcontract to the Tunnelling Contractor will be read as a reference to the Principal (or, if applicable, the Approved Nominee).

4.3 **Rights and obligations of the Principal and the Significant Subcontractor under the Significant Subcontract**

If the Principal gives an Assumption Notice then, subject to clause 4.7, with effect from the Effective Date:

(a) the Principal (or, if applicable, the Approved Nominee):

(i) is entitled to all rights and benefits under the Significant Subcontract to which, but for this deed, the Tunnelling Contractor could have been entitled, at and after the Effective Date;

(ii) must perform all obligations and discharge all liabilities under the Significant Subcontract which, but for this deed, the Tunnelling Contractor would have been required to perform or discharge at and after the Effective Date; and

(iii) is bound by and must comply with all other provisions of the Significant Subcontract by which, but for this deed, the Tunnelling Contractor would have been bound, at and after the Effective Date; and

(b) the Significant Subcontractor:

(i) is entitled to all rights and benefits under the Significant Subcontract to which, but for this deed, it would have been entitled at and after the Effective Date;

(ii) must perform all obligations and discharge all liabilities under the Significant Subcontract which, but for this deed, it would have been required to perform or discharge at and after the Effective Date; and

(iii) is bound by and must comply with all other provisions of the Significant Subcontract by which, but for this deed, it would have been bound at and after the Effective Date,

as if the Principal (or, if applicable, the Approved Nominee) had originally been a party to the Significant Subcontract in place of the Tunnelling Contractor.

4.4 **Release by Significant Subcontractor**

Subject to clause 4.7, with effect from the Effective Date, the Significant Subcontractor releases the Tunnelling Contractor from all obligations and liability under or in respect of the Significant Subcontract to be performed or discharged at or after the Effective Date.

4.5 **Release by Tunnelling Contractor**

Subject to clause 4.7, with effect from the Effective Date, the Tunnelling Contractor releases the Significant Subcontractor from all obligations and liability under or in respect of the Significant Subcontract to be performed or discharged at or after the Effective Date.

4.6 **Novation of Significant Subcontract Guarantee**

If the Principal gives an Assumption Notice then, subject to clause 4.7, with effect from the Effective Date:

(a) the Principal and the Significant Subcontractor Guarantor novate the Significant Subcontract Guarantee so that the Principal (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the Significant Subcontract Guarantee;

(b) any reference in the Significant Subcontract Guarantee to the Tunnelling Contractor will be read as a reference to the Principal (or, if applicable, the Approved Nominee); and

(c) the Significant Subcontractor Guarantor will guarantee for the benefit of the Principal (or, if applicable, the Approved Nominee) all of the obligations of the Significant Subcontractor in accordance with the Significant Subcontract Guarantee.

4.7 **Obligations and liability prior to the Effective Date**

Nothing in this deed releases:

(a) the Tunnelling Contractor or the Significant Subcontractor from any obligation or liability under the Significant Subcontract; or

(b) the Tunnelling Contractor, the Significant Subcontractor or the Significant Subcontractor Guarantor from any obligation or liability under the Significant Subcontract Guarantee,

arising or accruing before the Effective Date and the Principal (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this deed.

4.8 **Amendments to the Significant Subcontract**

(a) With effect from the Effective Date, the terms of the Significant Subcontract will be deemed to be amended as required to reflect the fact that the Western Tunnelling Works D&C Deed is at an end, and that the Significant Subcontract must operate independently of the Western Tunnelling Works D&C Deed, on the basis that:

(i) the rights and obligations that the Principal (or, if applicable, the Approved Nominee) will assume under the Significant Subcontract from the Effective Date will be equivalent to those that the Tunnelling Contractor would have had under the Significant Subcontract had the Western Tunnelling Works D&C Deed not been terminated;

(ii) the rights and obligations that the Significant Subcontractor will assume under the Significant Subcontract from the Effective Date will be equivalent to those that the Significant Subcontractor would have had under the Significant Subcontract had the Western Tunnelling Works D&C Deed not been terminated;

(iii) any provisions of the Western Tunnelling Works D&C Deed that are incorporated by reference into the Significant Subcontract prior to the

Effective Date are incorporated in the Significant Subcontract from the Effective Date; and

(iv) without affecting the generality of this clause 4.8, clauses [***to be inserted***] of the Significant Subcontract will be deleted. [***Note: This clause will be completed as required to capture any applicable clauses of the Significant Subcontract.***]

(b) If at or after the Effective Date, there is a dispute between the Principal (or, if applicable, the Approved Nominee) and the Significant Subcontractor as to how the terms of the Significant Subcontract are deemed to have been amended pursuant to clause 4.8, then upon either party serving a written notice to this effect on the other, the dispute will be determined as if clause 25 of the Western Tunnelling Works D&C Deed and the Dispute Procedure were incorporated in this deed but as if:

(i) references in those clauses to "the Tunnelling Contractor" were references to "the Significant Subcontractor";

(ii) references to "the parties" were references to "the Principal and the Significant Subcontractor";

(iii) references to a "party" were references to "the Principal" or "the Significant Subcontractor" (as appropriate);

(iv) references in those clauses to "Dispute" were references to this dispute; and

(v) the dispute had been appropriately referred to the IDAR Panel.

4.9 **Approved Nominee**

(a) The Principal's nominee may be named as a party to the Significant Subcontract in substitution for the Tunnelling Contractor if the Principal's nominee is an Approved Nominee.

(b) The Significant Subcontractor must:

(i) notify the Principal as to whether the Principal's nominee is an Approved Nominee, on or before the date falling 20 Business Days after the date of receipt of all information reasonably required by the Significant Subcontractor (including information as to the nominee's financial standing) to decide whether the nominated person is an Approved Nominee;

(ii) not unreasonably withhold or delay its decision as to whether the Principal's nominee is an Approved Nominee; and

(iii) enter into a side deed with the Principal and the Approved Nominee on substantially the same terms as this deed.

4.10 **Unconditional undertakings**

[***Note: This clause will be amended as required to reflect the security arrangements under the relevant Significant Subcontract.***]

If the Principal gives an Assumption Notice then, as from the Effective Date, the Tunnelling Contractor must (with the support of the Significant Subcontractor to effect this provision) either:

(a) procure the novation or assignment to the Principal (or, if applicable, the Approved Nominee) of any unconditional undertakings held by the Tunnelling Contractor under the Significant Subcontract prior to the Effective Date; or

(b) procure the issue to the Principal (or, if applicable, the Approved Nominee) of replacement unconditional undertakings for the same undrawn value and on the same terms as the unconditional undertakings held by the Tunnelling Contractor under the Significant Subcontract immediately prior to the Effective Date.

4.11 **Other documents under the Significant Subcontract**

[***Note: This clause will be included as required in order to deal with the assignment or novation of relevant ancillary documents.***]

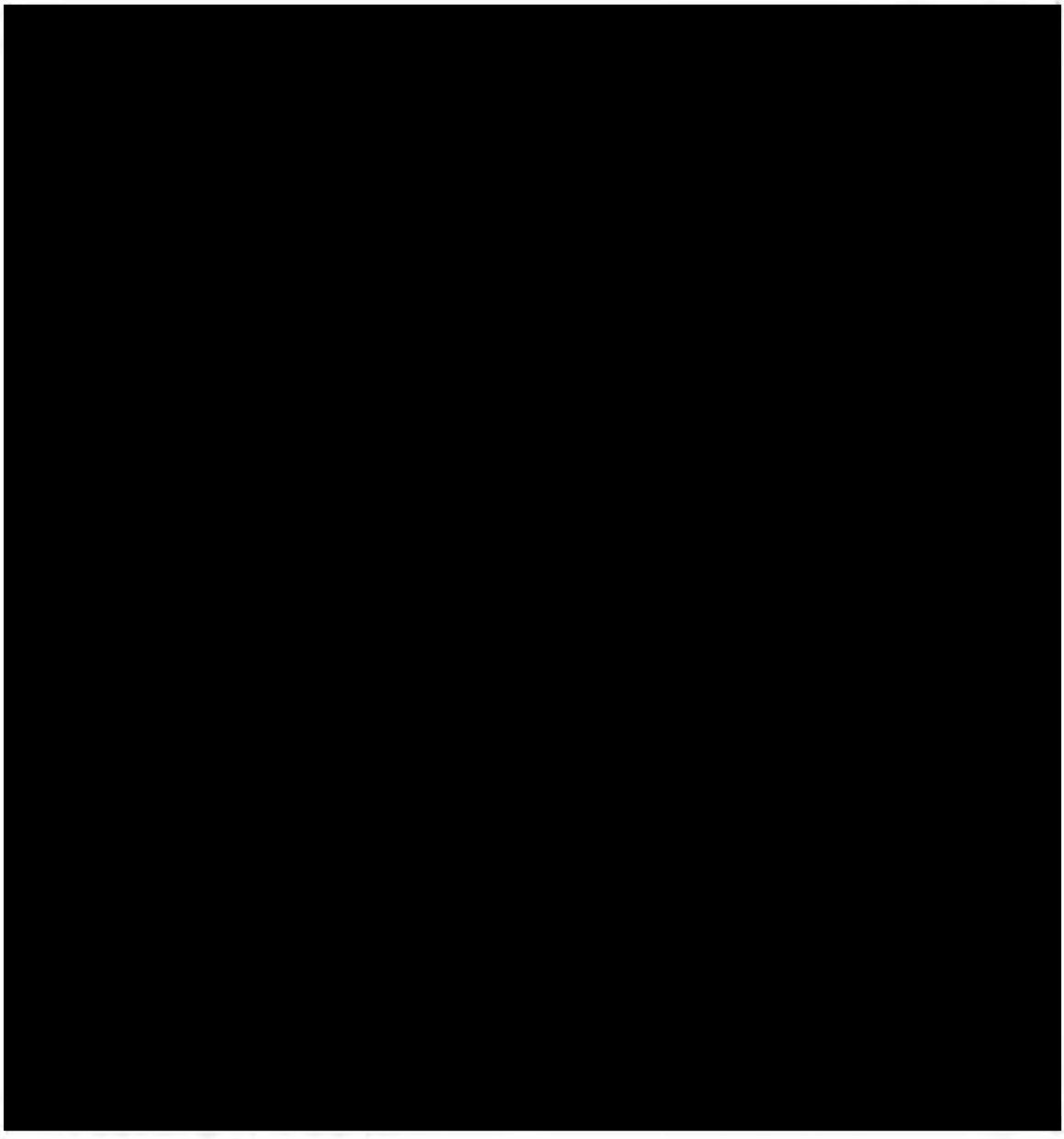
If the Principal gives an Assumption Notice then, as from the Effective Date, the Tunnelling Contractor must procure the novation or assignment to the Principal (or, if applicable, the Approved Nominee) of:

(a) [***Insert as required***].

5. **AMENDMENTS TO SIGNIFICANT SUBCONTRACT AND SIGNIFICANT SUBCONTRACT GUARANTEE**

(a) The Tunnelling Contractor and the Significant Subcontractor must not agree to or permit any modification, variation, waiver or amendment to the terms of the Significant Subcontract to the extent it may impact the rights or increase the liabilities or obligations of the Principal (including if the Principal were to subsequently exercise its rights under clause 4) without the prior consent of the Principal (which must not be unreasonably withheld or delayed).

(b) The Tunnelling Contractor and the Significant Subcontractor Guarantor must not agree to or permit any modification, variation, waiver or amendment to the terms of the Significant Subcontract Guarantee to the extent it may impact the rights or increase the liabilities or obligations of the Principal (including if the Principal were to subsequently exercise its rights under clause 4) without the prior consent of the Principal (which must not be unreasonably withheld or delayed).



6. RESTRICTION ON DEALINGS

(a) The Tunnelling Contractor and the Significant Subcontractor must not transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in the Significant Subcontract without the prior consent of the Principal (such consent not to be unreasonably withheld or delayed), and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrance holder enters into a deed in which it agrees to be bound by the terms of this deed.

(b) The Tunnelling Contractor and the Significant Subcontractor Guarantor must not transfer, assign, mortgage, charge, encumber or otherwise deal with their interest in the Significant Subcontract Guarantee without the prior consent of the Principal (such consent not to be unreasonably withheld or delayed), and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrance holder enters into a deed in which it agrees to be bound by the terms of this deed.

7. ACKNOWLEDGEMENT BY TUNNELLING CONTRACTOR AND SIGNIFICANT SUBCONTRACTOR

(a) The Tunnelling Contractor and the Significant Subcontractor consent to the terms of this deed and will cooperate in the implementation of this deed.

(b) The rights and benefits conferred upon the Principal by this deed are in addition to any other rights and remedies it may have against the Significant Subcontractor, including without prejudice to the generality of the foregoing, any remedies in negligence.

8. GENERAL REPRESENTATIONS AND WARRANTIES

The Significant Subcontractor makes the following representations and warranties to the Principal each of which is true and correct on the date of this deed:

(a) it has power to enter into this deed and the Significant Subcontract and comply with its obligations under this deed and the Significant Subcontract;

(b) this deed, the Significant Subcontract and the transactions under them do not contravene its constituent documents or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers or its directors to be exceeded;

(c) it has in full force and effect the authorisations necessary for it to enter into this deed, the Significant Subcontract and the transactions under them;

(d) its obligations under this deed and the Significant Subcontract are valid and binding and are enforceable against it in accordance with the terms of this deed and the Significant Subcontract;

(e) it is not in breach of any law or obligation affecting it or its assets in a way which may result in a material adverse effect on the business or financial condition;

(f) there is no pending or threatened proceeding affecting either it or any of its assets that would affect the validity or enforceability of this deed, the Significant Subcontract, the ability to fulfil its commitments under this deed or the Significant Subcontract in any material respect, or that could result in any material adverse change in the business or financial condition;

(g) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable; and

(h) it will give all notices it is required to give under this deed as and when it is required to do so.

9. AMENDMENT AND ASSIGNMENT

9.1 Amendment

This deed may only be varied by a formal deed or agreement executed by or on behalf of each party.

9.2 No assignment by the Significant Subcontractor

The Significant Subcontractor and the Significant Subcontractor Guarantor must not assign, novate, mortgage, charge, transfer or otherwise deal with its rights, interest or benefits under this deed without the prior written consent of the Principal (which may be given or be withheld in the Principal's absolute discretion).

9.3 **Transfer of functions or Public Transport Agency assets**

(a) The parties acknowledge that:

(i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;

(ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

(iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.

(b) The Tunnelling Contractor, Significant Subcontractor and Significant Subcontractor Guarantor acknowledge and agree that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.

(c) The Tunnelling Contractor, Significant Subcontractor and Significant Subcontractor Guarantor will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 9.3.

(d) For the purposes of this clause 9.3 "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

10. NOTICES

(a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.

(b) At any time and from time to time, the Principal may notify the parties that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's notice will set out:

(i) the name of the relevant PDCS;

(ii) the commencement date for use of the PDCS;

(iii) any password, login details or similar information required for the parties to use the PDCS;

(iv) any requirements for specific notices (e.g. notices of claims);

(v) the name and contact details of any additional person which the Principal nominates for receipt of Notices under this deed; and

(vi) any other information reasonably necessary for the use and service of Notices via the PDCS.

(c) At any time and from time to time, the Principal may notify the parties that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's notice will state that such Notices will be given in accordance with clause 10(d).

(d) Each Notice must:

(i) before the date referred to in clause 10(b)(ii) or where clause 10(c) applies:

(A) be in writing;

(B) be addressed:

(aa) in the case of a Notice from the Tunnelling Contractor, to the Principal, the Significant Subcontractor and the Significant Subcontractor Guarantor and any additional person notified by the Principal in writing;

(bb) in the case of a Notice from the Significant Subcontractor, to the Principal, the Tunnelling Contractor and the Significant Subcontractor Guarantor and any additional person notified by the Principal in writing;

(cc) in the case of a Notice from the Significant Subcontractor Guarantor, to the Principal, the Tunnelling Contractor and the Significant Subcontractor and any additional person notified by the Principal in writing; or

(dd) in the case of a Notice from the Principal, to the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor;

(C) comply with any requirements for specific notices (e.g. notices of claims) specified by the Principal in writing;

(D) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

(E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

Principal

Address: [***insert***]

Email: [***insert***]

Attention: [***insert***]
(any Notice in relation to a claim or a dispute must also be addressed to the Deputy General Counsel Sydney Metro and sent to [***insert***])

Tunnelling Contractor

Address: [***insert***]

Email: [***insert***]

Attention: [***insert***]

Tunnelling Contractor's Process Agent

Address: [redacted]

Attention: [redacted]

Significant Subcontractor

Address: [***insert***]

Email: [***insert***]

Attention: [***insert***]

Significant Subcontractor Guarantor

Address: [***insert***]

Email: [***insert***]

Attention: [***insert***]

(ii) on and from the commencement date for use of the PDCS referred to in clause 10(b)(ii) (other than where clause 10(c) or clause 10(d)(i) applies):

(A) be sent through the PDCS in accordance with the requirements set out in clause 10(f):

(aa) in the case of a Notice from the Tunnelling Contractor, be addressed to the Principal, the Significant Subcontractor and the Significant Subcontractor Guarantor and any additional person notified in accordance with clause 10(b)(v) and comply with any requirements notified in accordance with clause 10(b)(iv);

(bb) in the case of a Notice from the Significant Subcontractor, be addressed to the Principal, the Tunnelling Contractor and the Significant Subcontractor Guarantor and any additional person notified in accordance with clause 10(b)(v) and comply with any requirements notified in accordance with clause 10(b)(iv);

(cc) in the case of a Notice from the Significant Subcontractor Guarantor, be addressed to the Principal, the Significant Subcontractor and the Tunnelling Contractor and any additional person notified in accordance with clause 10(b)(v) and comply with any requirements notified in accordance with clause 10(b)(iv); and

(dd) in the case of a Notice from the Principal, be addressed to the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor; or

(iii) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 10(d)(i).

(e) A communication is taken to be received by the addressee:

(i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;

(ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;

(iii) (in the case of international post) 7 Business Days after the date of posting;

(iv) (in the case of delivery by hand) on delivery; and

(v) (in the case of email sent to the Principal):

(A) if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or

(B) if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

(f) With respect to Notices sent through the PDCS:

(i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

(ii) only the text in any Notice, or subject to clause 10(f)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and

(iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:

(A) .pdf format;

(B) a format compatible with Microsoft Office; or

(C) such other format as may be agreed between the parties in writing from time to time.

(g) Each of the Tunnelling Contractor, Significant Subcontractor and Significant Subcontractor Guarantor must:

(i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;

(ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;

(iii) ensure all relevant personnel attend all necessary training required by the Principal;

(iv) advise the Principal of which personnel require access to the PDCS;

(v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and

(vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 10(d)(iii) to the Principal through the PDCS.

(h) The Principal has no liability for any Losses the Tunnelling Contractor, Significant Subcontractor or Significant Subcontractor Guarantor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and neither the Tunnelling Contractor, the Significant Subcontractor nor the Significant Subcontractor Guarantor will be entitled to make, and the Principal will not be liable upon, any claim against the Principal arising out of or in connection with such access to or use of the PDCS or any failure of the PDCS.

10A. APPOINTMENT OF TUNNELLING CONTRACTOR'S PROCESS AGENT

(a) Without prejudice to any mode of service allowed under any relevant law, the Tunnelling Contractor:

(i) irrevocably appoints [redacted] in relation to proceedings in the State of New South Wales as its process agent to receive any document in an action in connection with this deed;

(ii) agrees that service of documents on its process agent at the physical address set out in clause 10(d)(i)(E) (or any new physical address notified to the other parties in writing) is sufficient service on it; and

(iii) agrees that failure by a process agent to notify it of any document in an action in connection with this deed, will not invalidate the action concerned.

(b) The parties acknowledge and agree that the service of any documents to the process agent appointed by the Tunnelling Contractor in accordance with this clause 10A must be at the physical address set out in clause 10(d)(i)(E) and must not be via email.

(c) If for any reason the person named above as process agent ceases to be able to act as process agent, the Tunnelling Contractor must promptly appoint another person as its process agent in Australia, ensure that the replacement process agent accepts its appointment and promptly provide the Principal, the Significant Subcontractor and the Significant Subcontractor Guarantor with notice of the appointment of the replacement process agent.

(d) The Tunnelling Contractor must, on or before the date of this deed, provide satisfactory evidence to the Principal that the process agent has accepted the appointment under clause 10A(a)(i).

11. GST

(a) (**Interpretation**)

(i) Except where the context suggests otherwise, terms used in this clause 11 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).

(ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11.

(iii) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11.

(iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) (**Reimbursements**) 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.

(c) (**Additional amount of GST payable**) If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:

(i) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and

(ii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 11(c)(i).

(d) (**Variation of GST**)

(i) If the GST Amount recovered by the Supplier from the Recipient under clause 11(c) for a supply varies from the amount of GST paid or payable by the Supplier on 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 Recipient.

(ii) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed within 20 Business Days after the Supplier becomes aware of the adjustment event.

(e) (**No merger**) This clause 11 will not merge on completion or termination of this deed.

12. GENERAL

12.1 Governing Law and jurisdiction

(a) This deed is governed by and must be constructed according to the Law in force in New South Wales.

(b) Each party irrevocably and unconditionally 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 that may be brought at any time relating to this deed.

12.2 **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 another breach of that term or of a breach of any other term of this deed.

12.3 **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.

12.4 **Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

12.5 **No representations or reliance**

(a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.

(b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

12.6 **Severance**

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

12.7 **Entire agreement**

To the extent permitted by Law, in relation to its subject matter, this deed:

(a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

(b) supersedes any prior written or other agreement of the parties.

12.8 **Counterparts**

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

12.9 **Independent subcontractor**

The Significant Subcontractor is an independent contractor performing this deed. This deed does not create any agency, partnership, joint venture or other joint relationship between the parties.

12.10 **Joint and several liability**

If a party to this deed is made up of more than one person, or a term is used in this deed to refer to more than one party, then unless otherwise specified in this deed:

(a) an obligation of those persons is joint and several;

(b) a right of those persons is held by each of them severally; and

(c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

12.11 **Conflicts of interests**

(a) The Significant Subcontractor warrants that, to the best of its knowledge having made diligent enquiries, no conflict of interest exists in the performance of its obligations and the Principal's best interests.

(b) The Significant Subcontractor must use reasonable endeavours to prevent any actions or conditions which may conflict with the Principal's best interests. In the event that such a conflict arises, the Significant Subcontractor shall immediately notify the Principal and take such steps as the Principal reasonably requires to resolve or otherwise deal with the conflict.

12.12 **Third party rights**

No one other than a party to this deed shall have any right to enforce any of its terms.

12.13 **Survival**

(a) Clause 1 (*Interpretation*), clause 4.8 (*Amendments to the Significant Subcontract*), clause 10 (*Notices*), clause 11 (*GST*) and clause 12 (*General*) and the representations and warranties given by the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor under this deed and any other provisions which are expressed to survive termination or by implication from their nature are intended to survive termination and any rights arising on termination, survive the expiry or termination of this deed.

(b) This deed survives the expiry or termination of any or all of the following documents:

(i) the Western Tunnelling Works D&C Deed; and

(ii) the Significant Subcontract.

12.14 **Costs of negotiating this deed**

Except as otherwise provided in this deed, each party agrees to pay its own costs of and incidental to the negotiation and execution of this deed.

EXECUTED as a deed.

[***Note: Execution blocks to be confirmed prior to execution.***]

SIGNED, SEALED AND DELIVERED on behalf of **GAMUDA BERHAD (COMPANY REGISTRATION NO 197601003632 (29579-T))** by its duly appointed representatives being duly authorised in this behalf under the Deed of Authorisation dated 7 May 2021 (registered on 28 May 2021 in New South Wales, Australia with the registration number Bk 4787 No 643) (**DOA**) in the presence of:

_____

Signature of witness

_____

Full name of witness

_____

Signature of witness

_____

Full name of witness

Gamuda Berhad by its authorised representatives

Seal

_____

Signature of Authorised Person under the DOA

_____

Full name of of Authorised Person under the DOA

_____

Signature of Authorised Person under the DOA

_____

Full name of of Authorised Person under the DOA

Each signatory above, by their execution, warrants that their appointment as "Authorised Person" under the DOA has not been revoked.

EXECUTED by [**NAME OF SIGNIFICANT SUBCONTRACTOR**] ABN [**INSERT**] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by [**NAME OF SIGNIFICANT SUBCONTRACTOR GUARANTOR**] ABN [**INSERT**] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name

SIGNED for **SYDNEY METRO** ABN 12 354 063 515 by its duly authorised delegate, in the presence of:

Signature of Delegate

Signature of witness

Name

Name

SCHEDULE A16

Nominated Subcontracts

(Clauses 1.1 and 5.4)

The documents referred to in the "Form of Nominated Subcontract" column for items 1 to 4 in the table below are included in Schedule F1 as electronic files.

Item	Nominated Subcontractor Work	Nominated Subcontractor	Form of Nominated Subcontract
1.	Videography, filming and editing services	[redacted]	The form of Nominated Subcontract is to be agreed between the Tunnelling Contractor and the relevant Nominated Subcontractor if/once a direction is issued by the Principal's Representative under clause 5.4(aa) of the deed, provided that that the rates agreed with the Nominated Subcontractor must be consistent with, and the terms of engagement must not be more onerous than, the terms set out in: • in respect of Item #1, the Professional Services Contract reference PSC No. 00013/11009; • in respect of Item #2, the Professional Services Contract reference PSC No. SMC-21-0293B; • in respect of Item #3, the Professional Services Contract reference PSC No. SMC-21-0253; and • in respect of Item #4, the Professional Services Contract reference PSC No. 00013/10882.
2.	Time lapse photos		
3.	3D animation and stills		
4.	Photography services		
5.	Archaeology consultant services	Archaeological Consultant	The form of Nominated Subcontract is to be agreed between the Tunnelling Contractor and the Archaeological Consultant, provided that the rates agreed with the Archaeological Consultant may not be higher than the rates agreed between Sydney Metro and the Archaeological Consultant (as set out in the form of professional services contract included in Schedule F1 as electronic files).

SCHEDULE A17

IDAR Panel Agreement

(Clauses 1.1 and 25)

This Agreement is made at on the day of 2021 between the following parties:

1. **Sydney Metro** ABN 12 354 063 515 a New South Wales 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

2. **Members of the IDAR Panel** (collectively **Members**), namely:

   (a) [***insert name of Chair***] of [***insert address of Chair***] (**Chair**);

   (b) [***insert name of Member***] of [***insert address of Member***];

   (c) [***insert name of Member***] of [***insert address of Member***]; and

   (d) [***insert name of Member***] of [***insert address of Member***],

   and

3. (From each Accession Date) each person who accedes to this agreement under clause 4, being the person identified as the "Acceding Party" in an Accession Deed Poll (**Project Contractor**).

RECITALS:

A. The Principal is procuring Sydney Metro West on behalf of the NSW government and the people of New South Wales. Sydney Metro West will involve multiple packages of works to be undertaken by contractors engaged by the Principal and by developers above or adjacent to the new Metro stations under separate contracts (**Project Contracts**).

B. The Principal will progressively engage or enter into contracts with Project Contractors. As each Project Contract is entered into, the Project Contractor will execute an Accession Deed Poll substantially in the form set out in Schedule 1 and will thereby accede to the terms of this agreement.

C. The Project Contracts provide for a dispute resolution process through the establishment and the operation of an IDAR Panel to assist in avoiding and resolving Disputes under the Project Contracts.

D. The role of the IDAR Panel is to, among other things, encourage the Principal and the relevant Project Contractor to avoid Disputes and proactively resolve Disputes by providing a non-binding forum for the parties to establish their positions and narrow the issues in Dispute.

E. The parties acknowledge the benefits of a project-wide IDAR Panel include an improvement in the quality of assessments and determinations as a result of the IDAR Panel's familiarity with complex interfaces across multiple integrated works packages.

F. This agreement sets out the rights, obligations and duties of the Members, the Principal and (from each Accession Date) the Project Contractors in relation to the IDAR Panel and the Disputes (the **Agreement**).

THIS AGREEMENT PROVIDES:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Accession Date has the same meaning as given to the term "Effective Date" in the Accession Deed Poll, being the date from which each Project Contractor accedes to this Agreement.

Accession Deed Poll means the deed poll in substantially the same form as Schedule 1 (with relevant details duly completed) which is to be executed by each Project Contractor in accordance with clause 4.

Continuing Parties has the same meaning as given to the term "Continuing Parties " in the Accession Deed Poll, being those parties to the Agreement at the Accession Date, excluding the Principal.

Fees and Disbursements Letter means each of the following:

(a) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [***insert name of Member***] dated on or about the date of this agreement;

(b) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [***insert named of Member***] dated on or about the date of this agreement;

(c) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [***insert name of Member***] dated on or about the date of this agreement; and

(d) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [***insert name of Member***] dated on or about the date of this agreement.

Members means the [***insert number of Members***] individuals appointed to the IDAR Panel in accordance with this Agreement.

Project Briefing has the meaning given in clause 6.

Project Contract has the meaning given in Recital A.

Project Meeting means each of the meetings that a Member of the IDAR Panel or a representative of the IDAR Panel (as applicable) may attend in accordance with clause 7.

1.2 Terms defined in the Project Contracts

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the Project Contracts.

1.3 **Interpretation**

In this Agreement unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

(i) a reference to:

(i) a party or clause is a reference to a party or clause of or to this Agreement; and

(ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;

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

(k) for all purposes (other than where designated as a Business Day), day means calendar day;

(l) a reference to "$" is to Australian currency;

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

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

2. **AGREEMENT TO PREVAIL**

(a) The parties agree that if there is any inconsistency between the terms of this Agreement and a Project Contract the terms of this Agreement will prevail to the extent of the inconsistency.

(b) This Agreement is effective as of the date the Principal and the Members sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 16.

3. **FORMATION OF THE IDAR PANEL**

The parties acknowledge that the IDAR Panel:

(a) has been formed;

(b) is constituted by the Members;

(c) will be chaired by that Member designated as Chair or such other Member as the Principal nominates, by written notice to the Members and Project Contractors, from time to time; and

(d) must perform its obligations and functions under the Project Contracts and this Agreement.

4. **ACCESSION BY PROJECT CONTRACTORS**

(a) The Principal will ensure that each Project Contractor who enters into a Project Contract that contemplates the involvement of the IDAR Panel in the relevant dispute resolution process accedes to this Agreement.

(b) The Project Contractors may accede to this Agreement by execution of an Accession Deed Poll without the Continuing Parties' prior approval.

(c) Upon accession of any Project Contractor to this Agreement as referred to in clause 4(a), the rights and liabilities of the parties to this Agreement will be as set out in this Agreement as amended in accordance with the requirements of the Accession Deed Poll.

(d) The Principal will provide the Members with a copy of the Accession Deed Poll duly executed by the Project Contractor.

5. **ROLE OF THE IDAR PANEL**

The parties acknowledge and agree that the role of the IDAR Panel is to:

(a) provide specialised expertise in each Project Contract in order to assist the relevant parties in firstly, attempting to prevent, and if unable to prevent, encouraging the

parties to reach a resolution in determining Disputes under each Project Contract in a timely manner;

(b) function as an objective, impartial and independent body at all times; and

(c) utilise knowledge gained from Disputes across each Project Contract in its recommendations and determinations.

6. **PROJECT BRIEFINGS**

(a) The Principal will:

(i) hold meetings with the Members for the purpose of the Principal providing a Sydney Metro West project briefing and update (**Project Briefing**); and

(ii) provide the Members at least 10 Business Days' notice to convene a Project Briefing.

(b) The Members must attend the Project Briefings.

(c) During the first Project Briefing, the IDAR Panel will establish procedures for the conduct of its routine site visits and other matters (excluding the rules governing the dispute resolution process as it relates to the IDAR Panel in each Project Contract) in accordance with the procedures included in Schedule 2 to this Agreement (unless otherwise agreed by the parties).

7. **PROJECT MEETINGS**

(a) The Members may, by invitation of the Principal or the Project Contractor, attend a Management Review Group meeting but will not be members of the Management Review Group.

(b) A representative of the IDAR Panel nominated by the Principal may attend each meeting of the Integration Coordination Group as a non-member observer, except for those meetings which the members of the Integration Coordination Group unanimously agree that the representative is not required to attend.

7A. **DISPUTE AVOIDANCE PROCESS**

(a) The Members shall encourage the parties to avoid and minimise the incidence of Disputes by proactively identifying and notifying the parties of any Potential Matter which, based upon the Members' attendance at Project Briefings and Project Meetings and the Members' experience and expertise, they (individually or collectively) consider has the potential to give rise to a Dispute between the parties, provided that a Dispute has not arisen and a Notice of Issue has not been issued with respect to the Potential Matter under the Project Contract.

(b) As soon as practicable after:

(i) a party has notified the IDAR Panel of a Potential Matter under the relevant provisions of the Project Contract; or

(ii) a Member has notified the parties of a Potential Matter under clause 7A(a),

and provided that both parties have elected to proceed with the Dispute Avoidance Process under the Project Contract, in the case of a notice of a Potential Matter:

(iii) issued by a party, the Member nominated by the Chair in accordance with clause 9; or

(iv) issued by a Member, the Member who issued the notice,

the relevant Member and the parties must meet as soon as reasonably practicable and as many times as the parties agree is necessary, in person or via any other agreed method, to discuss the Potential Matter with the aim of attempting to avoid a Dispute arising from or in connection with the Potential Matter.

(c) During the meetings referred to in clause 7A(b):

(i) the parties must provide their understanding and position with respect to the Potential Matter;

(ii) the relevant Member must provide its understanding of the Potential Matter based upon the Members' attendance at Project Briefings and Project Meetings and the Members' experience and expertise;

(iii) at the request of either party, the relevant Member must provide their opinion, advice or recommended direction with respect to the future resolution of the Potential Matter, with any conditions or limitations that the Member considers reasonably necessary (with any such opinion, advice or recommendation to be non-binding unless agreed to in writing by the parties); and

(iv) the parties and the member may agree upon any additional steps to be taken in the Dispute Avoidance Process for that Potential Matter.

(d) The Dispute Avoidance Process is purely consultative and advisory, and no advice, view, direction, statement or comment by the relevant Member as part of the Dispute Avoidance Process shall be binding on the parties unless and until it is incorporated into a written agreement between the parties for the purpose of avoiding the occurrence of a Dispute.

(e) Unless otherwise agreed between the parties, the Member who participates in the Dispute Avoidance Process with respect to a Potential Matter shall be precluded from acting as a Nominated Member of the IDAR Panel in the resolution of any Dispute arising out of or in connection with the Potential Matter.

8. MEMBER'S OBLIGATIONS

8.1 Impartiality

Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the IDAR Panel.

8.2 Independence

Each Member agrees to act honestly and independently in the performance of its obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 8 of this Agreement.

8.3 General Duties

Each Member agrees to carry out his or her obligations as a Member of the IDAR Panel:

(a) with due care and diligence;

(b) in compliance with the Project Contracts and this Agreement; and

(c) in compliance with all applicable Laws.

9. **SELECTION OF NOMINATED MEMBER**

(a) Where a Dispute has been notified to the IDAR Panel by Notice of Issue under the relevant provisions of the Project Contract, and:

(i) the parties to the Dispute are unable to agree on a Nominated Member; or

(ii) a Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the Chair must nominate a Nominated Member within a further 2 Business Days.

(b) Where a Potential Matter has been notified to the IDAR Panel by a party in accordance with the Project Contract, the Chair must nominate a suitable Member within 2 Business Days to perform the role of the relevant Member in the Dispute Avoidance Process for that Potential Matter.

(c) If a Member nominated under clause 9(a) or clause 9(b) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further Nominated Member, or relevant Member, within a further 2 Business Days.

(d) The Chair may not nominate itself as the Nominated Member, but may nominate itself as the relevant Member for the Dispute Avoidance Process in respect of a Potential Matter.

(e) If a replacement member appointed under clause 9(b) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 9(b) will be reapplied until there are no Members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.

10. **SELECTION OF EXPERT**

Where a Dispute is referred to expert determination by a Notice of Dispute under the relevant provisions of the Project Contract, the parties acknowledge and agree that:

(a) unless otherwise agreed in writing by the parties, the expert determination shall be conducted by:

(i) a person agreed between the parties; or

(ii) if the parties are unable to agree on the identity of the person to be appointed within 3 Business Days of one party giving the other party a Notice of Dispute, by a person nominated by the Australian Centre for International Commercial Arbitration,

who is not a Member and accepts appointment as Expert; and

(b) the Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by the relevant Project Contract.

11. **COSTS AND FEES**

11.1 **Monthly retainer**

(a) The Principal is liable for the payment of the Members' monthly retainer set out in the Fees and Disbursements Letter for each Member.

(b) The Principal is liable for the payment of the Members' attendance at each Project Meeting as set out in the Fees and Disbursements Letter for each Member.

11.2 **Agreed rates for work and services**

With respect to each Dispute between the Principal and a Project Contractor:

(a) the Principal and the relevant Project Contractor are jointly and severally liable for the payment of the Members' fees and disbursements (other than those in clause 11.1), calculated in accordance with the Fees and Disbursements Letter for each Member; and

(b) the Principal and the relevant Project Contractor agree as between themselves that:

11.3 **Payment claims**

All claims for payment by the Members must be submitted and processed in accordance with the payment procedure set out in Schedule 4.

12. **THE PARTIES' COMMITMENTS AND RESPONSIBILITIES**

The Principal and each Project Contractor acknowledges and agrees that it must:

(a) act in good faith towards each Member and the IDAR Panel;

(b) comply with the requests and directions of the IDAR Panel; and

(c) except for its participation in the IDAR Panel's activities as provided in the Project Contracts and this Agreement, not solicit advice or consultation from the IDAR Panel or the Members on matters dealing with the resolution of Disputes which may compromise the IDAR Panel's integrity or compliance with this Agreement.

13. **CONFIDENTIALITY**

In relation to all confidential information disclosed to the IDAR Panel at any time each Member agrees:

(a) to keep that information confidential;

(b) not to disclose that information except if compelled by Law to do so;

(c) not to use that information for a purpose other than the resolution of the Dispute in relation to which the confidential information was disclosed; and

(d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

14. CONFLICT OF INTEREST

(a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Principal and each Project Contractor and the other Members.

(b) The other Members will within 5 Business Days of notification under clause 14(a) confer and inform the parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member will immediately resign from the IDAR Panel and a reappointment will occur pursuant to clause 17.3.

15. LIABILITY AND INDEMNITY

15.1 Liability

Each Member is not liable to either the Principal or a Project Contractor for any act or omission done in good faith and with due care and diligence.

15.2 Indemnity

The Principal and each Project Contractor each indemnify each Member against all claims from a person not a party to this Agreement for any act or omission done in connection with this Agreement in good faith and with due care and diligence.

15.3 Due Care and Diligence

For the purpose of clauses 15.1 and 15.2, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

16. TERMINATION OF AGREEMENT

(a) The Principal may terminate this Agreement by written notice to the Members and each Project Contractor.

(b) Each Project Contractor's rights and obligations under this Agreement will terminate automatically upon termination of the Project Contractor's Project Contract, and the terms of this Agreement will be of no further force and effect.

17. MEMBERS' TERMINATION

17.1 Resignation

A Member may resign from the IDAR Panel by providing 30 Business Days' written notice to the other Members, the Principal and each Project Contractor.

17.2 Termination

A Member's appointment may be terminated at any time by the Principal.

17.3 Re-Appointment

The parties acknowledge and agree that if:

(a) a Member resigns under clause 14(b) or 17.1; or

(b) the appointment of a Member is terminated by the Principal under clause 17.2;

then:

(c) a replacement Member will be appointed by the Principal; and

(d) the parties, the Members and any new Member must enter into a replacement agreement substantially similar to this Agreement.

18. GOVERNING LAW

(a) This Agreement will be governed by and construed in accordance with the Laws of the State of New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

19. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement will be construed or interpreted as constituting the relationship between the Principal, the Project Contractors and the Members as that of partners, joint venturers or any other fiduciary relationship.

20. NOTICES

(a) Any notices contemplated by this Agreement must be in writing and delivered to the relevant address, sent by email in the form of a .pdf file as set out below (or to any new address or email address that a party notifies to the others).

(i) to the Principal: *[insert email address of Principal]*

(ii) to the Members: *[insert email address of Member]*

[insert emails address of Member]

[insert email address of Member]

[insert email address of Member]

(iii) to a Project Contractor: To the address or email address set out in the relevant Accession Deed Poll.

(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 will be taken to have been received:

(i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or

(ii) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day.

21. GIVING EFFECT TO THIS AGREEMENT

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

22. SURVIVAL OF TERMS

The parties agree that clauses 11 and 15 and this clause 22 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

23. WAIVER OF RIGHTS

A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

24. OPERATION OF THIS AGREEMENT

(a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

(b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

(c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

25. AMENDMENT

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

26. COUNTERPARTS

(a) This Agreement may be executed in counterparts, which taken together constitute one instrument.

(b) A party may execute this Agreement by executing any counterpart.

27. ATTORNEYS

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED as an agreement.

Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:

Signature of witness

Full name of witness

Signature

Name and position

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

Signature of Witness

Name of Witness in full

Signature

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

Signature of Witness

Name of Witness in full

Signature

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

Signature of Witness

Signature

Name of Witness in full

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

Signature of Witness

Signature

Name of Witness in full

SCHEDULE 1

Form of Accession Deed Poll

THIS DEED POLL is made on [2021]

BY: [Insert name] ABN [number] whose registered office is at [address] (**Acceding Party**)

IN FAVOUR OF:

(1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**)

and

(2) **Members of the IDAR Panel** (collectively **Members**), namely:

(a) [***insert name of Member***] of [***insert address of Member***];

(b) [***insert name of Member***] of [***insert address of Member***];

(c) [***insert name of Member***] of [***insert address of Member***]; and

(d) [***insert name of Member***] of [***insert address of Member***]

and

(3) each person who has acceded to the IDAR Panel Agreement,

(together (2) and (3) being the **Continuing Parties**).

RECITALS:

(A) This deed poll is supplemental to the agreement titled "IDAR Panel Agreement" between the Principal and the Continuing Parties dated [*insert*] as amended or acceded to from time to time (**IDAR Panel Agreement**).

(B) The Principal and the Continuing Parties are each party to the IDAR Panel Agreement.

(C) The Principal has entered into the [insert name of relevant Project Contract] with the Acceding Party.

(D) Each of the Continuing Parties has acknowledged and agreed that the Acceding Party will accede to the IDAR Panel Agreement.

(E) By this deed poll, the Acceding Party accedes to the IDAR Panel Agreement and the IDAR Panel Agreement is amended on the terms set out in this deed poll.

THE ACCEDING PARTY COVENANTS AS FOLLOWS:

1. **INTERPRETATION**

Capitalised terms used in this deed poll and not otherwise defined have the same meanings as those given in the IDAR Panel Agreement. The following definitions apply in this deed poll:

Effective Date means the date of execution of this deed poll.

[**Insert name of relevant Project Contract**] means the contract entered into between the Principal and the Acceding Party titled [**insert title**] and dated [**insert date**].

2. **PRIMARY COVENANTS**

(a) The Acceding Party:

(i) confirms that it has been supplied with a copy of the IDAR Panel Agreement; and

(ii) covenants with each of the Principal and the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of its obligations under the IDAR Panel Agreement.

(b) For the purposes of the IDAR Panel Agreement, the Acceding Party's representative is as set out below:

[*Insert details of Acceding Party's representative*]

(c) For the purposes of clause 20 of the IDAR Panel Agreement, the Acceding Party's notice address details are as set out below:

Address:
Email:
For the attention of:

(d) Clause 18 of the IDAR Panel Agreement applies to this deed poll.

EXECUTED as a deed poll.

[***Note: Appropriate execution block to be inserted by the Acceding Party prior to execution.***]

SCHEDULE 2

IDAR Panel General Operating Procedures

1. **General**

1.1 Each Project Contractor will furnish to each of the Members all documents necessary for the IDAR Panel to perform its functions, including copies of all Project Contract documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Members of Disputes and other matters.

1.2 The Members must make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.

1.3 Communications between the parties and the IDAR Panel for the purpose of attempting to prevent or resolve Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under the relevant Project Contract.

2. **Frequency of regular meetings and site visits**

2.1 The frequency and scheduling of meetings and site visits necessary to keep the IDAR Panel properly informed of the project circumstances will generally be agreed between the IDAR Panel and the parties to each Project Contract.

2.2 In the case of a failure to agree between the IDAR Panel and the parties to a Project Contract, the Principal will schedule the meetings and visits as it sees fit.

3. **Agenda for regular meetings**

3.1 IDAR Panel meetings held for the purposes of briefing and updating the Members on performance and progress of the work under each Project Contract and issues or potential issues between the relevant parties will be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.

3.2 At the conclusion of the meeting, the IDAR Panel will generally inspect the Project Works and the Construction Site in the company of representatives of both parties to the relevant Project Contract. Any areas of the Project Works or Construction Site that are or may be the subject of any potential Dispute will be pointed out by the parties to the relevant Project Contract.

4. **Minutes of meetings**

4.1 The Chair will prepare minutes of the regular meetings of the IDAR Panel and these draft minutes will be circulated to the parties of the relevant Project Contract and the Members for comments, additions and corrections.

4.2 In accordance with clause 3.1 above, the minutes of IDAR Panel meetings held will be marked "in-confidence, without prejudice".

4.3 Minutes as amended will be adopted by the relevant parties and the Members at the next meeting.

5. **Communications**

5.1 All communications by the parties to the IDAR Panel outside the IDAR Panel meetings should be directed in writing to the Chair and copied to the other Members and to the other party of the relevant Project Contract. All communications by the Members to the parties should

be addressed to the Principal's Representative and the relevant Project Contractor's representative.

6. Representation

6.1 The parties must each ensure they are represented at IDAR Panel meetings by at least one senior project personnel and at least one senior off-site person to whom the on-site personnel reports. The parties must inform the Chair of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternatives.

SCHEDULE 3

Not used

SCHEDULE 4

Payment procedure

1. **Payment claims**

At the end of each month in which the Members perform services under this Agreement with respect to each Dispute between the Principal and a Project Contractor, each Member must submit to both the Principal and the relevant Project Contractor an account for payment on account of the Member's fees and disbursements:

(a) setting out the value of the services performed in accordance with this Agreement during the relevant month;

(b) calculated in accordance with the Fees and Disbursements Letter for that Member; and

(c) in such form and with such details and supporting documentation as the Principal and the relevant Project Contractor may reasonably require (including details of the time expended by the Member in performing the services).

2. **Payment and notification of disputed amounts**

(a) Within 20 Business Days after receipt of the account for the month (submitted in accordance with section 1 of this Schedule 4):

(i) the Principal must pay:

(A) the Member's monthly retainer set out in the Fees and Disbursements Letter for that Member; and

(B) the Member's attendance at each Project Meeting as set out in the Fees and Disbursements Letter for the Member; and

(ii) the Principal and the relevant Project Contractor must each pay each Member [redacted] of the amount claimed by each Member for services performed (other than those in (i) above) during the month which is not disputed.

(b) If the Principal or the relevant Project Contractor disagrees with the amount included in an account submitted by a Member then, within 10 Business Days of receipt of the relevant Member's account, the Principal or the relevant Project Contractor (as applicable) must notify the relevant Member in writing of the reasons for any amount which is disputed (with a copy to the Principal and the relevant Project Contractor).

(c) If the Principal, the relevant Project Contractor and the relevant Member do not resolve the matter within 10 Business Days after the issue of the Principal's or the relevant Project Contractor's written notice, the Principal and the relevant Project Contractor (acting reasonably) must jointly determine the dispute. Any determination by the Principal and the relevant Project Contractor in respect of the amount payable must be given effect to by the Principal, the relevant Project Contractor and the relevant Member unless and until it is reversed or overturned in any subsequent court proceedings.

3. **Goods and services tax**

(a) A party must pay GST on a taxable supply made to it under this Agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST.

(b) Terms used in this section 3 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).

FORM OF FEES AND DISBURSEMENTS LETTER

[Date]

[Member details]

Dear [Member]

Fees and Disbursements for IDAR Panel

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [Member] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month	[redacted]	
2.	[Preparation for, and attendance at Project Meetings]		
3.	All other work carried out in connection with this Agreement, other work set out in items (1) and (2)		
4.	Disbursements		
5.	Rates escalation		

Payment terms

Payment terms will be in accordance with Schedule 4 of the IDAR Panel Agreement.

Counterparts

This Fees and Disbursements Letter may be executed in counterparts, which taken together constitute one instrument. A party may execute this Fees and Disbursements Letter by executing any counterpart.

Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:

_____
Signature of witness

_____
Full name of witness

_____
Signature of [insert position]

Name of [insert position]

Signed by [**Member**] in the presence of:

_____
Signature of Witness

_____
Name of Witness in full

_____
Signature

SCHEDULE A18

Deed of Novation

(Schedule A5)

Date:

Parties: [ ] **ABN** [ ] of [ ]
(**Retiring Party**)

[ ] **ABN** [ ] of [ ]
(**Continuing Party**)

[ ] **ABN** [ ] of [ ]
(**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.

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.

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;

(v) 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

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.

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 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 A19

Modification to the Expert Determination Rules

(Clause 25.5)

Pursuant to Rule 4(2)(b) of the Resolution Institute Expert Determination Rules (**Rules**), the parties agree to modify the application of the Rules as follows:

Modifications are underlined or ~~struck out~~.

RULE 1 Definitions

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

"IDAR Panel Agreement" means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the Members, the Tunnelling Contractor and any other party that accedes to the agreement from time to time.

"Member" has the meaning given in the IDAR Panel Agreement.

"Relevant Proportionate Liability Legislation" means:

(a) Part IV of *the Civil Liability Act 2002* (NSW);

(b) Part IVAA of the *Wrongs Act 1958* (Vic);

(c) Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);

(d) Part 1F of the *Civil Liability Act 2002* (WA);

(e) the *Proportionate Liability Act 2005* (NT);

(f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);

(g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);

(h) Part 9A of the *Civil Liability Act 2002* (Tas); and

(i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"Relevant Security of Payment Legislation" means:

(a) the Building and Construction Industry Security of Payment Act 1999 (NSW);

(b) the Building and Construction Industry Security of Payment Act 2002 (Vic);

(c) the Building Industry Fairness (Security of Payment) Act 2017 (Qld);

(d) the Construction Contracts Act 2004 (WA);

(e) the Construction Contracts (Security of Payment) Act 2004 (NT);

(f) the Building and Construction Industry (Security of Payment) Act 2009 (ACT);

(g) the Building and Construction Industry Security of Payment Act 2009 (SA);

(h) the Building and Construction Industry Security of Payment Act 2009 (Tas); and

(i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"Tunnelling Contract" mean the deed titled "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) between the Principal and the Tunnelling Contractor dated [*insert*].

RULE 2 Appointment of the Expert

1. Unless otherwise agreed in writing by the parties, the Process shall be conducted:

   a. by a person agreed between the parties; or

   b. if the parties are unable to agree on the identity of the person to be appointed within 3 Business Days of Party A giving Party B a Notice of Dispute, by a person nominated by the Australian Centre for International Commercial Arbitration (**ACICA**)~~Resolution Institute~~,

   who is not a Member and accepts appointment as Expert.

2. Rule 2.2 is deleted in its entirety.

3. [no modification]

4. [no modification]

5. [no modification]

RULE 3 Agreement to be bound

1. [no modification]

2. Rule 3.2 is deleted in its entirety.

RULE 5 Role of the Expert

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Tunnelling Contract, the requirements of procedural fairness and according to law.

2. [no modification]

3. [no modification]

4. (a)The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.

   (b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

   (c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the parties immediately.

   (d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c), unless the parties agree otherwise.

5. [no modification]

RULE 9 Conduct of the Process

1. [no modification]

2. [no modification]

3. ~~If~~ The parties agree ~~in writing (in the Agreement or otherwise),~~ that the procedure in Schedule B ~~shall~~ will apply.

4. The rules of evidence do not apply to the Process.

RULE 10 The Expert's Determination

1. ~~As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9, t~~The Expert shall determine the Dispute between the parties and notify such determination in writing to the parties within the time period specified in the Tunnelling Contract.

2. [no modification]

3. ~~Subject to any rule of law or equity or written agreement of the parties to the contrary,~~ Unless otherwise agreed by the parties, the Expert's determination:

   a. may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;

   b. must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;

   c. may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and

   d. to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.

4. [no modification]

RULE 12 Waiver of Right to Object

Rule 12 is deleted in its entirety.

RULE 14 Extension of Limitation Period

Rule 14 is deleted in its entirety.

SCHEDULE B

1. The reference to "twenty one (21) days" is replaced by "ten Business Days".

2. The reference to "twenty one (21) days" is replaced by "twenty Business Days".

3. The reference to "twenty one (21) days" is replaced by "five Business Days".

4. [no modification]

5. [no modification]

6. [no modification]

7. [no modification]

8. [no modification]

SCHEDULE A20

Not used

SCHEDULE A21

Information Documents

(Clauses 1.1 and 12.9)

This Schedule A21 consists of the documents and information set out in the document entitled "Schedule A21 (Information Documents) Register", which is included in Schedule F1 as an electronic file.

The documents and information set out in the document entitled "Schedule A21 (Information Documents) Register" are Information Documents for the purposes of paragraph (a) of the definition of "Information Document", and are included in Schedule F1 as electronic files for reference only.

SCHEDULE A22

Geotechnical Reports [redacted]

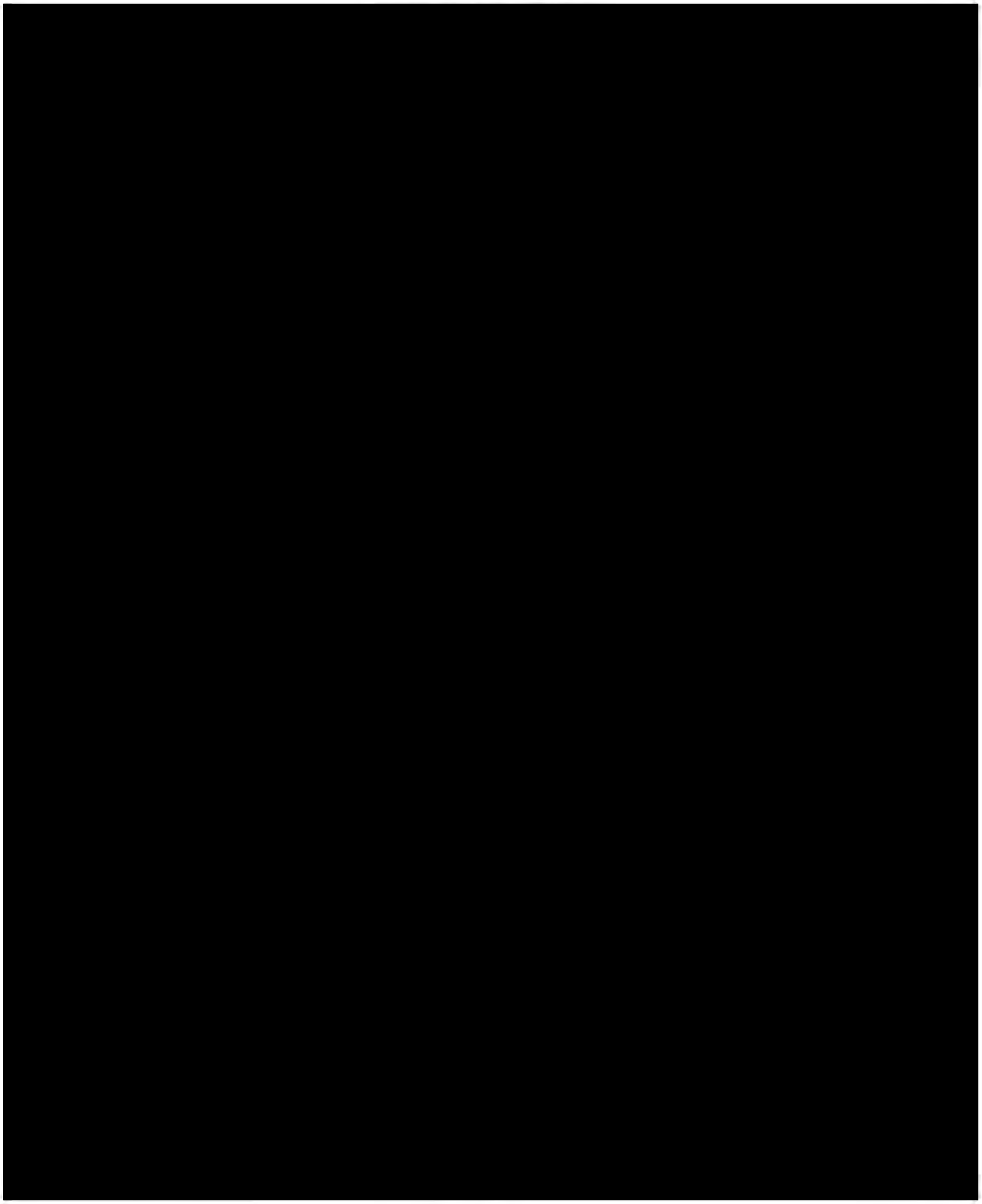
(Clauses 1.1 [redacted] **and 12.10)**

[redacted]

SCHEDULE A23

Overall D&C Program

(Clauses 1.1 and 19.2)



SCHEDULE A24

Proof Engineer Requirements

(Clauses 1.1 and 13.3)

The following are the minimum required qualifications, experience and expertise that must be possessed by the Proof Engineer:

(a) demonstrated experience in the design of temporary works similar to the Temporary Works that are required to be designed under the terms of this deed (including the Tunnelling Specification);

(b) 12 years' experience (including 5 years' experience in the last 10 years) and proven ability in structural analysis and design of temporary works similar to the Temporary Works that are required to be designed under the terms of this deed (including the Tunnelling Specification);

(c) Quality Management System 3rd party certified to AS/NZS ISO 9001;

(d) range of suitable structural analysis and CAD software;

(e) be a Chartered Engineer registered with the Institute of Engineers Australia, and with qualifications admitting to MIEAust and National Professional Engineers Register;

(f) knowledge of Australian Standards applicable to the Temporary Works that are required to be designed under the terms of this deed (including the Tunnelling Specification); and

(g) at least 5 years' experience in undertaking the checking of temporary works design as a proof engineer in the past 10 years.

SCHEDULE A25

Special Events

(Clauses 1.1 and 4.9)

Expected Month / Event	Location
JANUARY	
ATP Cup	Sydney Olympic Park
Movies in the Boulevard	Sydney Olympic Park
Annual Australia Day event	Sydney Olympic Park
Australia Day	Parramatta
FEBRUARY	
Chinese New Year Festival	Parramatta (Centenary Square)
Korean town Lunar New Year Festival	Parramatta
NBL Semi Finals	Sydney Olympic Park
NSW Country Swimming Championships	Sydney Olympic Park
MARCH	
Parramasala	Price Alfred Square, Parramatta
Australian Nepalese Multicultural Event	Westmead/Wentworthville
Various Sydney Children's Hospitals Foundation Events	Westmead
APRIL	
Sydney Royal Easter Show	Sydney Olympic Park
NSW Caravan Camping Holiday Supershow	Rosehill Gardens Racecourse
Parramatta Heritage Festival	346a Church St, Parramatta
ANZAC Day	Parramatta
MAY	
Warami	Parramatta
General Practice Conference & Exhibition (GPCE)	Sydney Olympic Park
JUNE	
Rosehill Gardens Winter Racing Festival - Civic Stakes Day	Clyde/ Rosehill
Cooks River Fun Run	Strathfield
JULY	
Burramatta NAIDOC	Parramatta Park, Parramatta
Winterlight Festival	Prince Alfred Square, 353D Church St, Parramatta
Winter Stakes Day	Rosehill/ Clyde
Winter Challenge Day	Rosehill/ Clyde
AUGUST	
Super Nova Comic Con & Gaming	Sydney Olympic Park
WWE Live (wrestling)	Sydney Olympic Park
SEPTEMBER	
Lets Go Greek Festival	George St, Parramatta
Golden Rose Day	Rosehill Racecourse
Strathfield Spring Festival	Strathfield
OCTOBER	
Spring Cycle	North Sydney-Sydney Olympic Park
Sydney Wine Festival	Parramatta
Retirement and Lifestyle Expo	Rosehill Gardens Racecourse
NRL Grand Final	Sydney Olympic Park
NOVEMBER	

Expected Month / Event	Location
Parramatta Lanes Festival	Parramatta
Diwali/ Deepavali - either occurs in October or November each year	Parramatta
Loi Krathong: Thai Water Festival	Parramatta River Foreshore
Parramatta Foundation Day	Heritage Precinct, Fleet St, Parramatta
Golden Eagle Day	Rosehill Racecourse
Three Bridges Run	Rhodes, Rosehill/ Cameilla, Parramatta
Garage Sale Trail	Sydney wide (national event)
DECEMBER	
Soccer: W-League and A-League	Sydney Olympic Park
Christmas in Parramatta	Centenary Square, Parramatta
NYE celebrations	Sydney & North Sydney, Parramatta
Christmas in the Square	Sydney Olympic Park
WEEKLY	
Parramatta Farmers Markets	Parramatta

SCHEDULE A26

Procedure for submission and review of Design Documentation and Network Assurance Submissions

(Clauses 1.1, 13.3, 14, 16.1, 16.6 and 25.5)

1. PREPARATION AND SUBMISSION OF DESIGN DOCUMENTATION

(a) The Tunnelling Contractor must:

(i) prepare the Design Documentation in the following three Design Stages:

(A) Design Stage 1;

(B) Design Stage 2; and

(C) Design Stage 3,

or as otherwise required by a Third Party Agreement or contemplated by the Systems Engineering Management Plan;

(ii) ensure that the Design Documentation submitted at each Design Stage:

(A) enables the Principal's Representative and, at Design Stage 3 the Independent Certifier, to confirm the matters contemplated by section 8 of the General Specification at each applicable Design Stage;

(B) includes a design report which contains the details, information and deliverables required by section 5 of the Particular Specification for each applicable Design Stage;

(C) references relevant clauses within this deed; and

(D) otherwise complies with the requirements of the Tunnelling Specification;

(iii) submit Design Documentation in design packages in accordance with the Tunnelling Specification and the Systems Engineering Management Plan;

(iv) as a precondition to submitting each design package deliver a design presentation workshop to the Principal's Representative, the Independent Certifier and the Principal's nominees, at least 5 Business Days prior to its submission;

(v) submit all Design Documentation (other than Third Party Agreement Design Documentation and Design Documentation for Temporary Works) to the Principal's Representative and the Independent Certifier and otherwise:

(A) in accordance with the Tunnelling Specification, the Systems Engineering Management Plan and the Tunnelling Contractor's Program; and

(B) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Principal's Representative and, at Design Stage 3, the Independent Certifier, a reasonable opportunity to review the submitted Design Documentation;

(vi) submit all Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement (with a copy to the Principal's Representative) at the times required by the relevant Third Party Agreement;

(vii) submit all Design Documentation for Category 1, 2 and 3 Temporary Works (as referred in section 3.2.2 of the Particular Specification) to the Principal's Representative in accordance with the requirements of section 3.2 of the Particular Specification at Design Stage 3 or when it has otherwise reached the final stage of design development;

(viii) otherwise submit Design Documentation for Temporary Works (regardless of category) whenever requested by the Principal's Representative and within 5 Business Days of the Principal's Representative's request;

(ix) ensure the Design Stage 3 Design Documentation submitted is accurate, complete, co-ordinated with the other Design Documentation and at a level of detail which is sufficient to permit the Principal's Representative and the Independent Certifier and any relevant third party to determine whether:

(A) the Design Documentation complies with this deed; and

(B) the Project Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed; and

(x) provide any further information required by the Principal's Representative and the Independent Certifier in relation to the Design Documentation; and

(xi) submit any amendment to the Design Documentation to the Principal's Representative and the Independent Certifier (in which case the requirements of this Schedule A26 will re-apply).

(b) The Principal's Representative may, at any time (including after the Principal's Representative has "not rejected" or the Independent Certifier has certified the Design Documentation pursuant to this Schedule A26), direct the Tunnelling Contractor to make amendments to any Design Documentation to ensure the Design Documentation complies with this deed and, if it does so, clause 5.3(c) of this Schedule A26 will apply.

(c) All Design Documentation submitted by the Tunnelling Contractor must be in English and in metric units.

2. CERTIFICATES TO BE PROVIDED BY THE TUNNELLING CONTRACTOR

(a) With all Design Documentation submitted for Design Stage 1 and Design Stage 2, the Tunnelling Contractor must deliver a certificate in the form of Schedule B3 from each of:

(i) the Tunnelling Contractor; and

(ii) the Subcontractor that prepared the Design Documentation.

(b) With all Design Documentation submitted for Design Stage 3, the Tunnelling Contractor must:

(i) deliver a certificate in the form of Schedule B4 from each of:

(A) the Tunnelling Contractor; and

(B) the Subcontractors that prepared the Design Documentation;

(ii) where the Design Documentation relates to any Proof Engineered Temporary Works, deliver a certificate in the form of Schedule B17 from the Proof Engineer; and

(iii) where the Design Documentation relates to any element of the Demolition Temporary Works, deliver certificates:

(A) in the form of Schedule B25 from a Demolition Temporary Works Independent Checker; and

(B) in the form of Schedule B24 from a Demolition Structural Engineer.

(c) The Tunnelling Contractor must procure and provide all certificates and approvals that are required by Schedule D5, Schedule D6 and Schedule D7.

3. DISTRIBUTION OF DESIGN DOCUMENTATION

(a) The Principal may distribute, or require the Tunnelling Contractor to distribute, the whole or a part of the Design Documentation to third parties including Authorities, the Independent Certifier and Interface Contractors.

(b) The Principal and, if applicable, the Independent Certifier may, but are not obliged to:

(i) consult with third parties in relation to the Design Documentation;

(ii) take into account the comments of third parties in relation to the Design Documentation when responding to the Tunnelling Contractor; and

(iii) in relation to the Principal only, take into account the comments of the Independent Certifier in relation to the Design Stage 3 Design Documentation when responding to the Tunnelling Contractor.

(c) No comment or instruction from a third party in relation to the design is binding on the Principal, or will have any effect on the obligations of the Tunnelling Contractor under this deed (unless it is also a direction from the Principal's Representative).

4. DESIGN STAGE 1 AND DESIGN STAGE 2 REVIEW

4.1 Principal's Representative review – Design Stage 1 and Design Stage 2

The Principal's Representative must, within the Principal's Design Review Period, review any Design Stage 1 and Design Stage 2 Design Documentation submitted to it by the Tunnelling Contractor and notify the Tunnelling Contractor in writing of any non-compliance or potential non-compliance of the Design Documentation with the requirements of this deed with detailed reasons.

4.2 Non-compliance of Design Stage 1 or Design Stage 2 Design Documentation

If the Principal's Representative notifies the Tunnelling Contractor under clause 4.1 of this Schedule A26 that any Design Stage 1 or Design Stage 2 Design Documentation contains a non-compliance with the requirements of the deed:

(a) the Tunnelling Contractor:

(i) must within 20 Business Days after receiving such notice, give the Principal's Representative a written response:

(A) which explains how the Tunnelling Contractor will address the non-compliance in sufficient detail to satisfy the Principal's Representative that compliance will be achieved prior to submitting the next stage of Design Documentation (as applicable); or

(B) setting out any matters in relation to which it disagrees with the Principal's Representative, together with its reasons for doing so;

(ii) must, prior to or when it submits the next stage of the Design Documentation that relates to a non-compliance identified in any Design Documentation, give the Principal's Representative a written statement which explains how the non-compliance has been addressed; and

(iii) is not obliged to respond to any comments received from the Principal's Representative which do not concern a non-compliance; and

(b) following receipt of a notice under clause 4.2(a)(i)(B) of this Schedule A26, the parties must meet and in good faith seek to resolve the disagreement.

5. DESIGN STAGE 3 REVIEW

5.1 Review of Design Stage 3 Design Documentation

(a) The Principal's Representative must, within the Principal's Design Review Period, review the Design Stage 3 Design Documentation submitted to it by the Tunnelling Contractor and either:

(i) reject a part or all of the Design Stage 3 Design Documentation (in writing, with detailed reasons, to the Tunnelling Contractor) if the Principal's Representative or, if applicable, the Independent Certifier considers that the Design Stage 3 Design Documentation:

(A) does not comply with the requirements of this deed; or

(B) is not sufficiently complete to enable the Principal's Representative or, if applicable, the Independent Certifier to form a view on whether it is compliant; or

(ii) notify the Tunnelling Contractor in writing that the Design Stage 3 Design Documentation is not rejected, together with:

(A) a list of:

(aa) any non-compliances which the Principal's Representative or, if applicable, the Independent Certifier considers to be Minor Non-Compliances; and

(bb) suggested actions that the Tunnelling Contractor may take to address those Minor Non-Compliances; and

(B) subject to clause 5.1(b) of this Schedule A26, a copy of the certificate issued by the Independent Certificate in the form of Schedule B2 in accordance with the Independent Certifier Deed.

(b) If, in respect of any Design Stage 3 Design Documentation, the Independent Certifier has not issued to the Principal's Representative, prior to the Principal's Representative giving notice to the Tunnelling Contractor under clause 5.1(a) of this Schedule A26, either:

(i) a notice rejecting a part or all of the Design Stage 3 Design Documentation; or

(ii) a certificate in the form of Schedule B2 in respect of the Design Stage 3 Design Documentation,

in accordance with the Independent Certifier Deed, then the Principal's Representative must provide the Tunnelling Contractor with a copy of the Independent Certifier's notice or certificate (as applicable) promptly after receiving such notice or certificate (as applicable) from the Independent Certifier.

(c) For the avoidance of doubt, it is acknowledged and agreed by the parties that the Independent Certifier is not required to review or certify any Design Stage 3 Design Documentation for Temporary Works.

5.2 Options following rejection of Design Stage 3 Design Documentation

Without limiting the Tunnelling Contractor's ability to proceed with construction where it is permitted to do so under clause 6 of this Schedule A26, if any Design Stage 3 Design Documentation is rejected by the Principal's Representative under clause 5.1(a)(i) of this Schedule A26, the Tunnelling Contractor must either:

(a) promptly amend the relevant non-compliant element of the Design Stage 3 Design Documentation and re-submit it to the Principal's Representative and the Independent Certifier in accordance with clause 1 of this Schedule A26 and the process in clause 5.1 of this Schedule A26 will be reapplied to the amended element of the Design Stage 3 Design Documentation, except that the reference to the Principal's Design Review Period will be deemed to be a reference to the Principal's Design Re-Review Period; or

(b) provide the Principal's Representative and the Independent Certifier with a notice setting out any matters in relation to which it disagrees with the Principal's Representative's opinion or, if applicable, the Independent Certifier's opinion that the Design Stage 3 Design Documentation does not comply with the requirements of this deed together with its reasons for doing so.

5.3 Process following notice of disagreement

(a) If the Tunnelling Contractor gives a notice under clause 5.2(b) of this Schedule A26, the Principal's Representative may, promptly after receipt of the notice:

(i) consult with the Independent Certifier, where appropriate; and

(ii) determine and notify the parties as to whether or not the Tunnelling Contractor's notice satisfactorily addresses the Principal's Representative's or, if applicable, the Independent Certifier's concerns, together with its reasons for forming that opinion and:

(A) if the Principal's Representative, or, if applicable, the Independent Certifier considers that the Tunnelling Contractor's notice satisfactorily addresses its concerns, provide as part of its notice:

(aa) the notice under clause 5.1(a)(ii) of this Schedule A26; and

(bb) if applicable, a copy of the certificate issued by the Independent Certifier in the form of Schedule B2 in accordance with the Independent Certifier Deed; or

(B) if the Principal's Representative does not consider that the Tunnelling Contractor's notice satisfactorily addresses its concerns, the parties will promptly meet and in good faith seek to resolve the disagreement (whether by a Change or otherwise) within 10 Business Days of the notice under clause 5.2(b) of this Schedule A26. If the disagreement is in relation to a non-compliance identified by the Independent Certifier, the Independent Certifier will also attend the relevant meeting.

(b) If the parties are unable to resolve a disagreement contemplated by clause 5.3(a)(ii)(B) of this Schedule A26 within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the Tunnelling Contractor may refer the disagreement for resolution in accordance with:

(i) the Dispute Procedure; or

(ii) if the dispute is in relation to any non-compliance identified by the Independent Certifier, the Independent Certifier Deed.

(c) If:

(i) the relevant parties reach resolution under clause 5.3(b) of this Schedule A26 and the Tunnelling Contractor is required to resubmit any Design Stage 3 Design Documentation;

(ii) it is determined in accordance with the Dispute Procedure, or, if applicable, the Independent Certifier Deed that the Tunnelling Contractor is required to resubmit any Design Stage 3 Design Documentation; or

(iii) any Design Stage 3 Design Documentation is the subject of a direction by the Principal's Representative under clause 1(b) of this Schedule A26,

then:

(iv) the Tunnelling Contractor must promptly amend and re-submit the relevant non-compliant element of the Design Stage 3 Design Documentation to the Principal's Representative and the Independent Certifier in accordance with clause 1(a) of this Schedule A26; and

(v) the process in clause 5.1 of this Schedule A26 will reapply to the amended element of the Design Stage 3 Design Documentation except that the reference to the Principal's Design Review Period under clause 5.1 of this Schedule A26 will be deemed to be a reference to the Principal's Design Re-Review Period.

(d) If clause 5.3(c) of this Schedule A26 applies, the Tunnelling Contractor must:

(i) immediately cease construction of any work that is being carried out in accordance with the relevant non-compliant element(s) of the Design Stage 3 Design Documentation or element(s) of the Design Stage 3 Design Documentation the subject of a direction by the Principal's Representative under clause 1(b) of this Schedule A26; and

(ii) promptly rectify any such work at its cost so that it complies with the requirements of this deed.

5.4 **Resolution of Minor Non-Compliances**

If a notice provided by the Principal's Representative under clause 5.1(a)(ii) of this Schedule A26 lists any Minor Non-Compliances:

(a) the notice may suggest the action that could be taken by the Tunnelling Contractor to address the Minor Non-Compliance; and

(b) the Tunnelling Contractor must complete the suggested action, or take any other action the Tunnelling Contractor deems reasonable in the circumstances, to correct the Minor Non-Compliance to the extent required for the Design Stage 3 Design Documentation to comply with this deed and provide a copy of the rectified Design Stage 3 Design Documentation to the Principal and the Independent Certifier, within the timeframe (if any) specified in the Principal's Representative's notice and, in any event, as a pre-condition to Substantial Completion of a Portion.

6. **USE OF DESIGN DOCUMENTATION FOR CONSTRUCTION**

(a) The Tunnelling Contractor may use for construction purposes Design Stage 3 Design Documentation submitted to the Principal's Representative and the Independent Certifier under clause 1(a) of this Schedule A26 if the following conditions are met:

(i) the Principal's Representative has issued the Tunnelling Contractor with:

(A) a notice under clause 5.1(a)(ii) of this Schedule A26; and

(B) subject to clause 2(b) of this Schedule A26, a copy of the certificate issued by the Independent Certificate in the form of Schedule B2,

or 20 Business Days have passed from submission of the Design Stage 3 Design Documentation in accordance with clause 1(a) of this Schedule A26;

(ii) the Design Documentation complies with the requirements of any relevant Approval (if applicable);

(iii) for Design Documentation that relates to Proof Engineered Temporary Works, the Tunnelling Contractor has provided a certificate from the Proof Engineer in the form of Schedule B17 from the Proof Engineer; and

(iv) for Design Documentation that relates to construction work that requires NAC Gate 3 approval (including Design Documentation for Category 1 Temporary Works (as defined in section 3.2.2 of the Particular Specification)):

(A) the Principal's Representative has given a notice under clause 8.2(a) of this Schedule A26; or

(B) the Principal's Representative has given a notice under clause 8.2(b) of this Schedule A26 and:

(aa) the Tunnelling Contractor has completed all NAC Required Actions set out in the notice; or

(bb) the notice permits the Tunnelling Contractor to proceed with construction provided that the NAC Required Actions are completed in due course.

(b) The Tunnelling Contractor may use Third Party Agreement Design Documentation for construction purposes if the relevant requirements set out in the relevant Third Party Agreement have been satisfied and all necessary Approvals have been obtained.

(c) This clause 6 of this Schedule A26 does not restrict the use for construction purposes of Design Documentation for Temporary Works which are Category 4 Temporary Works (as specified in section 3.2.2 of the Particular Specification).

7. AMENDMENTS TO AFC DESIGN DOCUMENTATION

(a) Subject to clause 7(b) of this Schedule A26 and clause 15 of the deed, if the Tunnelling Contractor wishes to amend any AFC Design Documentation prior to the Date of Substantial Completion of a Portion, then:

(i) the Tunnelling Contractor must submit the amended Design Documentation to the Principal's Representative together with an explanation as to why it is seeking to amend the AFC Design Documentation; and

(ii) clauses 1 to 6 and clause 8 of this Schedule A26 will apply as if the amended AFC Design Documentation is Design Stage 3 Design Documentation.

(b) The Tunnelling Contractor may, at its own risk, use the amended AFC Design Documentation submitted in accordance with clause 1(a) of this Schedule A26 for construction purposes prior to the expiry of the 20 Business Day period in clause 6(a)(i) of this Schedule A26 if the amendment to the AFC Design Documentation:

(i) is minor;

(ii) does not adversely impact the Project Works or the Temporary Works; and

(iii) is necessary to overcome an issue which:

(A) prevents or adversely affects the Tunnelling Contractor proceeding with construction; and

(B) has arisen or become evident since the AFC Design Documentation was submitted to the Principal's Representative; and

(C) the AFC Design Documentation does not relate to a NAS that has been the subject of a notice under clause 8.2(a) or clause 8.2(b) of this Schedule A26.

8. NETWORK ASSURANCE SUBMISSIONS

8.1 Submission of NAS to the NAC

(a) The Tunnelling Contractor must:

(i) prepare each NAS required for the following NAC control gates:

(A) Gate 3 "For Construction";

(B) Gate 4 "Ready for Testing"; and

(C) Gate 5 "Asset Handover"; and

(ii) submit each NAS to the Principal's Representative in accordance with the Tunnelling Specification and the Systems Engineering Management Plan.

(b) Within 2 Business Days commencing on the date on which the Principal's Representative is provided with a NAS by the Tunnelling Contractor under clause 8.1(a) of this Schedule A26, the Principal's Representative must review the NAS and either:

(i) reject the NAS (in writing, with reasons, to the Tunnelling Contractor) if the Principal's Representative reasonably considers that the NAS is not sufficiently complete to enable the NAC to form a view on whether the NAS satisfies the NAC Requirements; or

(ii) submit that NAS to the NAC in accordance with section 3.2 of the General Specification.

(c) If the Principal's Representative rejects a NAS under clause 8.1(b)(i) of this Schedule A26, the Tunnelling Contractor must promptly amend the NAS and re-submit it to the Principal's Representative in accordance with clause 8.1(a)(ii) of this Schedule A26 and clause 8.1(b) of this Schedule A26 will reapply.

8.2 NAC Assurance Review

In respect of each NAS submitted by the Principal's Representative to the NAC under clause 8.1(b)(ii) of this Schedule A26, within 10 Business Days of submitting the NAS to the NAC, the Principal's Representative must give notice to the Tunnelling Contractor:

(a) that the NAS has been accepted;

(b) that the NAS has been accepted subject to the satisfaction of a list of actions which the Tunnelling Contractor must take in order for the NAS to satisfy the NAC Requirements (**NAC Required Actions**); or

(c) that the NAS has been deferred or rejected.

8.3 NAC Required Actions and Deferral or Rejection

(a) If the Principal's Representative provides a notice under clause 8.2(b) or clause 8.2(c) of this Schedule A26, the Tunnelling Contractor:

(i) must complete the NAC Required Actions (if applicable);

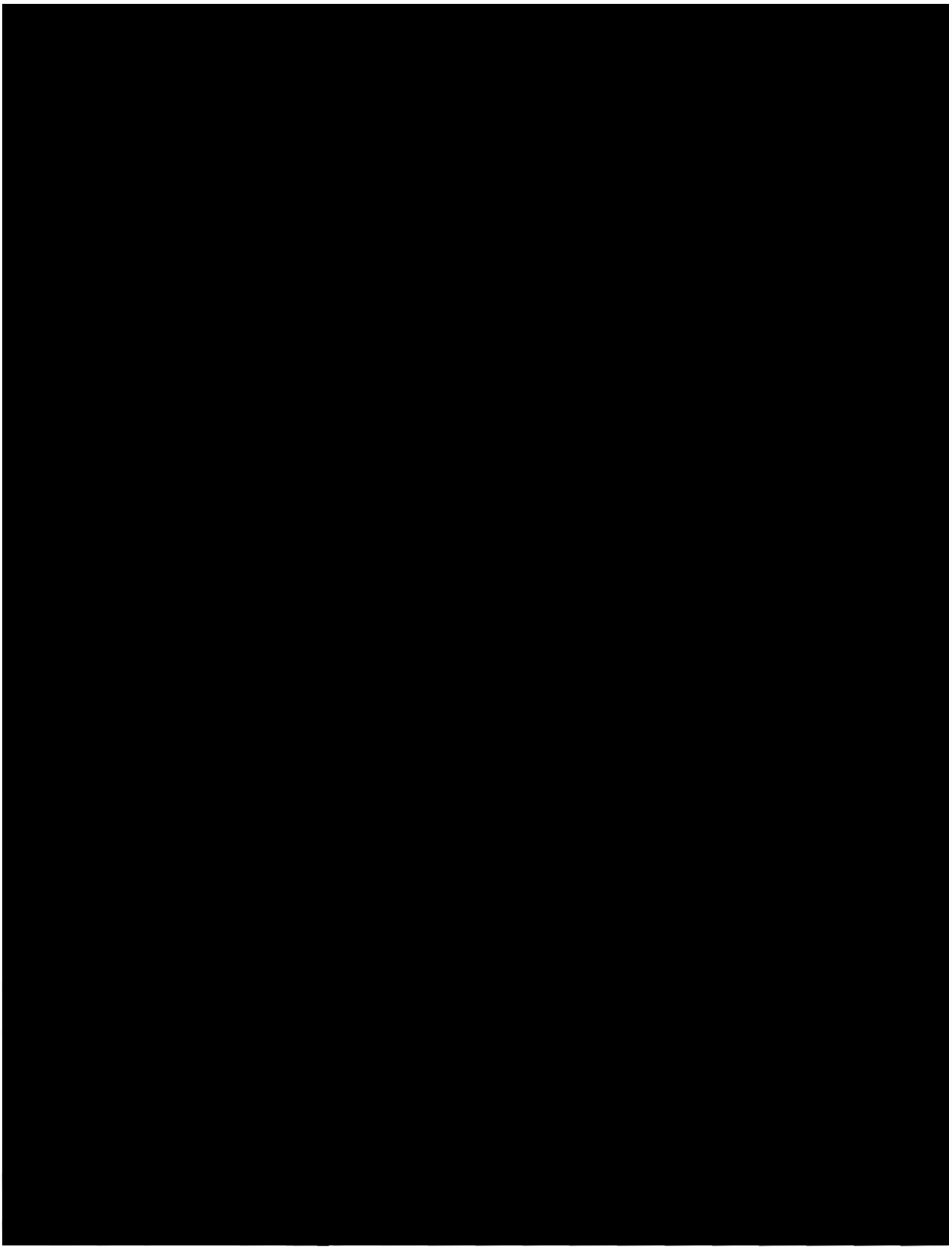
(ii) if the notice is under clause 8.2(c) of this Schedule A26, must promptly amend and re-submit the NAS to the Principal's Representative and the process in clause 8.1 and clause 8.2 of this Schedule A26 will reapply; and

(iii) may provide the Principal's Representative with a notice which states that the NAS satisfies the NAC Requirements and disputes the need to carry out any of the NAC Required Actions (if applicable), together with its reasons.

(b) If the Tunnelling Contractor gives a notice under clause 8.3(a)(iii) of this Schedule A26, the parties will promptly meet and in good faith seek to resolve the disagreement (whether by a Change or otherwise) within 10 Business Days of the notice under clause 8.3(a)(iii) of this Schedule A26.

(c) If the parties are unable to resolve a disagreement contemplated by clause 8.3(a)(iii) of this Schedule A26 within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the Tunnelling Contractor may refer the disagreement for resolution in accordance with the Dispute Procedure.

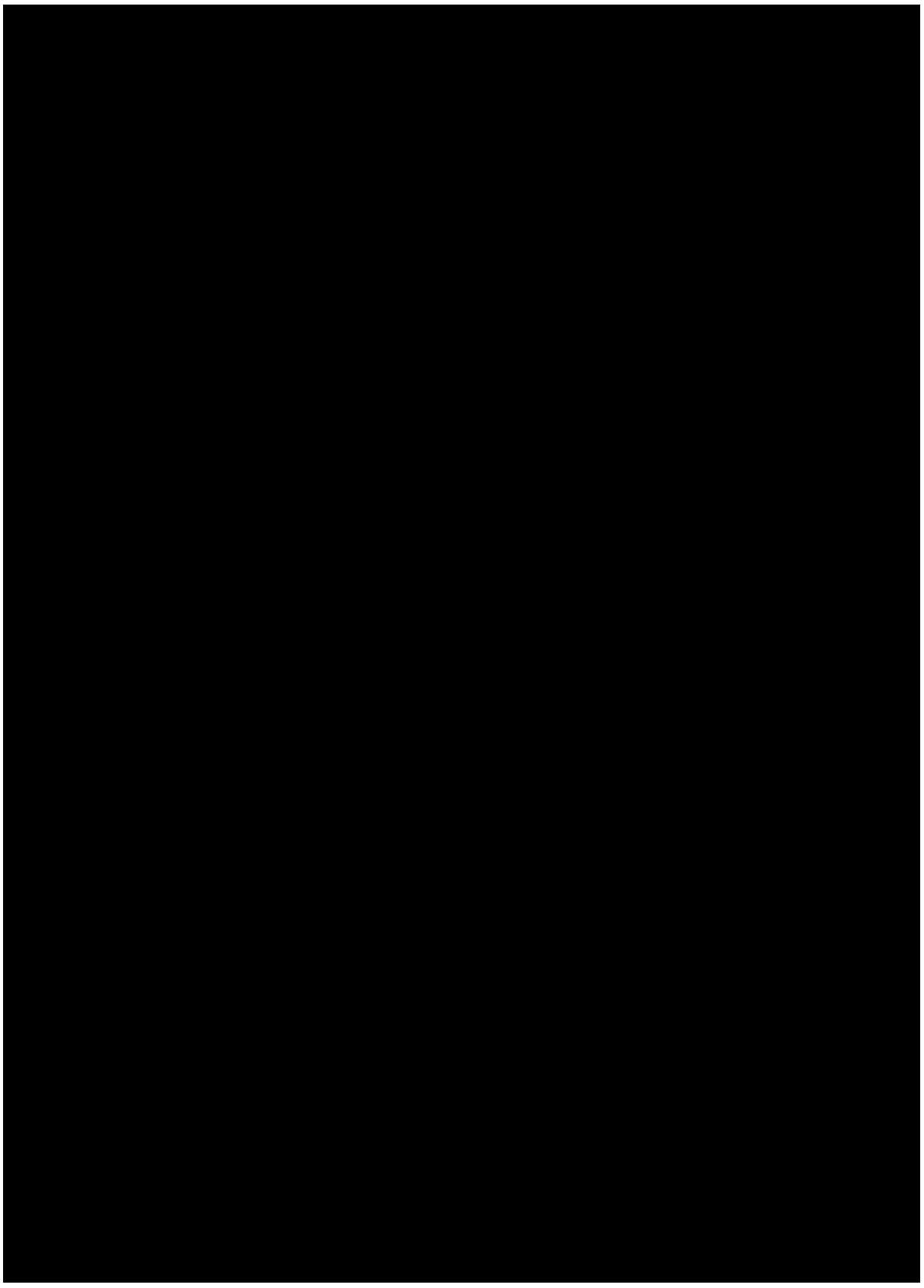
SCHEDULE A27



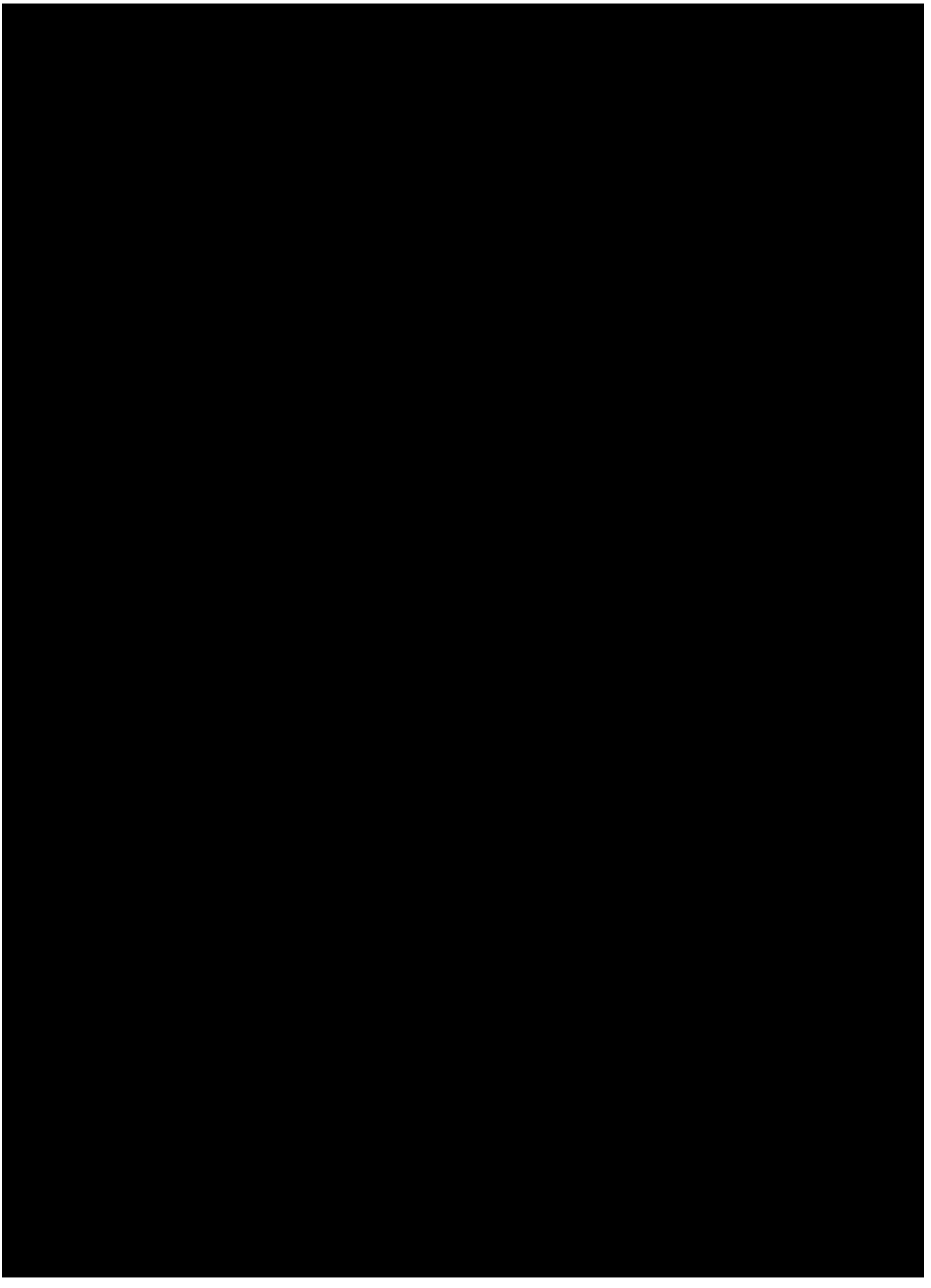
SCHEDULE A28

Initial ECI Design

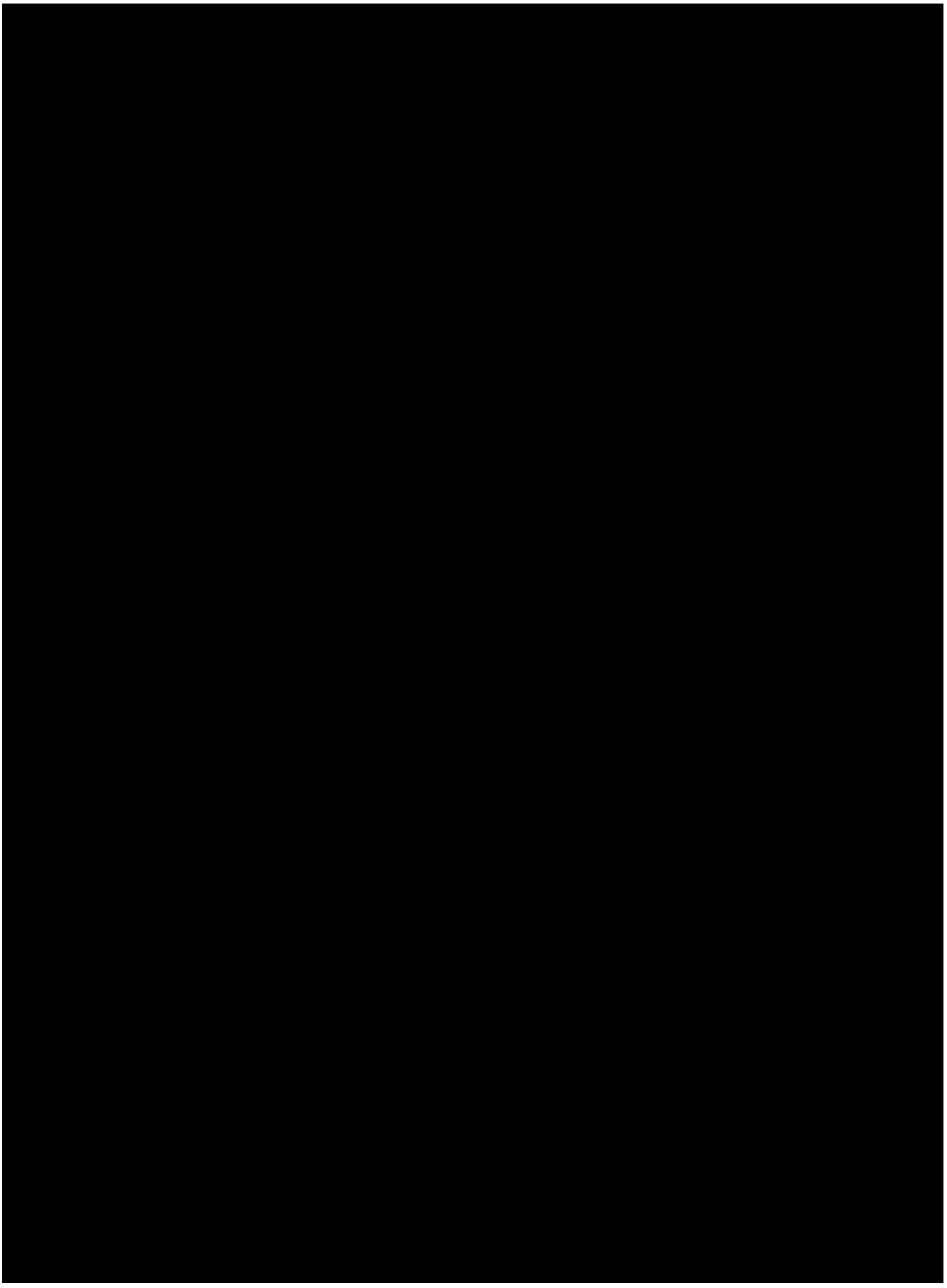
(Clauses 1.1 and 14.8)



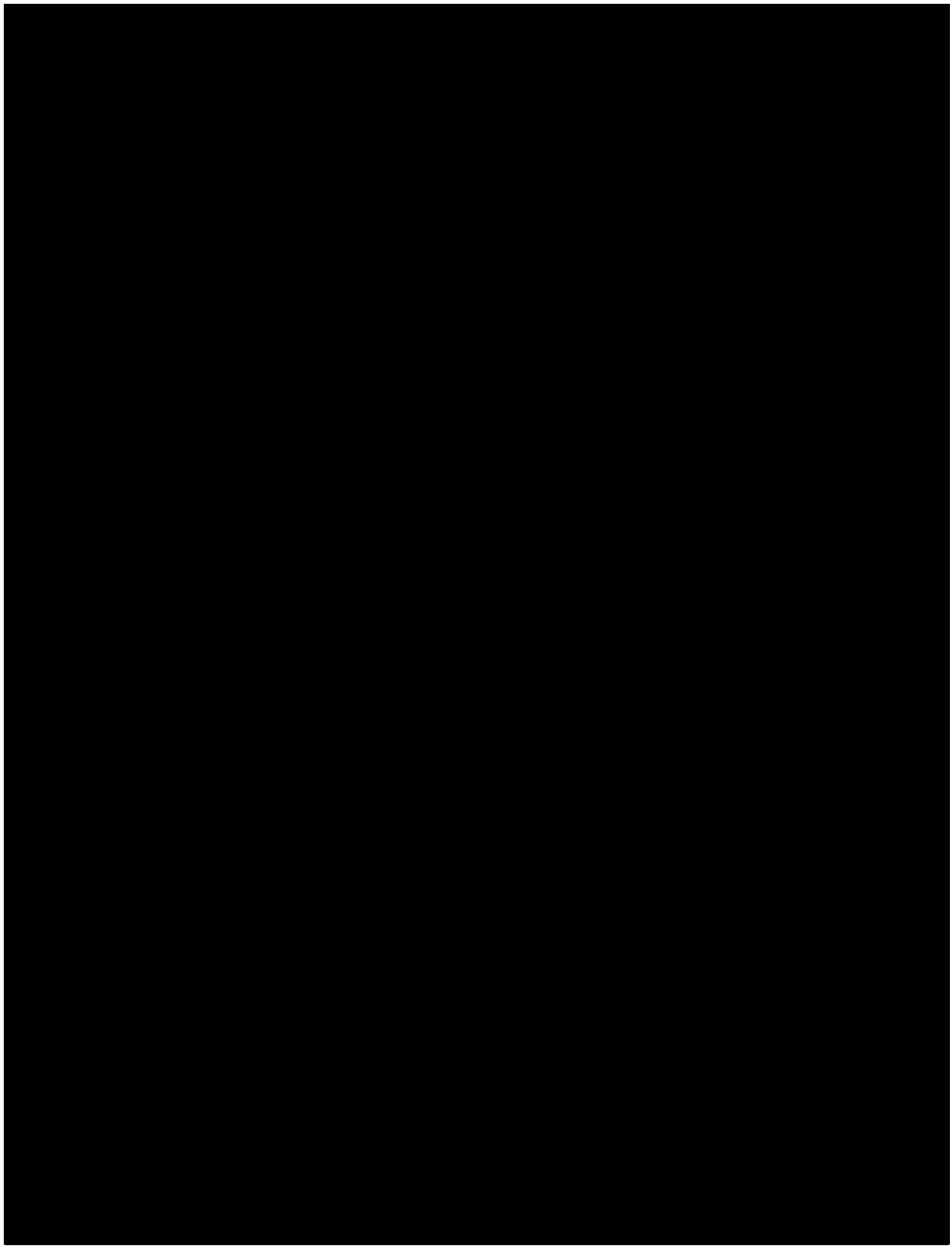
SCHEDULE A29



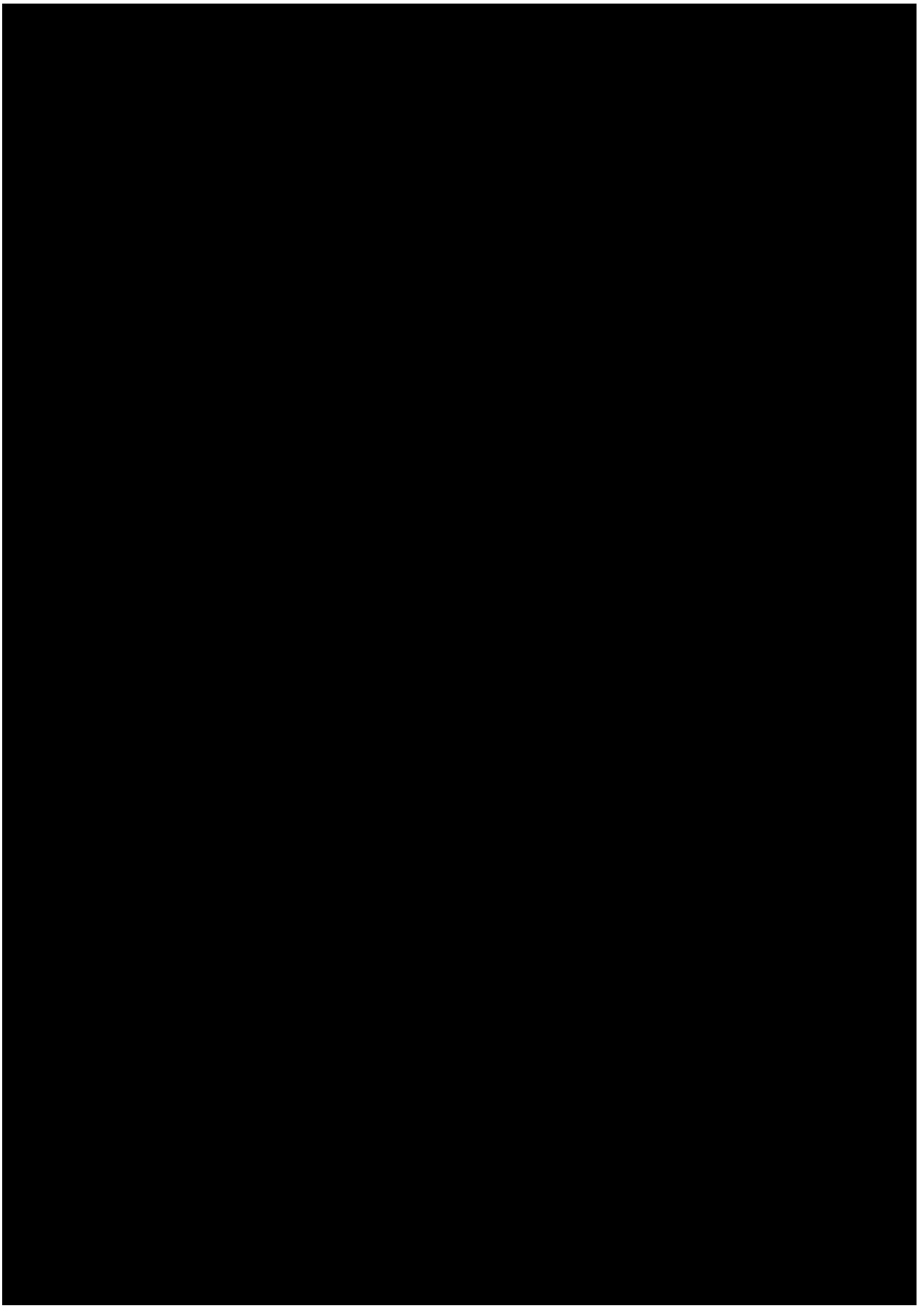
SCHEDULE A30

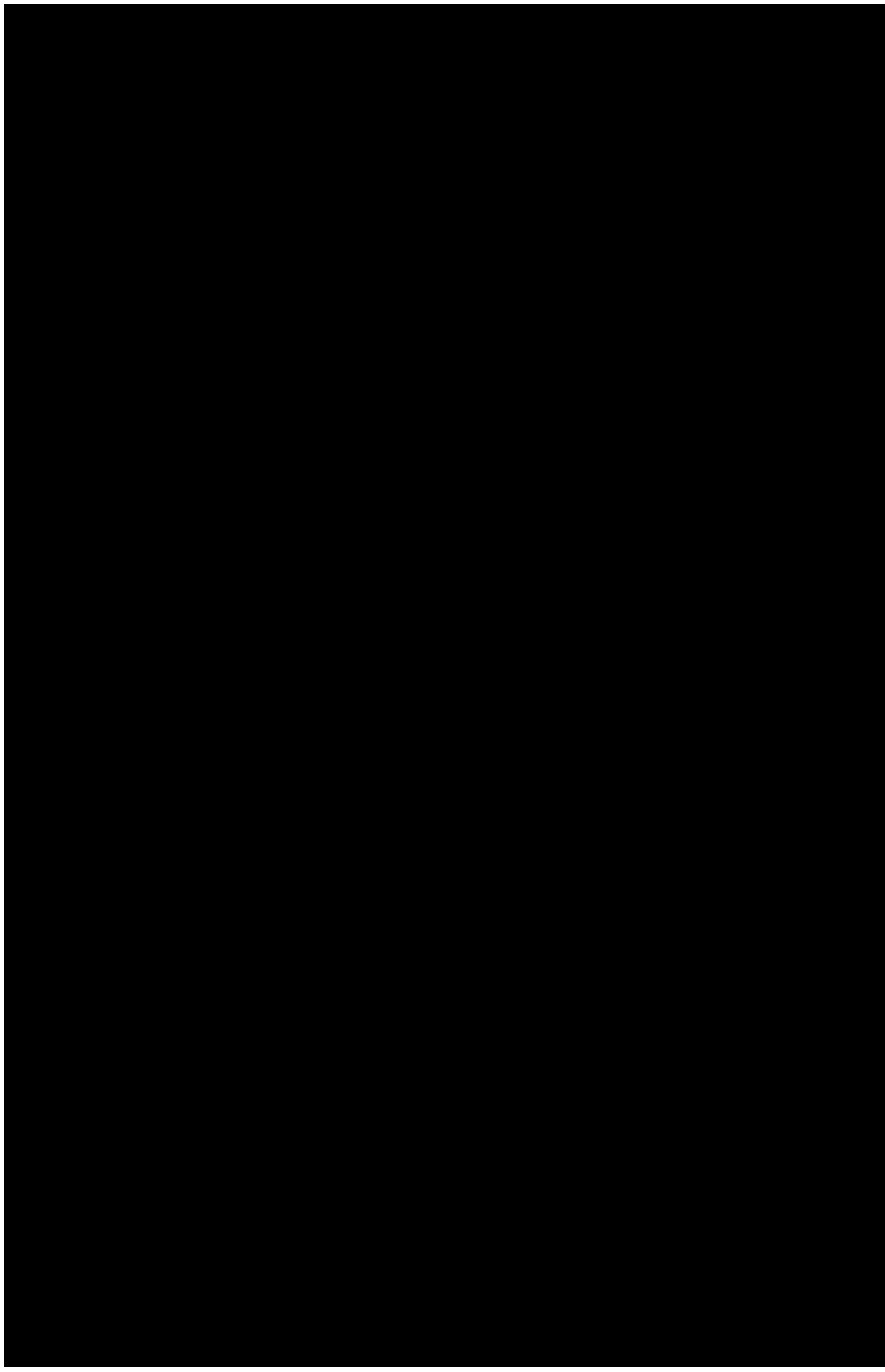


SCHEDULE A31



SCHEDULE A32





SCHEDULE B1

Tunnelling Contractor's Certificate – Substantial Completion

(Clauses 1.1 and 19.12(d))

To: [The Principal's Representative / The Independent Certifier]

From: [ ] (ABN [ ]) (**Tunnelling Contractor**)

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [*Insert*] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clauses 1.1 and 19.12(d) of the Tunnelling Contract, we hereby certify that Substantial Completion of Portion [ ] has been achieved by the Tunnelling Contractor on [ ] in accordance with the terms and conditions of the Tunnelling Contract.

.....

Signed for and on behalf of
[insert name of the Tunnelling Contractor]

SCHEDULE B2

Independent Certifier's Form of Design Certification

(Clause 1.1 and Schedule A26)

To: [The Principal's Representative / The Tunnelling Contractor]

From: [*insert name of Independent Certifier*] (ABN [*Insert*] (**Independent Certifier**))

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [*Insert*] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clause 2(b) of Schedule A26 of the Tunnelling Contract, we hereby certify that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed:

(a) the attached Design Stage 3 Design Documentation:

(i) complies with all the requirements of the Tunnelling Contract, including the Tunnelling Specification; and

(ii) is documented to enable construction in compliance with the Tunnelling Contract (including, to the extent applicable, in respect of correction of Defects); and

(b) the Tunnelling Contractor has addressed all issues of non-compliance with the Principal and the Independent Certifier in respect of the Design Stage 3 Design Documentation.

.....

Signed for and on behalf of

[insert name of Independent Certifier]

SCHEDULE B3

Tunnelling Contractor's and Subcontractor's Certificate – Design ([Design Stage 1 / Design Stage 2])

(Clause 1.1 and Schedule A26)

To: The Principal's Representative

From: [*Insert name of Tunnelling Contractor*] (ABN [*Insert*])
[*Insert name of Subcontractor*] (ABN [*Insert*])

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [*Insert*] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

This section to be completed by the Tunnelling Contractor:

In accordance with the terms of clause 2(a) of Schedule A26 of the Tunnelling Contract, the Tunnelling Contractor certifies that the attached Design Documentation complies with all requirements of the Tunnelling Contract, including the Tunnelling Specification.

Signed for and on behalf of the Tunnelling Contractor by:

Signature:	
Name:	
Position:	
Date:	

This section to be completed by the relevant Subcontractor. When there is more than one relevant Subcontractor, this section must be replicated and signed by each relevant Subcontractor:

The Subcontractor certifies that the attached Design Documentation complies with all requirements of its Subcontract and those parts of the Tunnelling Specification that are relevant to the Subcontractor's scope of work.

Signed for and on behalf of the Subcontractor by:

Signature:	
Name:	
Position:	
Date:	

Attachment A

Tunnelling Contractor's Design Documentation		
Document Name	**Reference Number**	**Revision**

Attachment B

Subcontractor's Design Documentation		
Document Name	**Reference Number**	**Revision**

SCHEDULE B4

Tunnelling Contractor's and Subcontractor's Certificate – Design (Design Stage 3)

(Clause 1.1 and Schedule A26)

To: The Principal's Representative

From: [*Insert name of Tunnelling Contractor*] (ABN [*Insert*])
[*Insert name of Subcontractor*] (ABN [*Insert*])

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [*Insert*] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

This section to be completed by the Tunnelling Contractor:

In accordance with the terms of clause 2(b) of Schedule A26 of the Tunnelling Contract, the Tunnelling Contractor certifies that the attached Design Documentation:

(a) complies with all requirements of the Tunnelling Contract, including the Tunnelling Specification; and

(b) is suitable for construction.

Signed for and on behalf of the Tunnelling Contractor by:

Signature:	
Name:	
Position:	
Date:	

This section to be completed by the relevant Subcontractor. When there is more than one relevant Subcontractor, this section must be replicated and signed by each relevant Subcontractor:

The Subcontractor certifies that the attached Design Documentation complies with all requirements of its Subcontract and those parts of the Tunnelling Specification that are relevant to the Subcontractor's scope of work.

Signed for and on behalf of the Subcontractor by:

Signature:	
Name:	
Position:	
Date:	

Attachment A

Tunnelling Contractor's Design Documentation		
Document Name	**Reference Number**	**Revision**

Attachment B

Subcontractor's Design Documentation		
Document Name	**Reference Number**	**Revision**

SCHEDULE B5

Environmental Manager's Certificate

(Clauses 1.1 and 13.4(d))

To: The Principal's Representative

From: [Environmental Manager]

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clause 13.4(d) of the Tunnelling Contract, I hereby certify that between the following dates [***Insert dates of preceding 3 month period***]:

(a) the Tunnelling Contractor's Environmental Management System was in accordance with AS/NZS ISO 14001;

(b) any Subcontractors' environmental management systems which form part of the Tunnelling Contractor's Environmental Management System were in accordance with AS/NZS ISO 14001;

(c) the Tunnelling Contractor complied with and satisfied the requirements of the Principal set out in sections 2.7 and 2.8 of the General Specification;

(d) the release of environmental-related Hold Points was undertaken in accordance with the Tunnelling Contract;

(e) the design, construction, inspection, repairs and monitoring by the Tunnelling Contractor was undertaken in accordance with the environmental-related requirements of the Tunnelling Contract; and

(f) that documentation was recorded and submitted to the Independent Certifier and the Principal's Representative in accordance with the environmental-related requirements of the Tunnelling Contract.

.....

Signed by
[Environmental Manager]

SCHEDULE B6

Independent Certifier's Certificate - Asset Management Information

(Clauses 1.1 and 16.13(j)(ii)(B))

To: [The Principal's Representative / The Tunnelling Contractor]

From: [insert name of Independent Certifier] (ABN [ ])

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clause 16.13(j)(ii)(B) of the Tunnelling Contract, we hereby certify that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed:

(a) the final set of the Asset Management Information complies with the requirements of the Tunnelling Contract, including the Tunnelling Specification; and

(b) the Tunnelling Contractor has addressed all issues of review, comment and consultation with the Independent Certifier and the Principal in respect of the Asset Management Information.

.....

Signed for and on behalf of
[insert name of Independent Certifier]

SCHEDULE B7

Independent Certifier's Certificate – Work as Executed Design Documentation

(Clauses 1.1 and 16.14(c)(ii)(B))

To: [The Principal's Representative / The Tunnelling Contractor / [***insert name of Operator or Alternative Operator if required (ABN [ ])***]]

From: [insert name of Independent Certifier] (ABN [ ])

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clause 16.14(c)(ii)(B) of the Tunnelling Contract, we hereby certify that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed:

(a) the Work as Executed Design Documentation for Portion [***insert number***] complies with the requirements of the Tunnelling Contract, including the Tunnelling Specification; and

(b) the Tunnelling Contractor has addressed all issues of non-compliance with the Independent Certifier and the Principal in respect of the Work as Executed Design Documentation.

.....

Signed for and on behalf of

[insert name of Independent Certifier]

SCHEDULE B8

NOT USED

SCHEDULE B9

Quality and Systems Manager's Certificate - Mobilisation

(Clauses 1,1 and 13.4(c)(i))

To: The Principal's Representative

From: [Quality and Systems Manager]

*This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.*

In accordance with the terms of clause 13.4(c)(i) of the Tunnelling Contract, I hereby certify that the Tunnelling Contractor's Quality Management System under clause 13.1 of the Tunnelling Contract is in accordance with the Tunnelling Specification and AS/NZS ISO 9001 Quality management systems – Requirements.

.....

Signed by

[Quality and Systems Manager]

SCHEDULE B10

Quality and Systems Manager's Certificate - Progressive

(Clauses 1.1 and 13.4(c)(ii))

To: The Principal's Representative

From: [Quality and Systems Manager]

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clause 13.4(c)(ii) of the Tunnelling Contract, I hereby certify that between the following dates [***Insert dates of preceding 3 month period***]:

(a) the Tunnelling Contractor's Quality Management System under clause 13.1 of the Tunnelling Contract was in accordance with AS/NZS ISO 9001 - 2008 Quality management systems - Requirements;

(b) any Subcontractors' quality systems which form part of the Tunnelling Contractor's Quality Management System were in accordance with AS/NZS ISO 9001 - 2008;

(c) the Tunnelling Contractor complied with and satisfied the requirements of the Tunnelling Specification;

(d) the release of Hold Points was undertaken in accordance with the Tunnelling Contract;

(e) the design, construction, inspection, repairs and monitoring by the Tunnelling Contractor was undertaken in accordance with the Tunnelling Contract; and

(f) that documentation was recorded and submitted to the Principal's Representative and the Independent Certifier in accordance with the Tunnelling Contract.

.....

Signed by

[Quality and Systems Manager]

SCHEDULE B11

Quality and Systems Manager's Certificate – Substantial Completion

(Clauses 1.1 and 13.4(c)(iii))

To: The Principal's Representative

From: [Quality and Systems Manager]

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clauses 1.1 and 13.4(c)(iii) of the Tunnelling Contract, I hereby certify in relation to Portion [ ] that:

(a) the Tunnelling Contractor has complied with and satisfied the requirements of the Tunnelling Specification;

(b) the Tunnelling Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 6 of Schedule A26 of the Tunnelling Contract, subject to Minor Defects, Agreed Defects and Accepted Defects;

(c) the release of all Hold Points has been undertaken in accordance with the Tunnelling Contract; and

(d) all documentation has been recorded and submitted to the Independent Certifier and the Principal's Representative in accordance with the Tunnelling Contract.

.....

Signed by
[Quality and Systems Manager]

SCHEDULE B12

Quality and Systems Manager's Certificate – Final Completion

(Clauses 1.1 and 13.4(c)(iv))

To: The Principal's Representative

From: [Quality and Systems Manager]

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clause 13.4(c)(iv) of the Tunnelling Contract, I hereby certify that as at the date of Final Completion:

(a) the release of all Hold Points has been undertaken in accordance with the Tunnelling Contract;

(b) all design, construction, inspection, repairs and monitoring by the Tunnelling Contractor has been undertaken in accordance with the Tunnelling Contract; and

(c) all documentation has been recorded and submitted to the Independent Certifier and the Principal's Representative in accordance with the Tunnelling Contract.

.....

Signed by
[Quality and Systems Manager]

SCHEDULE B13

Quality and Systems Manager's Certificate - Payment Claims

(Clauses 1.1 and 20.4(a)(iv))

To: The Principal's Representative

From: [Quality and Systems Manager]

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clause 20.4(a)(iv) of the Tunnelling Contract, I hereby certify that all work the subject of the attached progress claim by the Tunnelling Contractor has been executed and is in accordance with the requirements of the Tunnelling Contract, subject to the following:

(a) [Insert details of non-compliances as required]

.....

Signed by

[Quality and Systems Manager]

SCHEDULE B14

Notice of Substantial Completion

(Clauses 1.1 and 19.12(f)(i)(A))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[***insert date***]

Sydney Metro
[***insert address***]

Tunnelling Contractor
[***insert address***]

Dear [***insert name***]

NOTICE OF SUBSTANTIAL COMPLETION
Sydney Metro West
Western Tunnelling Works Design and Construction Deed
Project Works - Portion [*insert number*]

This Notice of Substantial Completion is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [***insert date***] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this notice.

In accordance with clause 19.12(f)(i)(A) of the Tunnelling Contract, the Independent Certifier confirms that Substantial Completion of Portion [***insert number***] has been achieved. The Date of Substantial Completion of Portion [***insert number***] is [**insert date**].

A list of Minor Defects, Agreed Defects and Accepted Defects is **attached**.

This Notice of Substantial Completion does not relieve the Tunnelling Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 17 of the Tunnelling Contract and to complete any other outstanding obligations under the Tunnelling Contract.

Yours sincerely

.....

[ ]

for and on behalf of the Independent Certifier

Attachment – List of Minor Defects, Agreed Defects and Accepted Defects

No.	Defects
No.	**Agreed Defects**
No.	**Accepted Defects**

SCHEDULE B15

Statutory Declaration

(Clause 20.4(a)(vi))

Statutory Declaration Oaths Act (NSW) Ninth Schedule

I,..... *insert full name of Declarant*

of

..... *insert address*

.....

do solemnly and sincerely declare that:

1. *I am the representative of:*

   ..... *insert name of Contractor, and ACN if applicable*

   .....

   (***the Contractor***)

   in the Office Bearer capacity of:

   ..... *insert position title of Declarant*

   .....

2. *The Contractor has a contract with the [ ]:*

   ..... *insert name of Contract*

   ..... (***the Contract***)

3. *I personally know the facts which I have set out in this declaration.*

4. *All employees who have at any time been engaged by the Contractor for work done under the Contract:*

   a) *have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and*

   b) *have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,*

   with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:

   Employee:

   Amount unpaid or not accrued:

   ..... *insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long*

   .....

   .....

   .....

   .....

5.	*Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).*	*service leave payments and superannuation entitlement etc.*
5A.	*Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW), with the exception of the items listed below:*	*insert details of any non-compliances*
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,* *except for the following subcontractors to the Contractor who have failed to provide such a declaration:* *Subcontractor:* *Due amount unpaid:*	*insert names and addresses of the*

	....	*Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim*
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:* *Employee, subcontractor or supplier:* *Amount unpaid or not accrued:*	*insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.*
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, Payroll Tax Act 2007 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* Schedule 2 Part 5 of the *Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and* *(c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.*	
12.	*I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.*	
13.	*All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:* *(a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll 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 not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.*	

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

Declared at ..... on .....

(place) (day) (month) (year)

.....
(Signature of Declarant)

Before me:

.....
(Signature of person before whom the declaration is made)

.....
(Name of the person before whom the declaration is made)

.....
(Title of the person before whom the declaration is made)*

** 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.

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1. I saw the face of the deponent.

[OR]

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

2. I have known the deponent for at least 12 months.

[OR]

I have confirmed the deponent's identity using the following identification document:

[*insert description of ID document*]

.....
Signature of witness

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 s 175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW), and s 127 *Industrial Relations Act 1996* (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

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

Subcontractor: ..... ABN: .....

(Business name)

of .....

(Address of subcontractor)

has entered into a contract with ..... ABN:.....

(Business name of principal contractor) **(Note 2)**

Contract number/identifier ..... **(Note 3)**

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

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

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

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)**

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)**

All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

Where the Subcontractor is required to be registered as an employer under the Payroll Tax Act 2007 (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**

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)**

Signature ..... Full name.....

Position/Title ..... Date ...../...../.....

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

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relation Act 1996* (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

   A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called ***the subcontractor***) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of section 127 of the *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

   Section 127(6) of the *Industrial Relations Act 1996* (NSW) defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'

   Section 127(11) of the *Industrial Relations Act 1996* (NSW) states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than $7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.

8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996* (NSW), 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* (NSW) and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au . Copies of the *Workers Compensation Act 1987, the Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

SCHEDULE B16

Property Owner's Certificate

(Clause 12.4(a))

THIS DEED POLL is made the day of 20

TO: **Sydney Metro** ABN 12 354 063 515 a New South Wales agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**).

BY: [***To be inserted***]

PROPERTY ADDRESS: .....

1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:

[INSERT DESCRIPTION OF PROPERTY WORKS]

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 item 1.

EXECUTED as a Deed Poll.

Signed sealed and delivered by [***Insert name***] in the presence of:	_____
	Signature
_____	
Signature of Witness	
_____	
Name of Witness in full	

SCHEDULE B17

Proof Engineer's Certificate

(Clause 1.1 and Schedule A26)

To: The Principal's Representative and the Tunnelling Contractor

From: [*Insert name of Proof Engineer*] (ABN [*Insert*])

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clause 2(b)(ii) of Schedule A26 of the Tunnelling Contract, we hereby:

(a) confirm that we have undertaken the full and independent assessment as required under, and in accordance with, clause 13.3(c)(i)(A) of the Tunnelling Contract of the following elements of the Proof Engineered Temporary Works:

(i) [*Insert description of relevant elements of the Proof Engineered Temporary works*]

(b) certify that those elements of the Proof Engineered Temporary Works identified in the attached Design Documentation:

(i) are adequate and suitable for their intended purpose as stated in, implied from or contemplated by the Tunnelling Contract; and

(ii) comply with the requirements of the Tunnelling Contract (including the Tunnelling Specification).

.....

Signed for and on behalf of

[*Insert name of Proof Engineer*]

SCHEDULE B18

Archaeological Site Clearance Certificate

(Clauses 1.1 and 12.12(b)(ii))

To: The Principal's Representative

From: [Insert name of Tunnelling Contractor] (ABN [ ])

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clause 12.12(b)(ii) of the Tunnelling Contract, we hereby certify that in respect of [Insert details of applicable Artefact Risk Area]:

(a) Archaeological Clearance Works have been carried out and completed in accordance with the requirements of:

(i) section 2.7 of the General Specification;

(ii) the Construction Heritage Management Plan; and

(iii) all applicable Laws and guidelines relating to heritage and conservation;

(b) we are satisfied that:

(i) no further site research and/or testing is required; and

(ii) the tests completed are adequate and the results are satisfactory;

(c) the scope of the Tunnelling Contractor's Activities to be carried out at [Insert details of applicable Artefact Risk Area] is understood and the potential future archaeological impact is assessed as low;

(d) based on the test findings and all available research material:

(i) we have assessed the future archaeological potential as low;

(ii) the implementation of the "Unexpected Finds Policy" within the Construction Heritage Management Plan will provide appropriate archaeological risk mitigation; and

(iii) additional controls such as archaeological monitoring [are / are not] required; and

(e) bulk earthworks can commence at [Insert details of applicable Artefact Risk Area].

.....

Signed for and on behalf of
[insert name of the Tunnelling Contractor]

SCHEDULE B19

Tunnelling Contractor and Subcontractor design certificate – Work as Executed Design Documentation

(Clauses 1.1 and 16.14(b)(ii))

To: The Principal's Representative and the Independent Certifier

From: [Insert name of Tunnelling Contractor] (ABN [ ])

[Insert name of Subcontractor] (ABN [ ])

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

This section to be completed by Tunnelling Contractor:

In accordance with the terms of clause 16.14(b)(ii)(A) of the Tunnelling Contract, the Tunnelling Contractor certifies that the attached Work as Executed Design Documentation for Portion [***insert number***] complies with all requirements of the Tunnelling Contract, including section 7.8.4 of the General Specification.

Signed for and on behalf of the Tunnelling Contractor by:

Signature:	
Name:	
Position:	
Date:	

This section to be completed by the relevant Subcontractor. When there is more than one relevant Subcontractor, this section shall be replicated and signed by each relevant Subcontractor:

In accordance with the terms of clause 16.14(b)(ii)(B) of the Tunnelling Contract, the Subcontractor certifies that the attached Work as Executed Design Documentation complies with all requirements of its Subcontract and section 7.8.4 of the General Specification, to the extent that part of the General Specification is relevant to the Subcontractor's scope of work.

Signed for and on behalf of the Subcontractor by:

Signature:	
Name:	

Position:	
Date:	

Attachment A

Tunnelling Contractor's Work as Executed Design Documentation		
Document Name	**Reference Number**	**Revision**

Attachment B

Subcontractor's Work as Executed Design Documentation		
Document Name	**Reference Number**	**Revision**

SCHEDULE B20

Tunnelling Contractor's Certificate – Completion

(Clauses 1.1 and 19.13(a))

To: [The Principal's Representative / The Independent Certifier]

From: [ ] (ABN [ ]) (**Tunnelling Contractor**)

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clauses 1.1 and 19.13(a) of the Tunnelling Contract, we hereby certify that Completion of Portion [ ] has been achieved by the Tunnelling Contractor on [ ] in accordance with the terms and conditions of the Tunnelling Contract.

.....

Signed for and on behalf of

[insert name of the Tunnelling Contractor]

SCHEDULE B21

Notice of Completion

(Clauses 1.1 and 19.13(b)(i))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[***insert date***]

Sydney Metro
[***insert address***]

Tunnelling Contractor
[***insert address***]

Dear [***insert name***]

NOTICE OF COMPLETION
Sydney Metro West
Tunnelling Works Design and Construction Deed
Project Works - Portion [*insert number*]

This Notice of Completion is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [***insert date***] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this notice.

In accordance with clause 19.13(b)(i) of the Tunnelling Contract, the Independent Certifier confirms that Completion of Portion [***insert number***] has been achieved. The Date of Completion of Portion [***insert number***] is [***insert date***].

Yours sincerely

.....

[ ]

for and on behalf of the Independent Certifier

SCHEDULE B22

Demolition Work Plan Certificate

(Clauses 1.1 and 12.15(c)(i)(A))

To: The Principal's Representative and the Tunnelling Contractor

From: [ ] (ABN [ ]) (**Demolition Structural Engineer**)

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

This certificate is given for the benefit of the Principal's Representative and the Tunnelling Contractor.

In accordance with clause 12.15(c)(i)(A) of the Tunnelling Contract, the Demolition Structural Engineer certifies that it:

(a) is an independent structural engineer who is a member of The Institution of Engineers Australia with at least 15 years' experience in demolition work; and

(b) has reviewed the Demolition Work Plan included at Attachment A and that such:

(i) complies with the requirements of a "work plan" as detailed in AS 2601-2001 – The demolition of structures;

(ii) complies with the requirements of a "demolition plan" as detailed in SafeWork NSW Code of Practice: Demolition Work August 2019; and

(iii) is suitable for use, subject to the comments included at Attachment B (if applicable).

.....

Signed for and on behalf of

[insert name of the Demolition Structural Engineer]

Attachment A –Demolition Work Plan

[*Relevant Demolition Work Plan to be attached*]

Attachment B - Demolition Structural Engineer's comments

[*Demolition Structural Engineer's comments in relation to the Demolition Work Plan being suitable for use to be attached (to the extent applicable).*]

SCHEDULE B23

Structural Demolition Work Methodology Certificate

(Clauses 1.1 and 12.15(c)(i)(B))

To: The Principal's Representative and the Tunnelling Contractor

From: [ ] (ABN [ ]) (**Demolition Structural Engineer**)

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

This certificate is given for the benefit of the Principal's Representative and the Tunnelling Contractor.

In accordance with clause 12.15(c)(i)(B) of the Tunnelling Contract, the Demolition Structural Engineer certifies that it:

(a) is an independent structural engineer who is a member of The Institution of Engineers Australia with at least 15 years' experience in demolition work; and

(b) has reviewed the structural demolition methodology included at Attachment A and that such:

(i) complies with the requirements of:

(A) AS2601 - 2001 - The demolition of structures; and

(B) SafeWork NSW Code of Practice: Demolition Work August 2019; and

(ii) is suitable for use, subject to the comments included at Attachment B (if applicable).

.....

Signed for and on behalf of

[insert name of the Demolition Structural Engineer]

Attachment A –Methodology for structural Demolition Work

[*Methodology for relevant structural Demolition Work to be attached*]

Attachment B - Demolition Structural Engineer's comments

[*Demolition Structural Engineer's comments in relation to the Tunnelling Contractor's methodology being suitable for use to be attached (to the extent applicable).*]

SCHEDULE B24

Demolition Temporary Works Design Certificate

(Clauses 1.1 and 12.15(c)(i)(C))

To: The Principal's Representative and the Tunnelling Contractor

From: [ ] (ABN [ ]) (**Demolition Structural Engineer**)

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

This certificate is given for the benefit of the Principal's Representative and the Tunnelling Contractor.

In accordance with clause 12.15(c)(i)(C) of the Tunnelling Contract, the Demolition Structural Engineer certifies that it:

(a) is an independent structural engineer who is a member of The Institution of Engineers Australia with at least 15 years' experience in demolition work; and

(b) has reviewed the attached design for the Demolition Temporary Works and that such:

(i) complies with the requirements of:

(A) the SafeWork NSW Code of Practice: Demolition Work August 2019;

(B) AS2601 - 2001 - The demolition of structures;

(C) AS1170-0-2002;

(D) AS1170-1, 2002; and

(E) AS 1170 – 2; and

(ii) is suitable for construction.

.....

Signed for and on behalf of

[insert name of the Demolition Structural Engineer]

Attachment –Design for Demolition Temporary Works

[*Design for Demolition Temporary Works to be attached*]

SCHEDULE B25

Demolition Temporary Works Independent Checker Certificate

(Clauses 1.1 and 12.15(c)(i)(D))

To: The Principal's Representative and the Tunnelling Contractor

From: [ ] (ABN [ ]) (**Demolition Temporary Works Independent Checker**)

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

This certificate is given for the benefit of the Principal's Representative and the Tunnelling Contractor.

In accordance with clause 12.15(c)(i)(D) of the Tunnelling Contract, the Demolition Temporary Works Independent Checker certifies that it:

(a) is an independent structural engineer who is a member of The Institution of Engineers Australia with at least 10 years' experience in reviewing and checking temporary works in the demolition and structural engineering industry; and

(b) has reviewed the attached design prepared by the Tunnelling Contractor's Demolition Structural Engineer for the purposes of section 3.3.2(b) of the Particular Specification, and confirms that the design is suitable for construction.

.....

Signed for and on behalf of

[insert name of the Demolition Temporary Works Independent Checker]

Attachment –Design for Demolition Temporary Works

[*Design prepared by the Tunnelling Contractor's Demolition Structural Engineer for the Demolition Temporary Works to be attached*]

SCHEDULE B26

Demolition Temporary Works Construction Certificate

(Clauses 1.1 and 12.15(c)(i)(E))

To: The Principal's Representative and the Tunnelling Contractor

From: [ ] (ABN [ ]) (**Demolition Structural Engineer**)

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [ ] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

This certificate is given for the benefit of the Principal's Representative and the Tunnelling Contractor.

In accordance with clause 12.15(c)(i)(E) of the Tunnelling Contract, the Demolition Structural Engineer certifies that:

(a) it is an independent structural engineer who is a member of The Institution of Engineers Australia with at least 15 years' experience in demolition work; and

(b) the Demolition Temporary Works included at Attachment A have been constructed in accordance with the certified design for the Demolition Temporary Works included at Attachment B.

.....

Signed for and on behalf of

[insert name of the Demolition Structural Engineer]

Attachment A –Demolition Temporary Works

[*Demolition Temporary Works constructed by the Tunnelling Contractor to be attached*]

Attachment B - Certified design for Demolition Temporary Works

[*Certified design for the Demolition Temporary Works included at Attachment A to be attached*]

SCHEDULE B27

Tunnelling Contractor's Certificate – Milestone Achievement

(Clauses 1.1 and 19.11A(d))

To: [The Principal's Representative / The Independent Certifier]

From: [ ] (ABN [ ]) (**Tunnelling Contractor**)

This certificate is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [*Insert*] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this certificate.

In accordance with the terms of clauses 1.1 and 19.11A(d) of the Tunnelling Contract, we hereby certify that Milestone Achievement of Milestone [***insert number***] has been achieved by the Tunnelling Contractor on [**insert date**] in accordance with the terms and conditions of the Tunnelling Contract.

.....

Signed for and on behalf of
[insert name of the Tunnelling Contractor]

SCHEDULE B28

Notice of Milestone Achievement

(Clauses 1.1 and 19.11A(f)(i))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[***insert date***]

Sydney Metro
[***insert address***]

Tunnelling Contractor
[***insert address***]

Dear [***insert name***]

NOTICE OF MILESTONE ACHIEVEMENT
Sydney Metro West
Western Tunnelling Works Design and Construction Deed
Project Works - Milestone [*insert number*]

This Notice of Milestone Achievement is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [***insert date***] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this notice.

In accordance with clause 19.11A(f)(i) of the Tunnelling Contract, the Independent Certifier confirms that Milestone Achievement of Milestone [***insert number***] has been achieved. The Date of Milestone Achievement of Milestone [***insert number***] is [**insert date**].

A list of Minor Defects, Agreed Defects and Accepted Defects is **attached**.

This Notice of Milestone Achievement does not relieve the Tunnelling Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 17 of the Tunnelling Contract and to complete any other outstanding obligations under the Tunnelling Contract.

Yours sincerely

.....

[ ]

for and on behalf of the Independent Certifier

Attachment – List of Minor Defects, Agreed Defects and Accepted Defects

No.	Minor Defects
No.	**Agreed Defects**
No.	**Accepted Defects**

SCHEDULE D1

Site Access Schedule

(Clauses 1.1 and 12.2)

1. INTRODUCTION AND DEFINITIONS

1.1 Introduction

This Schedule D1 identifies:

(a) the Project Site and the Temporary Areas;

(b) the dates on which the Tunnelling Contractor will be provided access to each area of the Construction Site;

(c) the Site Access Expiry Dates that apply to relevant areas of the Construction Site; and

(d) the restrictions upon the access, possession and use that will apply to the Tunnelling Contractor's access to or use of applicable areas of the Construction Site.

1.2 References

In this Schedule D1, a reference to:

(a) Figure 2.1 is a reference to the drawings described in row 1 of Table 1 of this Schedule D1;

(b) the Tunnel Access Plan is a reference to the drawings described in row 2 of Table 1 of this Schedule D1; and

(c) a lot number and draft DP number is a reference to the area contained in the lot so numbered in a deposited plan so numbered and registered with Land Registry Services, New South Wales under the *Real Property Act 1900* (NSW).

1.3 Drawings and Unregistered Plans

(a) This Schedule D1 contains the drawings identified in Table 1.

Table 1 Drawings

[redacted]

1.4 **Boundaries**

(a) Subject to section 1.4(b) of this Schedule D1, each Area in Figure 2.1 contains the land enclosed by the plan area represented for that Area in Figure 2.1.

(b) Areas in Figure 2.1 are unrestricted in height and depth above and below the plan area represented in Figure 2.1, unless a limit is specified in Figure 2.1.

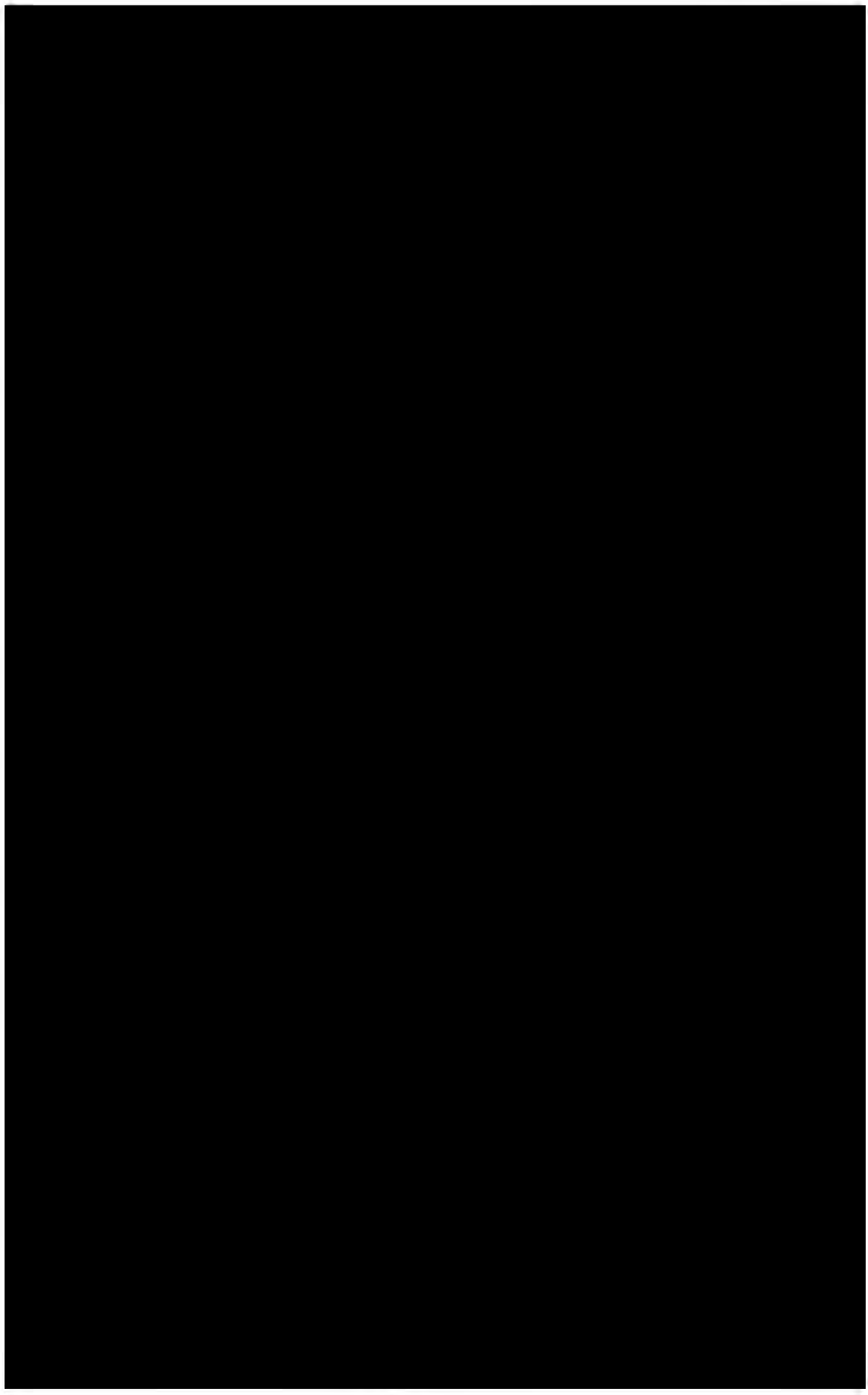
(c) Where boundaries of the Project Site and Temporary Areas are identified as curved in Figure 2.1, the boundary is defined by the schedule of curved boundaries.

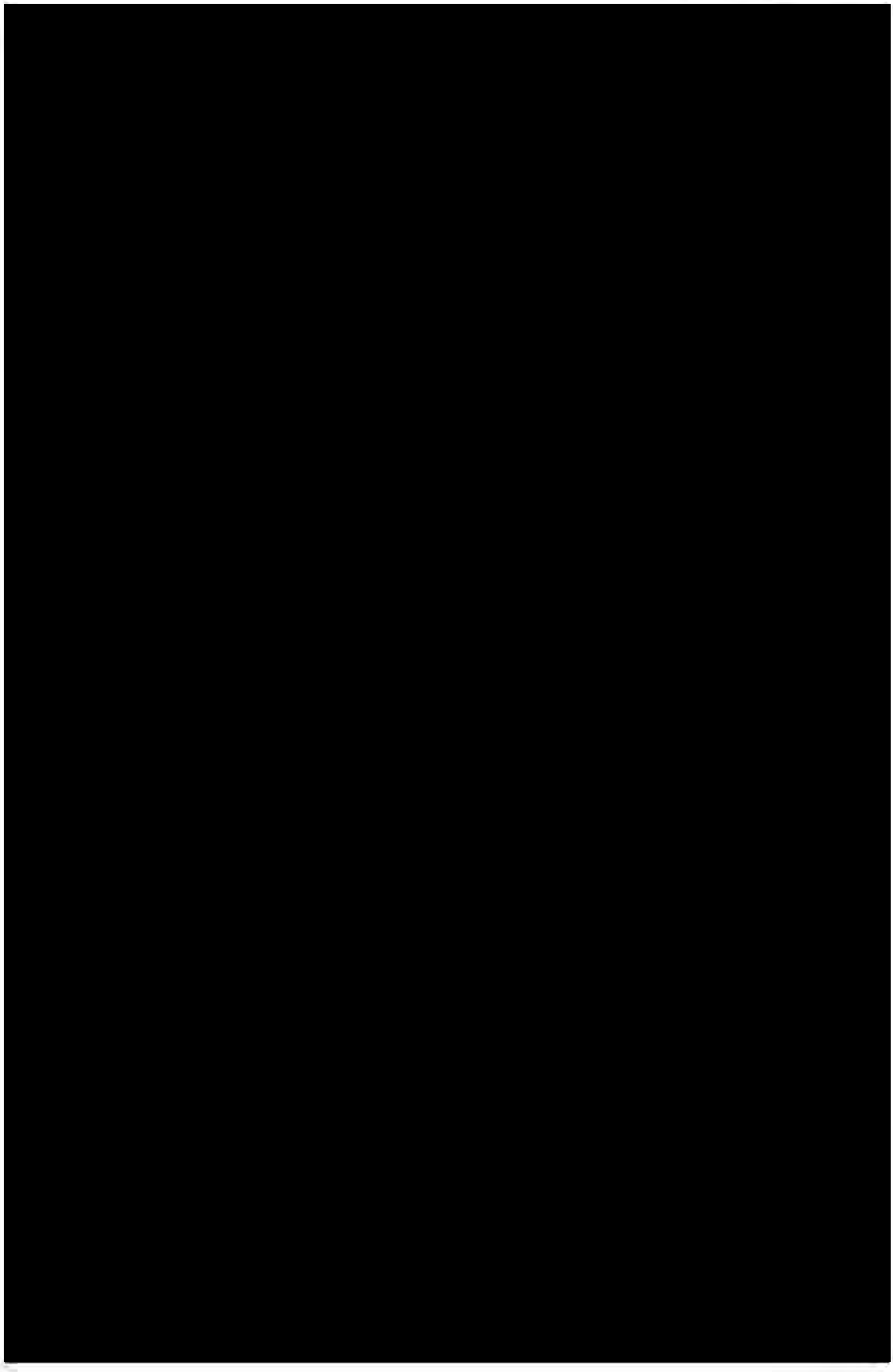
2. PROJECT SITE

2.1 The Project Site is all of the land described in Table 2.

Table 2 Areas comprising the Project Site

[redacted]





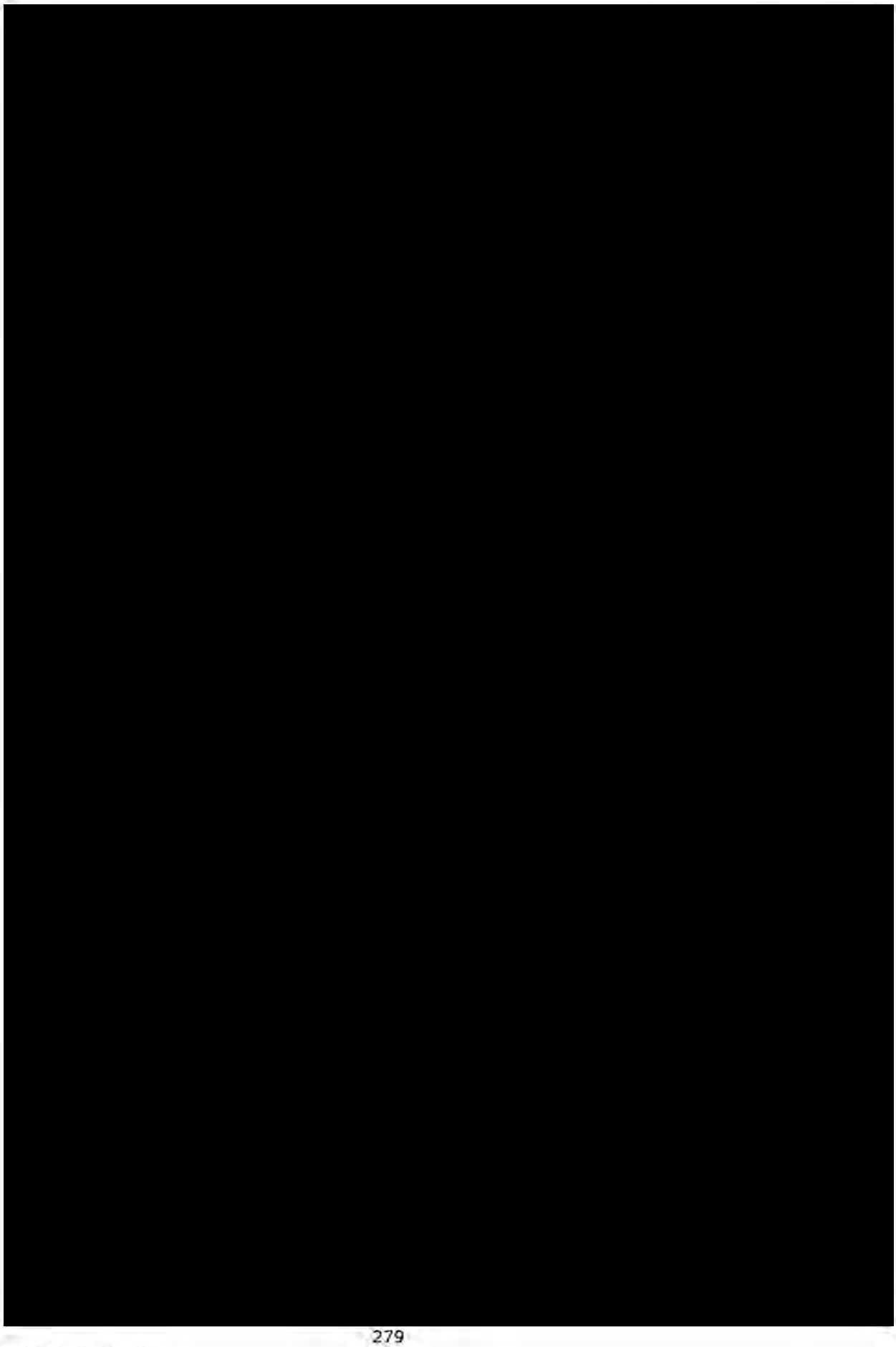
[redacted]

3. TEMPORARY AREAS

3.1 The Temporary Areas are all of the land described in Table 3.

Table 3 Areas comprising the Temporary Areas

[redacted]



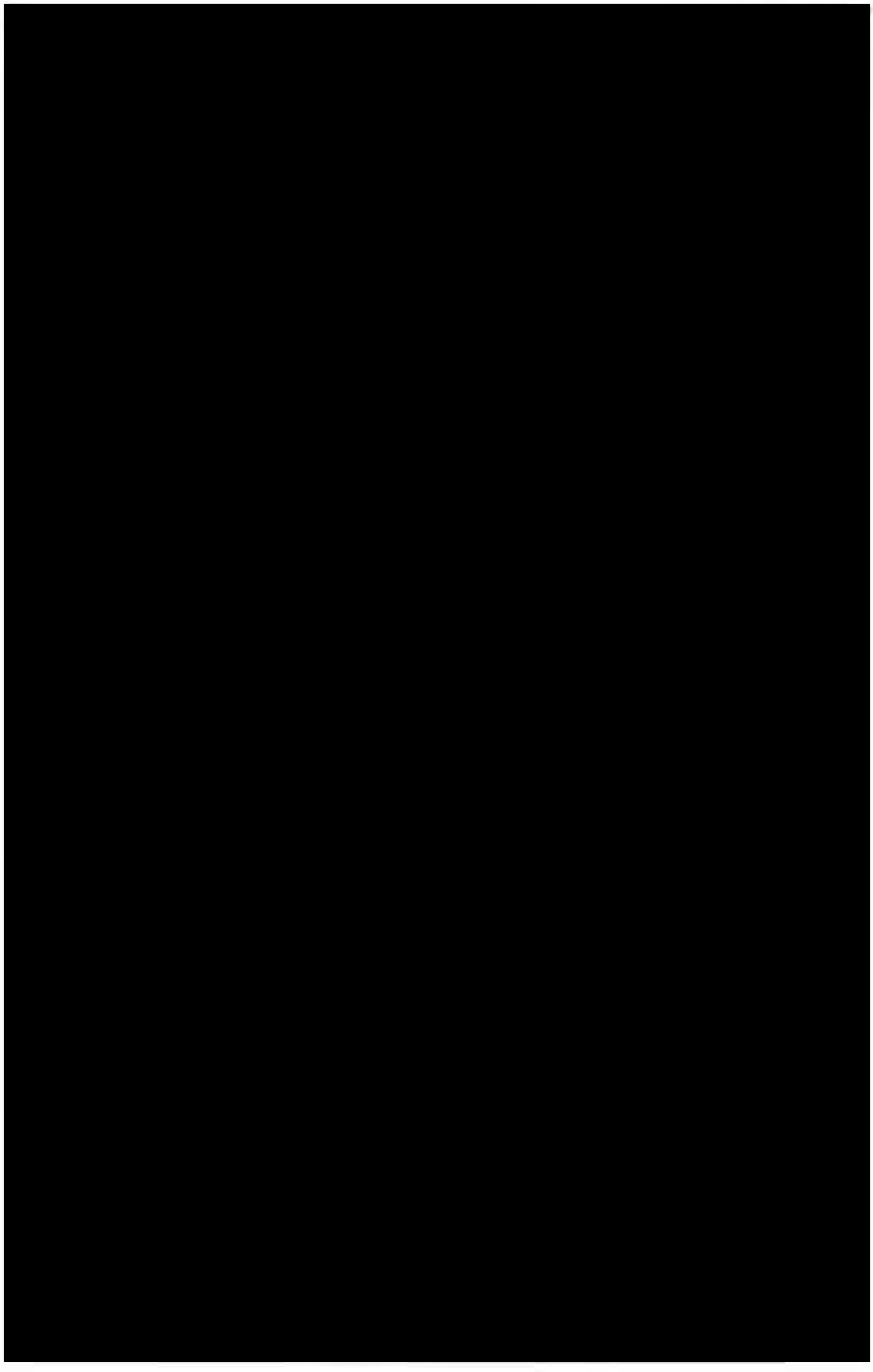
[redacted]

4. SITE ACCESS

4.1 The Site Access Date for each area identified in the second column of Table 4 of this Schedule D1 is identified in the fourth column of Table 4 of this Schedule D1.

Table 4 Site Access Dates

[redacted]



[redacted]

4.2 The Site Access Expiry Date for each area identified in the second column of Table 4a of this Schedule D1 is identified in the third column of Table 4a of this Schedule D1.

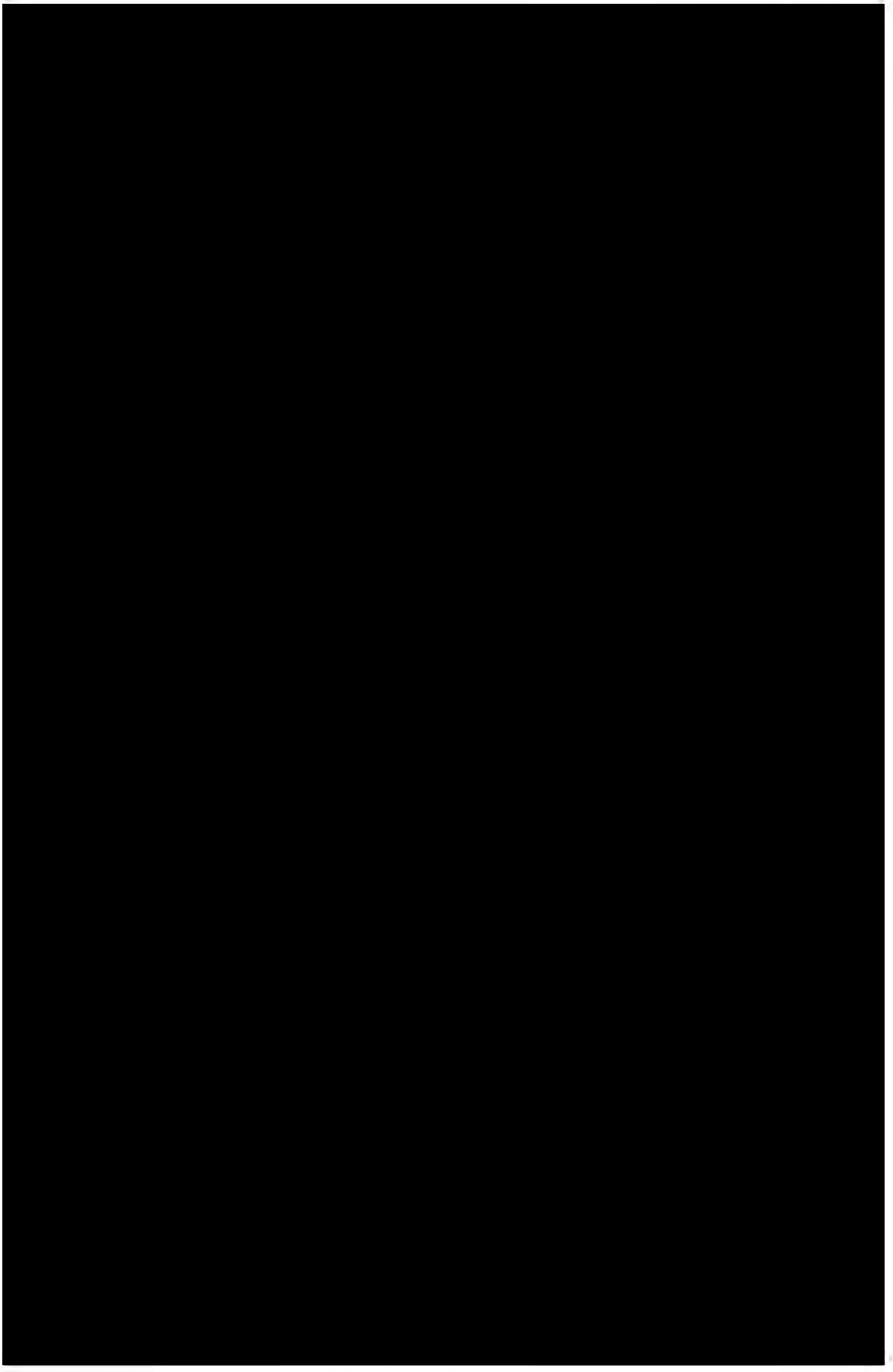
Table 4a Site Access Expiry Date

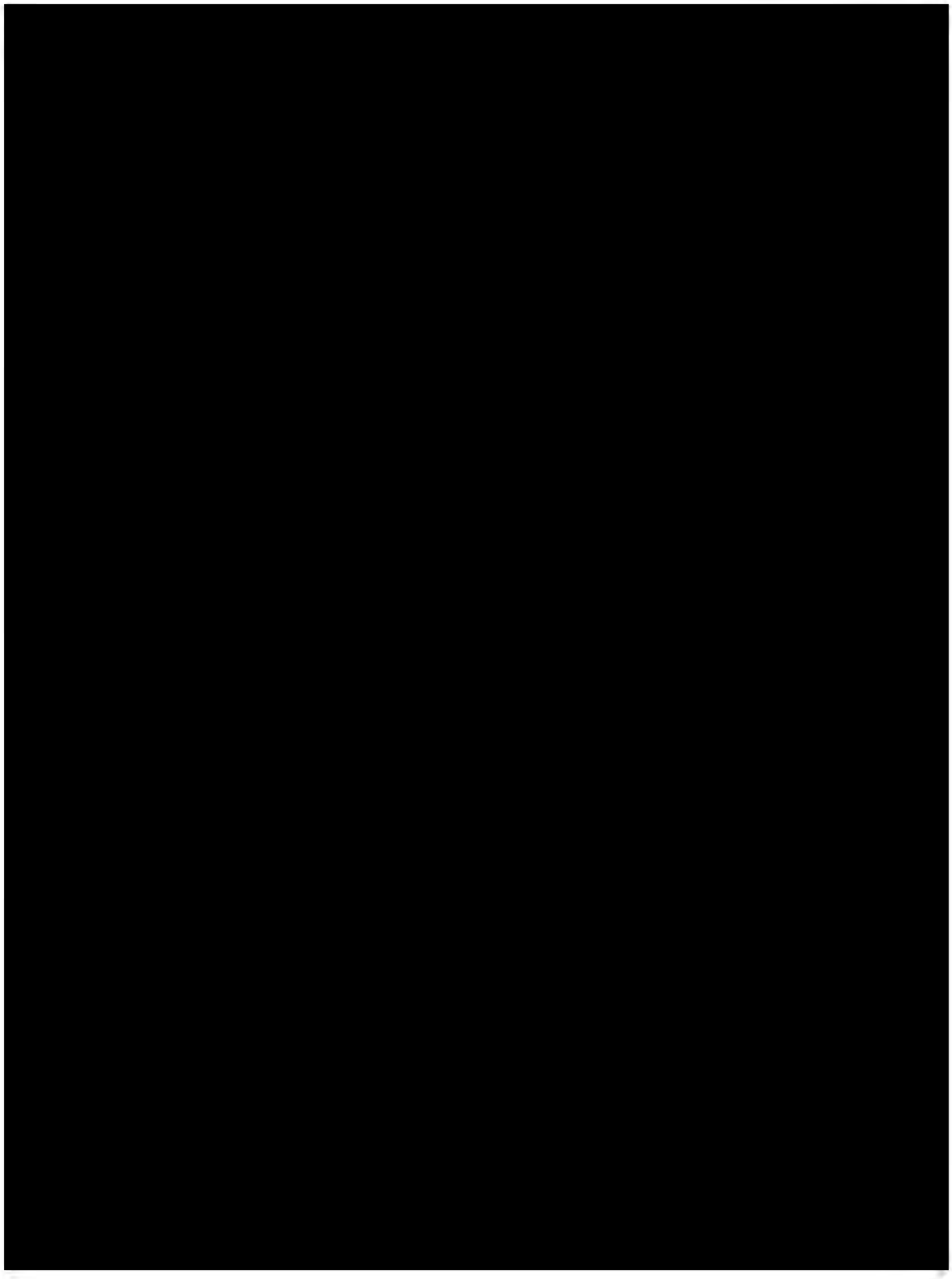
[redacted]

4.3 Site Access Restrictions

For the purposes of clause 12.2(b)(i) of the deed, the restrictions that apply to areas specified in the second column of Table 4b are identified in the third column of Table 4b.

Table 4b – Site Access Restrictions





SCHEDULE D2

Approvals to be obtained by the Principal

(Clauses 1.1, 7.2(a)(i) and 15.10(b))

1. Existing Approvals

The Project Planning Approval.

The REF Approval.

The Principal's Accreditation.

2. Future Approvals to be obtained by the Principal

None. The Principal will not obtain any Approvals in addition to those listed in item 1 (Existing Approvals) above.

SCHEDULE D3

Planning Approvals

(Clause 1.1)

This Schedule D3 is comprised of the Project Planning Approval and the REF Approval.

The Project Planning Approval is set out in this Schedule D3 and the REF Approval is included in Schedule F1 as an electronic file.

Sydney Metro West – Concept and Stage 1 Conditions of Approval

Infrastructure approval

Section 5.19 of the *Environmental Planning & Assessment Act 1979*

I grant approval to the carrying out of the critical State significant infrastructure (CSSI) referred to in Schedule 1, subject to the conditions in Schedule 2 and Schedule 3.

The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

Sydney 11th March 2021

SCHEDULE 1

Application no.:	SSI 10038
Proponent:	Sydney Metro
Approval Authority:	Minister for Planning and Public Spaces
Land:	Land in the local government areas of Burwood, City of Canada Bay, Cumberland, Inner West, City of Parramatta, Strathfield and City of Sydney, and the parts of Sydney Harbour and the Parramatta River that adjoin these local government areas.

Description of CSSI:	Development of the Sydney Metro West project comprising:
	• new passenger rail infrastructure between Westmead and the central business district (CBD) of Sydney, including:
	  o tunnels, stations (including surrounding areas) and associated rail facilities, and
	  o stabling and maintenance facilities (including associated underground and overground connections to tunnels), and
	• modification of existing rail infrastructure (including stations and surrounding areas), and
	• ancillary development.
	
	The development does not include the following:
	• surveys, test drilling, test excavations, geotechnical or contamination investigations or other tests, surveys, sampling or investigation for the purposes of the design or assessment of the Sydney Metro West project, and
	• the relocation or upgrade of existing roads, intersections or parking areas that:
	  o is carried out on land identified as being within the Bays Precinct Site on the State Significant Development Sites Map of the *State Environmental*

	Planning Policy (State and Regional Development) 2011, and o is the subject of a determination under Division 5.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
Staged CSSI	The proposal is for a staged CSSI by virtue of section 5.20 of the EP&A Act.
Description of Concept of the CSSI:	Concept proposal for the staged CSSI, which includes approximately 24 kilometres of underground metro rail between Westmead and the Sydney CBD.
Description of Stage 1 of the CSSI:	Stage 1 works of the CSSI, including: • station excavation for the new metro stations, • shaft excavation for services facilities, • civil work for the stabling and maintenance facility at Clyde, and • tunnel excavation including tunnel support activities between Westmead and The Bays.
Declaration as CSSI:	The proposal is CSSI by virtue of Schedule 5, clause 21 of *State Environmental Planning Policy (State and Regional Development) 2011.*

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DEFINITIONS

The definitions below apply to terms used in this approval, unless otherwise stated or the context indicates otherwise.

Table 1: Definitions

Term	Definition
AA	The Acoustics Advisor for the CSSI approved by the Planning Secretary
Aboriginal object	The same meaning as in the *National Parks and Wildlife Act 1974* (NSW)
AEP	Annual Exceedance Probability
AHIMS	Aboriginal Heritage Information Management System
Amendment Report	The Amendment Report submitted to the Planning Secretary under the EP&A Act
Ancillary facility	A temporary facility for construction of Stage 1 of the CSSI including an office and amenities compound, construction compound, material crushing and screening plant, materials storage compound, maintenance workshop, testing laboratory and material stockpile area and parking facilities
At-property treatment	Includes building treatments and courtyard walls. Building treatments may include but are not limited to ventilation, glazing, window and door seals, sealing of vents and underfloor areas as described in Appendix B of *At Receiver Noise Treatment Guideline* (Roads and Maritime Services, 2017) and other treatments including, but not limited to, noise curtains, shutters and secondary glazing
ANZG (2018)	*Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2018)*
BC Act	*Biodiversity Conservation Act 2016* (NSW)
CBD	Central business district
CEMF	Construction Environmental Management Framework
CEMP	Construction Environmental Management Plan
Completion of construction	The date upon which construction of Stage 1 of the CSSI is completed and all construction related requirements of the Planning Secretary (if any) have been met. If construction is phased, completion of construction of Stage 1 of the CSSI is the date upon which construction of Stage 1 is completed and all construction related requirements of the Planning Secretary (if any) have been met, in respect of all phases of construction
Construction	Includes all work required to construct Stage 1 of the CSSI as described in the documents listed in **Condition A1** of **Schedule 3**, including commissioning trials of equipment and temporary use of any part of the CSSI, but excluding **Low Impact Work**
Construction Boundary	The area physically affected by work as described in the documents listed in **Condition A1** of **Schedule 3**

Term	Definition
CSSI	The critical State Significant Infrastructure, as described in Schedule 1, the carrying out of which is approved under the conditions of this approval
CTMP	Construction Traffic Management Plan
Department	NSW Department of Planning, Industry and Environment
DNVIS	Detailed Noise and Vibration Impact Statement(s)
DPIE EES	Environment, Energy and Science Group of the Department
DPI Fisheries	NSW Department of Primary Industries, Fisheries
DPIE Water	Water Group of the Department
EIS	The Environmental Impact Statement submitted to the Planning Secretary seeking approval to carry out the development described in it, as revised if required by the Planning Secretary under the EP&A Act, and including any additional information provided by the Proponent in support of the application for approval of the project
EP&A Act	*Environmental Planning and Assessment Act 1979* (NSW)
EPA	NSW Environment Protection Authority
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth)
EPL	Environment Protection Licence under the POEO Act
ER	The Environmental Representative(s) for the CSSI approved by the Planning Secretary
Environment	Includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings
Environmental Representative Protocol	The document of the same title published by the Department of Planning and Environment (now the Department) dated October 2018
Exempt or complying development	Has the same meaning as the definition of the terms in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
Heavy Vehicle	Has the same meaning as in the *Heavy Vehicle National Law* (NSW)
Heritage Council	Heritage Council of NSW
Heritage item	A place, building, work, relic, archaeological site, tree, movable object or precinct of heritage significance, that is listed under one or more of the following registers: the State Heritage Register under the *Heritage Act 1977* (NSW), a state agency heritage and conservation register under section 170 of the *Heritage Act 1977* (NSW), a Local Environmental Plan under the EP&A Act, the World, National or Commonwealth Heritage lists under the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth), and an "Aboriginal object" or "Aboriginal place" as defined in section 5 of the *National Parks and Wildlife Act 1974* (NSW)
Heritage NSW	Heritage NSW, Department of Premier and Cabinet or its predecessor agencies
Highly noise affected	As defined in the ICNG

Term	Definition
Highly noise intensive works	Works which are defined as annoying under the ICNG, including: (a) use of power saws, such as used for cutting timber, rail lines, masonry, road pavement or steel work; (b) grinding metal, concrete or masonry; (c) rock drilling; (d) line drilling; (e) vibratory rolling; (f) bitumen milling or profiling; (g) jackhammering, rock hammering or rock breaking; (h) rail tamping and regulating; and (i) impact piling.
ICNG	*Interim Construction Noise Guideline* (DECC, 2009)
Incident	An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be or cause a non-compliance with the conditions of this approval *Note: "material harm" is defined in this approval*
IPIAP	Independent Property Impact Assessment Panel
Land	Has the same meaning as the definition of the term in section 1.4 of the EP&A Act
Landowner	Has the same meaning as "owner" in the Local Government Act 1993 (NSW) and in relation to a building means the owner of the building
Local road	Any road that is not defined as a classified road under the *Roads Act 1993* (NSW)

Term	Definition
Low Impact Work	Includes: (a) survey work including carrying out general alignment survey, installing survey controls (including installation of global positioning systems (GPS)), installing repeater stations, carrying out surveys of existing and future utilities and building and road dilapidation surveys; (b) investigations including investigative drilling, contamination investigations and excavation; (c) site establishment work approved under a **Site Establishment Management Plan**; (d) operation of ancillary facilities if the **ER** has determined the operational activities will have minimal impact on the environment and community; (e) minor clearing and relocation of native vegetation, as identified in the documents listed in **Condition A1** of **Schedule 3**; (f) installation of mitigation measures including erosion and sediment controls, temporary exclusion fencing for sensitive areas and acoustic treatments; (g) property acquisition adjustment work including installation of property fencing, and relocation and adjustments of utilities to property including water supply and electricity; (h) relocation and connection of utilities where the relocation or connection has a minor impact to the environment as determined by the **ER**; (i) archaeological testing under the *Code of practice for archaeological investigation of Aboriginal objects in NSW (DECCW, 2010)* or archaeological monitoring undertaken in association with (a)-(h) above to ensure that there is no impact on Heritage items; (j) archaeological testing for historical archaeological resources to identify and seek to reduce impact on state significant archaeology where it is proposed, ahead of construction or in association with (a)-(h) above; (k) maintenance of existing buildings and structures required to facilitate the carrying out of the CSSI; and (l) other activities determined by the **ER** to have minimal environmental impact which may include but not limited to construction of minor access roads, temporary relocation of pedestrian and cycle paths and the provision of property access. However, where Heritage items on the State heritage register, areas of known or expected archaeological potential, or threatened species or threatened ecological communities (within the meaning of the BC Act) are affected by any **Low Impact Work**, that work is construction, unless otherwise determined by the Planning Secretary in consultation with Heritage NSW, DPIE EES or DPI Fisheries (in the case of impact upon fish, aquatic invertebrates or marine vegetation). The low impact work described in this definition becomes Construction with the approval or endorsement of a **CEMP**. Where **Low Impact Work** has already commenced, this is considered to remain as **Low Impact Work** and is managed in accordance with the framework under which it commenced.

Term	Definition
Material harm	Is harm that: (a) involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial, or (b) results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding $10,000, (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good the harm to the environment)
Minister	NSW Minister for Planning and Public Spaces
NML	Noise Management Level as defined in the ICNG
Non-compliance	An occurrence or set of circumstances or development that is a breach of this approval
NSW WQO	*NSW Water Quality Objectives*
Operation	The commencement of paid services.
POEO Act	*Protection of the Environment Operations Act 1997* (NSW)
Planning Secretary	Planning Secretary of the Department (or nominee, whether nominated before or after the date on which this approval was granted)
Proponent	The person identified as such in Schedule 1 of this approval and any other person carrying out any part of the CSSI from time to time
Relic	Has the same meaning as the definition of the term in section 4 of the *Heritage Act 1977* (NSW)
RAPs	Registered Aboriginal Parties
RBL	Rating background noise level
Relevant Council(s)	Any or all as relevant, Cumberland City, City of Parramatta, Strathfield, City of Canada Bay, Burwood, Inner West or City of Sydney
Relevant Roads Authority	The same meaning as the roads authority defined in the *Roads Act 1993* (NSW)
Sensitive land use(s)	Includes residences, educational institutions (including preschools, schools, universities, TAFE colleges), health care facilities (including nursing homes, hospitals), religious facilities (including churches), child care centres and passive recreation areas (including outdoor grounds used for teaching). Receivers that may be considered to be sensitive include commercial premises (including film and television studios, research facilities, entertainment spaces, temporary accommodation such as caravan parks and camping grounds, restaurants, office premises, and retail spaces), and industrial premises as identified by the Planning Secretary *Note: For the purpose of determining appropriate mitigation, a multi-storey residential flat building must not be counted as a* single *sensitive receiver.*
SES	NSW State Emergency Services
SHR	State Heritage Register

Term	Definition
Sleep disturbance event	Where the subject development / premises night-time noise levels at a residential location exceed: (a) $L_{Aeq,15min}$ 40 dB(A) or the prevailing RBL plus 5 dB, whichever is the greater, and / or (b) L_{AFmax} 52 dB(A) or the prevailing RBL plus 15 dB, whichever is the greater.
SMART principles	Specific, Measurable, Achievable, Realistic, and Timely
SOPA	Former Sydney Olympic Park Authority, now part of Place Management NSW
Stage 1 or future stages	As described by the documents listed in **Condition A1** of **Schedule 3**
Submissions Report	The Proponent's response to issues raised in submissions received in relation to the application for approval for the CSSI under the EP&A Act
TBM	Tunnel Boring Machine
TfNSW	Transport for NSW
Tree	Long lived woody perennial plant greater than (or usually greater than) three (3) metres in height with one or relatively few main stems or trunks (AS4373-2007 Pruning of amenity trees)
Unexpected heritage find	An object or place that is discovered during the carrying out of the CSSI and which may be a Heritage item but was not identified in the documents listed in **Condition A1** of **Schedule 3** or suspected to be present. An unexpected heritage find does not include human remains
Work	Any physical work to construct or facilitate the construction of the CSSI, including **Low Impact Work**, environmental management measures and utility work. However, does not include activities that informs or enables detailed design of the CSSI or generates noise that is not more than 5 dB(A) above the RBL at any sensitive land user(s)

SUMMARY OF REPORTING REQUIREMENTS

Reports and notifications that must be provided to the Planning Secretary under the conditions of this approval are listed in **Table 2.** Note that under **Condition A9** of **Schedule 3** of this approval the Proponent may seek the Planning Secretary's agreement to a later timeframe for submission (other than in relation to the immediate written notification of an incident required under **Condition A9 of Schedule 3**).

Table 2: Reports and Notifications that must be submitted to the Planning Secretary

Condition	Report / Notification	Timing[1]	Purpose
Part A – Administrative (Stage 1)			
A10	Phasing Report	One month before commencement of construction of the first of the proposed phases	Information
A18	Site Establishment Management Plan (except for Silverwater or any other expressly nominated by the Planning Secretary)	One month before the establishment of the relevant ancillary facility	Approval
A19 A30(e)	Site Establishment Management Plan (Silverwater and any other expressly nominated by the Planning Secretary)	As soon as practicable after endorsement by the ER	Information
A27	Environmental Representative	Must be approved before the commencement of work	Approval
A30(e)	Documents requiring ER endorsement only	As soon as practicable after endorsement by the ER	Information
A30(k)	Environmental Representative Monthly Reports	Within seven (7) days following the end of each month for the duration of the ER's engagement	Information
A33	Acoustic Advisor	Must be approved before the commencement of work	Approval
A40	Independent Auditors	Must be approved before the commencement of an Independent Audit	Approval
A42	Independent Audit Reports and Proponent's response	Within two (2) months of undertaking the independent audit site inspection	Information
A43	Initial notification of incident	Immediately upon becoming aware of the incident via phone or writing. Subsequent written notification within 24 hours if originally notified via phone	Information
A45	Written notification of non-compliance	Non-compliance notification required in writing seven (7) days after the Proponent becomes aware of the non-compliance	Information

[1] Where a project is phased, all required approvals must be obtained before the commencement of the relevant stage.

Condition	Report / Notification	Timing[1]	Purpose
Part B - Communication Information and Reporting (Stage 1)			
B6	Complaints Register	Upon request of the Planning Secretary	Information
Part C - Construction Environmental Management (Stage 1)			
C2 C4	CEMPs (except for any CEMPs expressly nominated by the Planning Secretary to be endorsed by the ER only)	One month before the commencement of construction or where construction is phased no later than one (1) month before the commencement of that phase	Approval
C7 C9	CEMP Sub-plans (except for any sub-plans expressly nominated by the Planning Secretary to be endorsed by the ER only)	One month before the commencement of construction or where construction is phased no later than one (1) month before the commencement of that phase	Approval
C18 C20	Construction Monitoring Programs (except for any programs expressly nominated by the Planning Secretary to be endorsed by the ER only)	One month before the commencement of construction or where construction is phased no later than one (1) month before the commencement of that phase	Approval
C23	Construction Monitoring Report	As specified in Construction Monitoring Programs	Information
Part D – Key Issues (Stage 1)			
Biodiversity and Trees			
D6	Evidence of Credit Retirement	Within one month of receiving evidence of retirement of credits / certificate of payment	Information
Heritage			
D27	Excavation Director	Before the commencement of archaeological excavation	Approval
D29	Final Excavation Report and Aboriginal Cultural Heritage Excavation Report	No later than 24 months after the completion of the work	Information
D32	Unexpected Heritage Finds and Human Remains Procedure	One month before commencement of construction	Information
Noise and Vibration			
D37(a)(ii)	Variation to Work Hours	On becoming aware of the need for emergency work	Information
D38	Out-of-Hours Work Protocol	Before the commencement of out-of-hours works	Approval

Condition	Report / Notification	Timing[1]	Purpose
D43	Detailed Noise and Vibration Impact Statements	Upon request of the Planning Secretary	Information
D51	Out-of-Hours Works Community Consultation Outcomes on Respite	Upon completion of the outcomes of community consultation	Information
D57	Blast Management Strategy	One month before the commencement of blasting	Information
Socio-economic, Land Use and Property			
D64	Independent Property Impact Assessment Panel	Planning Secretary to be informed of the members of the panel after its establishment	Information
D66	Settlement Monitoring	Upon request of the Planning Secretary	Information
D68	Community Benefit Plan(s)	Before commencement of construction	Information
D70	Small Business Owners Engagement Plan(s)	Before commencement of construction at the relevant construction site	Information
Soils and Contamination			
D75	Site Audit Statement and Site Audit Report	Before the commencement of operation	Information
D76	Detailed Site Investigation Report(s), Remedial Action Plan(s), Validation Report(s), Site Audit Report(s) and Site Audit Statement(s)	As soon as practicable following receipt of the final report(s)	Information
Traffic and Transport			
D83	Heavy Vehicle Monitoring	Upon request of the Planning Secretary	Information
D85	Construction Traffic Management Plans	Before commencement of construction in the area identified and managed within the relevant CTMP	Information
D86	Additional Local Roads to be Used by Heavy Vehicles	Before the use of the additional local road	Approval
D92	Construction Parking and Access Strategy	One month before the commencement of construction	Approval
D97	Road Safety Audits	Upon request of the Planning Secretary	Information
Urban Design and Visual Amenity			
D107	Visual Amenity, Solar Access and	Within one month prior to the installation of the acoustic shed at the Five Dock Metro station eastern construction site	Approval

Condition	Report / Notification	Timing[1]	Purpose
	Overshadowing Report		
Water			
D122	Groundwater Modelling Report	Before bulk excavation at the relevant construction location	Information

*Note: This **Table 2** is not a condition of this approval. If there is an inconsistency between a requirement in **Table 2** and a requirement in a condition, the requirement of the condition prevails.*

SCHEDULE 2

CONDITIONS OF APPROVAL FOR CONCEPT PROPOSAL

PART C-A

ADMINISTRATIVE CONDITIONS

GENERAL

C-A1 Approval is granted to the 'Concept' as described in Schedule 1 and in Chapter 6 and in Chapter 7 of the *Sydney Metro West – Westmead to The Bays and Sydney CBD Environmental Impact Statement* dated 15 April 2020, as amended by the following:

(a) *Sydney Metro West – Westmead to The Bays and Sydney CBD Amendment Report* dated 20 November 2020; and
(b) *Sydney Metro West – Westmead to The Bays and Sydney CBD Submissions Report* dated 20 November 2020.

C-A2 The Proponent must carry out the CSSI Concept in accordance with the conditions of this approval and the documents listed in **Condition C-A1** of this schedule unless otherwise specified in, or required under, the conditions of this approval.

C-A3 In the event of an inconsistency between:

(a) the conditions of this approval and any document listed in **Condition C-A1** of this schedule inclusive, the conditions of this approval will prevail to the extent of the inconsistency; and
(b) any document listed in **Condition C-A1** of this schedule, the most recent document will prevail to the extent of the inconsistency.

Note: For the purpose of this condition, there will be an inconsistency between a term of this approval and any document if it is not possible to comply with both the term and the document.

C-A4 Except to the extent described in any document listed in **Condition C-A1** of this schedule, any over station development, including any future uses, does not form part of this CSSI and will be subject to the relevant assessment pathway prescribed by the EP&A Act.

PART C-B

KEY ISSUE CONDITIONS

PLACE AND DESIGN

Place and Design

C-B1 To ensure that a high-quality urban design response is achieved, the CSSI must have regard to, and be generally consistent with, the place and design principles for each location outlined in the documents listed in **Condition C-A1** of this schedule, unless expressly specified in the conditions of this approval.

Clyde Stabling and Maintenance Facility Site

C-B2 For the relevant future stage application, the following must be considered at the Clyde Maintenance and Stabling Facility site:

(a) publicly-accessible active transport corridors immediately around the site adjoining James Ruse Drive that connects to existing and future links and open spaces;
(b) public spaces for recreational use on residual land to offset the loss of the private recreational land, or any alternate and commensurate opportunity that achieves the objective and provides value for money, developed in consultation with City of Parramatta Council;
(c) renaturalisation of parts of Duck Creek and A'Becketts Creek and rehabilitation of the riparian corridor; and
(d) integration with strategic planning for the precinct.

Parramatta Metro Station Site

C-B3 The delivery of the section of the future Parramatta Civic Link located on the Parramatta metro station construction site must be facilitated to enable completion before operation of the CSSI.

ABORIGINAL AND NON-ABORIGINAL HERITAGE

C-B4 The relevant future stage application relating to the design of stations must include a **Heritage Interpretation Strategy**, prepared in consultation with Heritage NSW, which outlines how key Aboriginal and non-Aboriginal heritage values and stories of Heritage items will be interpreted in the project design, including station and precinct urban design. The **Heritage Interpretation Strategy** must include procedures for how to include results of archaeological findings (historical and Aboriginal archaeological results) when they become available.

C-B5 The **Heritage Interpretation Strategy** must be prepared in accordance with the *NSW Heritage Manual*, the NSW Heritage Office's *Interpreting Heritage Places and Items: Guidelines* (August 2005), and the NSW Heritage Council's *Heritage Interpretation Policy*.

C-B6 The **Heritage Interpretation Strategy** must include, but not be limited to:

(a) a discussion of key interpretive themes, stories and messages proposed to interpret the history and significance of archaeological excavation, the affected Heritage items and sections of heritage conservation areas (if applicable);
(b) options for the re-purposing of archaeological finds (results and artefacts), heritage features or listed items salvaged or protected during construction stages of the CSSI, and how they will be integrated into the final project design;
(c) Aboriginal cultural and heritage values of the project area including the results of any archaeological investigations undertaken (or any interim results of any archaeological investigations that have commenced but have yet to be completed) and key socio-cultural values identified in the **Aboriginal Cultural Heritage Assessment Report** referred to in **Condition C-A1** of this schedule, and those of any future stages of the CSSI;
(d) details of the audience, potential devices to be employed in interpretation, possible locations for interpretation and how this will be incorporated into design;

(e) engagement with the Relevant Council(s) and regard for any relevant council heritage interpretation guidelines; and
(f) with respect to the Parramatta construction site and (a) above, any discussion must include how the heritage interpretation of the CSSI relates to the heritage interpretations of other projects in Parramatta, including State Significant Development projects and other SSI projects.

SUSTAINABILITY

C-B7 The CSSI must achieve a minimum Infrastructure Sustainability Council of Australia (ISCA) Infrastructure Sustainability rating of 75 (Version 1.2) (or equivalent level of performance using a demonstrated equivalent rating tool) or a 5-Star Green Star rating (or equivalent level of performance using a demonstrated equivalent rating tool).

BIODIVERSITY AND TREES

C-B8 As many mature trees as practicable must be retained. In addition, within ten (10) years of the date of this approval or no later than the commencement of operation of the CSSI (whichever is earlier) there must be a net increase in the number of mature trees provided at a ratio of 2:1.

C-B9 The CSSI must result in an increase in tree canopy coverage.

C-B10 Parts of Duck Creek and A'Becketts Creek that remain open channels at the Clyde Stabling and Maintenance Facility site must be rehabilitated and / or renaturalised before operation of the CSSI commences. Only species that are representative of PCT 920 (Mangrove Forests in estuaries of the Sydney Basin Bioregion and South East Corner Bioregion) must be used in the revegetation of the riparian zone along the open channels to Duck Creek and A'Becketts Creek.

CLIMATE CHANGE

C-B11 The CSSI must be designed to withstand known impacts associated with climate change to year 2100.

SCHEDULE 3

CONDITIONS OF APPROVAL FOR STAGE 1

PART A

ADMINISTRATIVE CONDITIONS

GENERAL

A1 The Proponent must carry out Stage 1 of the CSSI in accordance with the conditions of this approval and generally in accordance with the:

(a) *Sydney Metro West – Westmead to The Bays and Sydney CBD Environmental Impact Statement* dated 15 April 2020;
(b) *Sydney Metro West – Westmead to The Bays and Sydney CBD Submissions Report* dated 20 November 2020; and
(c) *Sydney Metro West – Westmead to The Bays and Sydney CBD Amendment Report* dated 20 November 2020.

A2 Stage 1 of the CSSI must only be carried out in accordance with all procedures, commitments, preventative actions, performance criteria and mitigation measures set out in the documents listed in **Condition A1** of this schedule unless otherwise specified in, or required under, this approval.

A3 In the event of an inconsistency between:

(a) the conditions of this approval and any document listed in **Condition A1** of this schedule, the conditions of this approval will prevail to the extent of the inconsistency; and
(b) any document listed in **Condition A1** of this schedule, the most recent document will prevail to the extent of the inconsistency.

Note: For the purpose of this condition, there is an inconsistency between a term of this approval and any document if it is not possible to comply with both the term and the document.

A4 In the event that there are differing interpretations of the conditions of this approval, including in relation to a condition of this approval, the Planning Secretary's interpretation is final.

A5 The Proponent must comply with all written requirements or directions of the Planning Secretary, including in relation to:

(a) the environmental performance of Stage 1 of the CSSI;
(b) any document or correspondence in relation to Stage 1 of the CSSI;
(c) any notification given to the Planning Secretary under the conditions of this approval;
(d) any audit of Stage 1 of the CSSI;
(e) the conditions of this approval and compliance with the conditions of this approval (including anything required to be done under this approval);
(f) the carrying out of any additional monitoring or mitigation measures; and
(g) in respect of ongoing monitoring and management obligations, compliance with an updated or revised version of a guideline, protocol, Australian Standard or policy required to be complied with under the conditions of this approval.

A6 Where the conditions of this approval require a document or monitoring program to be prepared, or a review to be undertaken, in consultation with identified parties, evidence of the consultation undertaken must be submitted to the Planning Secretary with the document. The evidence must include:

(a) documentation of the engagement with the party identified in the condition of approval that has occurred before submitting the document for approval;
(b) a log of the dates of engagement or attempted engagement with the identified party and a summary of the issues raised by them;
(c) documentation of the follow-up with the identified party(s) where feedback has not been provided to confirm that the party(s) has none or has failed to provide feedback after repeated requests;
(d) outline of the issues raised by the identified party(s) and how they have been addressed; and
(e) a description of the outstanding issues raised by the identified party(s) and the reasons why they have not been addressed.

A7 This approval lapses five (5) years after the date on which it is granted, unless work has physically commenced on or before that date.

A8 References in the conditions of this approval to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, standards or policies in the form they are in as at the date of this approval.

A9 Any document that must be submitted or action taken within a timeframe specified in or under the conditions of this approval may be submitted or undertaken within a later timeframe agreed with the Planning Secretary. This condition does not apply to the written notification required in respect of an incident under **Condition A43** of this schedule.

PHASING

A10 Stage 1 of the CSSI may be constructed in phases. Where phased construction is proposed, a **Phasing Report** must be prepared and submitted to the Planning Secretary for information. The **Phasing Report** must be submitted to the Planning Secretary for information no later than one (1) month before the commencement of construction of the first of the proposed phases of construction.

A11 The **Phasing Report** must:

(a) set out how construction of the whole of Stage 1 of the CSSI will be phased, including details of work and other activities to be carried out in each phase and the general timing of when construction of each phase will commence and finish;
(b) specify the relevant conditions that apply to each phase and how compliance with conditions will be achieved across and between each of the phases of Stage 1 of the CSSI;
(c) set out mechanisms for managing any cumulative impacts arising from the proposed phasing; and
(d) include an assessment of the predicted level of environmental risk and potential level of community concern posed by the construction activities required to construct each phase of Stage 1 of the CSSI.

With respect to (d) above, the risk assessment must use an appropriate process consistent with AS/NZS ISO 31000: 2009; Risk Management - Principles and Guidelines and must be endorsed by the **ER**.

A12 Stage 1 of the CSSI must be phased in accordance with the **Phasing Report,** as submitted to the Planning Secretary for information.

A13 Where phasing is proposed, the conditions of this approval that apply or are relevant to the work or activities to be carried out in a specific phase must be complied with at the relevant time for that phase.

A14 Where changes are proposed to the phasing of construction, a revised **Phasing Report** must be prepared and submitted to the Planning Secretary for information before the commencement of changes to the phasing of construction.

A15 With the approval of the Planning Secretary, the Proponent may submit any strategies, plans or programs required by this approval on a progressive basis within each phase of Stage 1 of the CSSI.

Notes:

1. *While any strategy, plan or program may be submitted on a progressive basis, the Proponent will need to ensure that the existing activities on site are covered by suitable strategies, plans or programs at all times; and*
2. *If the submission of any strategy, plan or program is to be submitted on a progressive basis, then the relevant strategy, plan or program must clearly describe the activities to which the strategy, plan or program applies, the relationship of this activity to any future activities within the phase, and the trigger for updating the strategy, plan or program.*

ANCILLARY FACILITIES

Ancillary facilities

A16 Ancillary facilities that are not identified by description and location in the documents listed in **Condition A1** of this schedule can only be established and used in each case if:

(a) they are located within or immediately adjacent to the Construction Boundary; and
(b) they are not located next to sensitive land user(s) (including where an access road is between the facility and the receiver), unless the landowner and occupier have given written acceptance to the carrying out of the relevant facility in the proposed location; and
(c) they have no impacts on Heritage items (including areas of archaeological sensitivity), threatened species, populations or ecological communities beyond the impacts approved under the conditions of this approval; and
(d) the establishment and use of the facility can be carried out and managed within the outcomes set out in the conditions of this approval, including in relation to environmental, social and economic impacts.

*Note: This condition does not apply to any ancillary facilities or work that are exempt or complying development, established before the commencement of construction under this approval or minor ancillary facilities established under **Condition A21** of this schedule.*

SITE ESTABLISHMENT WORK

Site Establishment Management Plan

A17 Before establishment of any ancillary facility (excluding exempt or complying development, minor ancillary facilities determined by the **ER** to have minimal environmental impact and those established under **Condition A21** of this schedule, and those considered in an approved **CEMP**), the Proponent must prepare a **Site Establishment Management Plan** which outlines the environmental management practices and procedures to be implemented for the establishment of the ancillary facilities. The **Site Establishment Management Plan** must be prepared in consultation with the Relevant Council(s) and relevant government agencies. The **Site Establishment Management Plan** must include:

(a) a description of activities to be undertaken during establishment of the ancillary facility (including scheduling and duration of work to be undertaken at the site);
(b) figures illustrating the proposed operational site layout and the location of the closest sensitive land user(s);

(c) a program for ongoing analysis of the key environmental risks arising from the site establishment activities described in subsection (a) of this condition, including an initial risk assessment undertaken before the commencement of site establishment work;
(d) details of how the site establishment activities described in subsection (a) of this condition will be carried out to:
    (i) meet the performance outcomes stated in the documents listed in **Condition A1** of this schedule, and
    (ii) manage the risks identified in the risk analysis undertaken in subsection (c) of this condition; and
(e) a program for monitoring the performance outcomes, including a program for construction noise monitoring, where appropriate or required.

Nothing in this condition prevents the Proponent from preparing individual **Site Establishment Management Plans** for each ancillary facility.

A18 With the exception of a **Site Establishment Management Plan** relating to the Silverwater ancillary facility referred to in **Condition A19** below and any other **Site Establishment Management Plan** expressly nominated by the Planning Secretary to be endorsed by the **ER**, all **Site Establishment Management Plans** must be submitted to the Planning Secretary for approval one (1) month before the establishment of any ancillary facilities.

A19 A **Site Establishment Management Plan** relating to the Silverwater ancillary facility and any other **Site Establishment Management Plan** expressly nominated by the Planning Secretary must be submitted to the **ER** for endorsement one (1) month before the establishment of that ancillary facility or as otherwise agreed with the **ER**.

Use of Ancillary Facilities

A20 The use of an ancillary facility for construction must not commence until the **CEMP** required by **Condition C1** of this schedule, relevant **CEMP Sub-plans** required by **Condition C5** of this schedule and relevant **Construction Monitoring Programs** required by **Condition C14** of this schedule have been approved by the Planning Secretary or endorsed by the **ER** (whichever is applicable).

*Note: This condition does not apply to **Condition A21** of this schedule or where the use of an ancillary facility is Low Impact Work or for Low Impact Work.*

Minor Ancillary Facilities

A21 Lunch sheds, office sheds, portable toilet facilities, and the like, can be established and used where they have been assessed in the documents listed in **Condition A1** of this schedule or satisfy the following criteria:

(a) are located within or adjacent to the Construction Boundary; and
(b) have been assessed by the **ER** to have:
    (i) minimal amenity impacts to surrounding residences and businesses, after consideration of matters such as compliance with the ICNG, traffic and access impacts, dust and odour impacts, and visual (including light spill) impacts, and
    (ii) minimal environmental impact with respect to waste management and flooding, and
    (iii) no impacts on biodiversity, soil and water, and Heritage items beyond those already approved under other conditions of this approval.

Boundary screening

A22 Boundary screening must be erected around ancillary facilities that are adjacent to sensitive land user(s) for the duration that the ancillary facility is in use unless otherwise agreed with relevant affected residents, business operators or landowners.

A23 Boundary screening required under **Condition A22** of this schedule must minimise visual impacts on adjacent sensitive land user(s).

INDEPENDENT APPOINTMENTS

A24 All **Independent Appointments** required by the conditions of this approval must hold current membership of a relevant professional body, unless otherwise agreed by the Planning Secretary.

A25 The Planning Secretary may at any time commission an audit of how an **Independent Appointment** has exercised their functions. The Proponent must:

(a) facilitate and assist the Planning Secretary in any such audit; and
(b) make it a term of their engagement of an **Independent Appointment** that the **Independent Appointment** facilitate and assist the Planning Secretary in any such audit.

A26 Upon completion of an audit under **Conditions A25** above, the Planning Secretary may withdraw its approval of an **Independent Appointment** should they consider the **Independent Appointment** has not exercised their functions in accordance with this approval.

*Note: **Conditions A25** and **A26** of this schedule apply to all **Independent Appointments** including the **ER**, **AA** and **Independent Auditor**.*

ENVIRONMENT REPRESENTATIVE

A27 Work must not commence until an **Environmental Representative** (**ER**) has been nominated by the Proponent and approved by the Planning Secretary.

A28 The proposed **ER** must be a suitably qualified and experienced person(s) who was not involved in the preparation of the documents listed in **Condition A1** of this schedule, and is independent from the design and construction personnel for the CSSI and those involved in the delivery of it.

A29 The Proponent may engage more than one **ER** for Stage 1 of the CSSI, in which case the functions to be exercised by an **ER** under the conditions of this approval may be carried out by any **ER** that is approved by the Planning Secretary for the purposes of Stage 1 of the CSSI. The **ER** must meet the requirements of the Department's *Environmental Representative Protocol* (DPE, 2018). The appointment of the **ER** must have regard to the Department's guideline *Seeking approval from the Department for the appointment of independent experts* (DPIE, 2020).

A30 For the duration of the work or as agreed with the Planning Secretary, the approved **ER** must:

(a) receive and respond to communication from the Planning Secretary in relation to the environmental performance of Stage 1 of the CSSI;
(b) consider and inform the Planning Secretary on matters specified in the conditions of this approval;
(c) consider and recommend to the Proponent any improvements that may be made to work practices to avoid or minimise adverse impact to the environment and to the community;
(d) review documents identified in **Conditions A10**, **A17**, **A19**, **C1**, **C5** and **C14** of this schedule and any other documents that are identified by the Planning Secretary, to ensure they are consistent with requirements in or under this approval and if so:
    (i) endorse the documents before submission of such documents to the Planning Secretary (if those documents are required to be approved by the Planning Secretary); or
    (ii) endorse the documents before the implementation of such documents (if those documents are only required to be submitted to the Planning Secretary / Department for information or are not required to be submitted to the Planning Secretary / Department);
(e) for documents that are required to be submitted to the Planning Secretary / Department for information under **(d)(ii)** above, the documents must be submitted as soon as practicable to the Planning Secretary / Department after endorsement by the **ER**, unless otherwise agreed by the Planning Secretary;
(f) regularly monitor the implementation of the documents listed in **Conditions A10**, **A17**, **A19**, **C1**, **C5** and **C14** of this schedule to ensure implementation is being carried out in accordance with the document and the conditions of this approval;

(g) as may be requested by the Planning Secretary, help plan or attend audits of the development commissioned by the Department including scoping audits, programming audits, briefings and site visits, but not independent environmental audits required under **Condition A39** of this schedule;
(h) as may be requested by the Planning Secretary, assist in the resolution of community complaints received directly by the Department;
(i) consider or assess the impacts of minor ancillary facilities comprising lunch sheds, office sheds and portable toilet facilities as required by **Condition A21** of this schedule; and
(j) consider any minor amendments to be made to the **Site Establishment Management Plan**, **CEMP**, **CEMP Sub-plans** and construction monitoring programs without increasing impacts to nearby sensitive receivers, and are consistent with the conditions of this approval and the **Site Establishment Management Plan**, **CEMP**, **CEMP Sub-plans** and construction monitoring programs approved by the Planning Secretary and, if satisfied such amendment is necessary, approve the amendment. This does not include any modifications to the conditions of this approval;
(k) prepare and submit to the Planning Secretary and other relevant regulatory agencies, for information, an **Environmental Representative Monthly Report** providing the information set out in the Environmental Representative Protocol under the heading "Environmental Representative Monthly Reports". The **Environmental Representative Monthly Report** must be submitted within seven (7) days following the end of each month for the duration of the ER's engagement for Stage 1 of the CSSI, or as otherwise agreed by the Planning Secretary; and
(l) assess the impacts of activities as required by the **Low Impact Work** definition.

With respect to **(d)** above, the **ER** is not required to endorse the specialist content in documents requiring specialist review and / or endorsement.

A31 The Proponent must provide the **ER** with all documentation requested by the **ER** in order for the **ER** to perform their functions specified in **Condition A30** of this schedule (including preparation of the **ER** monthly report), as well as:

(a) the **Complaints Register** (to be provided on a weekly basis or as requested); and
(b) a copy of any assessment carried out by the Proponent of whether proposed work is consistent with the approval (which must be provided to the **ER** before the commencement of the subject work).

ACOUSTICS ADVISOR

A32 A suitably qualified and experienced **Acoustics Advisor(s)** (**AA**) in noise and vibration management, who is independent of the design and construction personnel, must be nominated by the Proponent and engaged for the duration of work (as required by **Condition A35** of this schedule) and for no less than six (6) months following completion of construction of Stage 1 of the CSSI.

A33 Work must not commence until an **AA** has been nominated by the Proponent and approved by the Planning Secretary.

A34 The Proponent must cooperate with the **AA** by:

(a) providing access to noise and vibration monitoring activities as they take place;
(b) providing access to the **Complaints Register** if requested;
(c) providing for review of noise and vibration documents required to be prepared under the conditions of this approval; and
(d) considering any recommendations to improve practices and demonstrating, to the satisfaction of the **AA**, why any recommendation is not adopted.

A35 The Proponent may nominate additional suitably qualified and experienced persons to assist the lead **AA** for the Planning Secretary's approval.

A36 The approved **AA** must:

(a) receive and respond to communication from the Planning Secretary in relation to the performance of Stage 1 of the CSSI in relation to noise and vibration;
(b) consider and inform the Planning Secretary on matters specified in the conditions of this approval relating to noise and vibration;
(c) consider and recommend, to the Proponent, improvements that may be made to avoid or minimise adverse noise and vibration impacts;
(d) review all proposed night-time works (with the exception of low risk activities) to determine if sleep disturbance would occur and recommend measures to avoid sleep disturbance or appropriate additional alternative mitigation measures;
(e) review all noise and vibration documents required to be prepared under the conditions of this approval and, should they be consistent with the conditions of this approval, endorse them before submission to the Planning Secretary (if required to be submitted to the Planning Secretary) or before implementation (if not required to be submitted to the Planning Secretary);
(f) regularly monitor the implementation of all noise and vibration documents required to be prepared under the conditions of this approval to ensure implementation is in accordance with what is stated in the document and the conditions of this approval;
(g) review the Proponent's notification of incidents in accordance with **Condition A43** of this schedule;
(h) in conjunction with the **ER** (where required), the **AA** must:
    (i) as may be requested by the Planning Secretary or **Community Complaints Mediator** (required by **Condition B8** of this schedule), help plan, attend or undertake audits of noise and vibration management of Stage 1 of the CSSI including briefings, and site visits,
    (ii) in the event that conflict arises between the Proponent and the community in relation to the noise and vibration performance of Stage 1 of the CSSI, follow the procedure in the **Overarching Community Communication Strategy** referenced in **Condition B1** of this schedule to attempt to resolve the conflict, and if it cannot be resolved, notify the Planning Secretary,
    (iii) if requested by the **ER**, consider relevant minor amendments made to the **Site Establishment Management Plan**, **CEMP**, relevant sub-plans and noise and vibration monitoring programs that require updating or are of an administrative nature, and are consistent with the conditions of this approval and the management plans and monitoring programs approved by the Planning Secretary and, if satisfied such amendment is necessary, endorse the amendment, (this does not include any modifications to the conditions of this approval),
    (iv) if requested by the **ER**, review the noise impacts of minor ancillary facilities, and
    (v) prepare and submit to the Planning Secretary and other relevant regulatory agencies, for information, a **Monthly Noise and Vibration Report** detailing the **AA**'s actions and decisions on matters for which the **AA** was responsible in the preceding month. The **Monthly Noise and Vibration Report** must be submitted within seven (7) days following the end of each month for the duration of the **AA**'s engagement for Stage 1 of the CSSI, or as otherwise agreed by the Planning Secretary.

NOTIFICATION OF COMMENCEMENT

A37 The Department must be notified in writing of the date of commencement of construction before the commencement of construction.

A38 If construction of Stage 1 of the CSSI is to be phased, the Department must be notified in writing before the commencement of each phase, of the date of the commencement of that phase.

INDEPENDENT ENVIRONMENTAL AUDIT

A39 **Independent Audits** of Stage 1 of the CSSI must be conducted and carried out in accordance with the *Independent Audit Post Approval Requirements* (DPIE, 2020).

A40 Proposed independent auditors must be approved by the Planning Secretary before the commencement of an **Independent Audit**.

A41 The Planning Secretary may require the initial and subsequent **Independent Audits** to be undertaken at different times to those specified in the *Independent Audit Post Approval Requirements* (DPIE, 2020), upon giving at least four (4) weeks' notice (or timing as stipulated by the Planning Secretary) to the Proponent of the date upon which the audit must be commenced.

A42 **Independent Audit Reports** and the Proponent's response to audit findings must be submitted to the Planning Secretary within two (2) months of undertaking the independent audit site inspection as outlined in the *Independent Audit Post Approval Requirements* (DPIE, 2020), unless otherwise agreed by the Planning Secretary.

INCIDENT AND NON-COMPLIANCE NOTIFICATION AND REPORTING

A43 The Planning Secretary must be notified via phone or in writing via the Major Projects website immediately after the Proponent becomes aware of an incident. Any notification via phone must be followed up by a notification in writing via the Major Projects website within 24 hours of the initial phone call.

The written notification must identify the CSSI (including the application number and the name of the CSSI if it has one) and set out the location and general nature of the incident.

A44 Subsequent notification must be given and reports submitted in accordance with the requirements set out in **Appendix A**.

A45 The Planning Secretary must be notified in writing via the Major Projects website within seven (7) days after the Proponent becomes aware of any non-compliance with the conditions of this approval.

A46 A non-compliance notification must identify the CSSI (including the application number for it), set out the condition of approval that the development is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be undertaken to address the non-compliance.

Note: A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

IDENTIFICATION OF WORKFORCE

A47 All Heavy Vehicles used for spoil haulage must be clearly marked on the sides and rear with the project name and application number to enable immediate identification by a person viewing the Heavy Vehicle standing 20 metres away.

A48 The CSSI name, application number, telephone number, postal address and email address required under **Condition B3** of this schedule must be available on site boundary fencing / hoarding at each ancillary facility before the commencement of construction. This information must also be provided on the website required under **Condition B11** of this schedule.

PART B

COMMUNITY INFORMATION AND REPORTING

COMMUNITY INFORMATION, CONSULTATION AND INVOLVEMENT

Community Communication

B1 The **Overarching Community Communication Strategy** as provided in the documents listed in **Condition A1** of this schedule must be implemented for the duration of the work.

COMPLAINTS MANAGEMENT SYSTEM

B2 A **Complaints Management System** must be prepared and implemented before the commencement of any work and maintained for the duration of construction and for a minimum for 12 months following completion of construction of Stage 1 of the CSSI.

B3 The following information must be available to facilitate community enquiries and manage complaints before the commencement of work and for 12 months following the completion of construction:

(a) a 24- hour telephone number for the registration of complaints and enquiries about the CSSI;
(b) a postal address to which written complaints and enquires may be sent;
(c) an email address to which electronic complaints and enquiries may be transmitted; and
(d) a mediation system for complaints unable to be resolved.

This information must be accessible to all in the community regardless of age, ethnicity, disability or literacy level.

B4 A **Complaints Register** must be maintained recording information on all complaints received about the CSSI during the carrying out of any work and for a minimum of 12 months following the completion of construction. The **Complaints Register** must record the:

(a) number of complaints received;
(b) date and time of the complaint;
(c) number of people in the household affected in relation to a complaint, if relevant;
(d) method by which the complaint was made;
(e) any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect;
(f) issue of the complaint;
(g) means by which the complaint was addressed and whether resolution was reached, with or without mediation; and
(h) if no action was taken, the reason(s) why no action was taken.

B5 Complainants must be advised of the following information before, or as soon as practicable after, providing personal information:

(a) the Complaints Register may be forwarded to government agencies, including the Department (Department of Planning Industry and Environment, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150), to allow them to undertake their regulatory duties;
(b) by providing personal information, the complainant authorises the Proponent to provide that information to government agencies;
(c) the supply of personal information by the complainant is voluntary; and
(d) the complainant has the right to contact government agencies to access personal information held about them and to correct or amend that information (Collection Statement).

The **Collection Statement** must be included on the Proponent or development website to make prospective complainants aware of their rights under the *Privacy and Personal Information Protection Act 1998* (NSW). For any complaints made in person, the complainant must be made aware of the **Collection Statement**.

B6 The **Complaints Register** must be provided to the Planning Secretary upon request, within the timeframe stated in the request.

*Note: Complainants must be advised that the **Complaints Register** may be forwarded to Government agencies to allow them to undertake their regulatory duties.*

B7 A **Community Complaints Mediator** that is independent of the design and construction personnel must be engaged by the Proponent, upon the referral of the complaint by the **ER** in accordance with the **Overarching Community Communication Strategy**.

B8 The role of the **Community Complaints Mediator** is to provide independent mediation services for any reasonable and unresolved complaint referred by the **ER** where a member of the public is not satisfied by the Proponent's response. Where a **Community Complaints Mediator** is required, a mediator accredited under the National Mediator Accreditation System (NMAS), administered by the Mediator Standards Board must be appointed.

B9 **Community Complaints Mediation** will:

(a) review any unresolved disputes, referred by the **ER** in accordance with the **Overarching Community Communication Strategy**;
(b) make recommendations to the Proponent to satisfactorily address complaints, resolve disputes or mitigate against the occurrence of future complaints or disputes.

B10 **Community Complaints Mediation** will not be enacted before the **Complaints Management System** required by **Condition B2** of this schedule has been executed for a complaint and will not consider issues such as property acquisition, where other dispute processes are provided for in this approval or clear government policy and resolution processes are available, or matters which are not within the scope of this CSSI.

PROVISION OF ELECTRONIC INFORMATION

B11 A website or webpage providing information in relation to the CSSI must be established before commencement of work and maintained for the duration of construction, and for a minimum of 24 months following the completion of all phases of construction of Stage 1 of the CSSI. Up-to-date information (excluding confidential, private, commercial information or other documents as agreed to by the Planning Secretary) must be published before the relevant work commencing and maintained on the website or dedicated pages including:

(a) information on the current implementation status of Stage 1 of the CSSI;
(b) a copy of the documents listed in **Condition A1** of this schedule, and any documentation relating to any modifications made to the CSSI or the conditions of this approval;
(c) a copy of this approval in its original form, a current consolidated copy of this approval (that is, including any approved modifications to its conditions), and copies of any approval granted by the Minister to a modification of the conditions of this approval, or links to the referenced documents where available;
(d) a copy of each statutory approval, licence or permit required and obtained in relation to Stage 1 of the CSSI, or where the issuing agency maintains a website of approvals, licences or permits, a link to that website;
(e) a current copy of each document required under the conditions of this approval, which must be published within one (1) week of its approval or before the commencement of any work to which they relate or before their implementation, as the case may be; and
(f) a copy of the audit reports required under this approval.

Where the information / document relates to a particular work or is required to be implemented, it must be published before the commencement of the relevant work to which it relates or before its implementation.

All information required in this condition is to be provided on the website or webpage, and easy to navigate.

PART C

CONSTRUCTION ENVIRONMENTAL MANAGEMENT

CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

C1 **Construction Environmental Management Plans** (**CEMPs**) and **CEMP Sub-plans** must be prepared in accordance with the **Construction Environmental Management Framework** (**CEMF**) included in the documents listed in **Condition A1** of this schedule to detail how the performance outcomes, commitments and mitigation measures specified in the documents listed in **Condition A1** of this schedule will be implemented and achieved during construction.

C2 With the exception of any **CEMPs** expressly nominated by the Planning Secretary to be endorsed by the **ER**, all **CEMPs** must be submitted to the Planning Secretary for approval.

C3 The **CEMP(s)** not requiring the Planning Secretary's approval must be submitted to the **ER** for endorsement no later than one (1) month before the commencement of construction or where construction is phased no later than one (1) month before the commencement of that phase. That **CEMP** must obtain the endorsement of the **ER** as being consistent with the conditions of this approval and all undertakings made in the documents listed in **Condition A1** of this schedule.

C4 Any **CEMP** to be approved by the Planning Secretary must be endorsed by the **ER** and then submitted to the Planning Secretary for approval no later than one (1) month before the commencement of construction or where construction is phased no later than one (1) month before the commencement of that phase.

C5 Of the **CEMP Sub-plans** required under **Condition C1** of this schedule, the following **CEMP Sub-plans** must be prepared in consultation with the relevant government agencies identified for each **CEMP Sub-plan**. Details of issues raised by a government agency during consultation must be included in the relevant **CEMP Sub-plan**, including copies of all correspondence from those government agencies as required by **Condition A6** of this schedule. Where a government agency (ies) request(s) is not included, the Proponent must provide the Planning Secretary / **ER** (whichever is applicable) justification as to why:

	Required CEMP Sub-plan	Relevant government agencies to be consulted for each CEMP Sub-plan
(a)	Noise and vibration	SOPA (in respect of Sydney Olympic Park), Place Management NSW (in respect of The Bays) and Relevant Council(s)
(b)	Flora and fauna	DPIE EES, DPI Fisheries, SOPA (in respect of Sydney Olympic Park) and Relevant Council(s)
(c)	Soil and water	DPIE EES, Relevant Council(s), SOPA (in respect of Sydney Olympic Park) and Sydney Water (if Sydney Water's assets are affected)
(d)	Heritage (Non-Aboriginal and Aboriginal)	Heritage NSW, SOPA (in respect of Sydney Olympic Park), Place Management NSW (in respect of The Bays) and Relevant Council(s)
(e)	Spoil	Relevant Council(s) and SOPA (in respect of Sydney Olympic Park)

C6 The **CEMP Sub-plans** must state how:

(a) the environmental performance outcomes identified in the documents listed in **Condition A1** of this schedule will be achieved;
(b) the mitigation measures identified in the documents listed in **Condition A1** of this schedule will be implemented;
(c) the relevant conditions of this approval will be complied with; and

(d) issues requiring management during construction (including cumulative impacts), as identified through ongoing environmental risk analysis, will be managed through SMART principles.

C7 With the exception of any **CEMP Sub-plans** expressly nominated by the Planning Secretary to be endorsed by the **ER**, all **CEMP Sub-plans** must be submitted to the Planning Secretary for approval.

C8 The **CEMP Sub-plans** not requiring the Planning Secretary's approval must obtain the endorsement of the **ER** as being in accordance with the conditions of approval and all relevant undertakings made in the documents listed in **Condition A1** of this schedule. Any of these **CEMP Sub-plans** must be submitted to the **ER** with, or subsequent to, the submission of the **CEMP** but in any event, no later than one (1) month before construction or where construction is phased no later than one (1) month before the commencement of that phase.

C9 Any of the **CEMP Sub-plans** to be approved by the Planning Secretary must be submitted to the Planning Secretary with, or subsequent to, the submission of the **CEMP** but in any event, no later than one (1) month before construction or where construction is phased no later than one (1) month before the commencement of that phase.

C10 Construction must not commence until the **CEMP** and all **CEMP Sub-plans** have been approved by the Planning Secretary or endorsed by the **ER** (whichever is applicable), unless otherwise agreed by the Planning Secretary. The **CEMP** and **CEMP Sub-plans**, as approved by the Planning Secretary or endorsed by the **ER** (whichever is applicable), including any minor amendments approved by the **ER,** must be implemented for the duration of construction. Where construction of Stage 1 of the CSSI is phased, construction of a phase must not commence until the **CEMP** and **CEMP Sub-plans** for that phase have been approved by the Planning Secretary or certified by the **ER** upon nomination by the Planning Secretary (whichever is applicable).

C11 In addition to the relevant requirements of the **CEMF**, the **Flora and fauna CEMP Sub-plan** must include, but not be limited to:

(a) site specific mitigation measures to manage impacts (including proposed techniques, timing, frequency and responsibility of implementing);
(b) measures to minimise disturbance to habitat associated with *Myotis macropus* / Southern Myotis, including demolition inspections by a suitably qualified ecologist of any vegetation to be cleared and any buildings or structures identified as potential roosting habitat for microbats that are to be demolished or refurbished;
(c) measures to minimise and mitigate disturbance to mangrove forests at the Clyde Maintenance and Stabling construction site to the extent necessary; and
(d) details for undertaking and mitigating vegetation clearance through improved environmental outcomes.

C12 In addition to the relevant requirements of the **CEMF**, the **Soil and Water CEMP Sub-plan** must include, but not be limited to:

(a) details of construction activities and their locations which have the potential to expose areas known to contain, or potentially contain, contaminated soils and / or materials;
(b) measures for the handling, treatment and management of hazardous and contaminated soils and materials including measures to manage and / or minimise worker and public health and safety with regards to exposure to contamination; and
(c) a description of how the effectiveness of the actions and measures for managing contamination impacts would be monitored during the proposed works, clearly indicating how often this monitoring would be undertaken, the locations where monitoring would take place, and how the results of the monitoring would be recorded and reported.

C13 In addition to the relevant requirements of the **CEMF**, the **Heritage CEMP Sub-plan** must include, but not be limited to:

(a) be prepared in consultation with a suitably qualified and experienced heritage expert;
(b) identify exclusion zones, archival recording requirements, baseline and periodic monitoring protocols (including before and during construction);
(c) identify and assess the heritage significance of the ancillary structures proposed to be demolished or significantly impacted that are within the curtilage of White Bay Power Station and other items identified as retaining 'potential heritage significance' in the documents listed in **Condition A1** of this schedule and which will be impacted by the CSSI;
(d) in association with **Condition D61** of this schedule, set out the final site inspections to be conducted within three (3) months of completion of construction for the following heritage sites unless otherwise agreed by the Planning Secretary:
    (i) the Roxy Theatre (SHR I00711);
    (ii) White Bay Power Station (SHR I01015);
    (iii) the former State Abattoirs (*State Environmental Planning Policy (State Significant Precincts) 2005* Item 141); and
    (iv) the RTA Depot facade fronting Unwin Street (*Parramatta Local Environmental Plan 2011* I576); and
(e) set out means of rectification of any damage by the CSSI to Heritage items **(d)(i)** to **(d)(iv)** above within six (6) months of the completion of construction at the construction site identified in the relevant **Heritage CEMP Sub-plan**. This rectification work must be in consultation with a suitably qualified and experienced heritage consultant to ensure the use of appropriate materials, appropriate conservation practices and in accordance with existing heritage management documents (for example, conservation management plans or strategies) to protect and conserve the heritage significance of the items.

The **Heritage CEMP Sub-plan** must include Aboriginal cultural heritage management and mitigation measures (that may include conservation, archaeological salvage excavation and community collection) based on the **Aboriginal Cultural Heritage Excavation Report** and continuing Aboriginal community consultation.

CONSTRUCTION MONITORING PROGRAMS

C14 The following **Construction Monitoring Programs** must be prepared in consultation with the relevant government agencies identified for each to compare actual performance of construction of Stage 1 of the CSSI against the performance predicted in the documents listed in **Condition A1** of this schedule or in the **CEMP**:

	Required Construction Monitoring Programs	Relevant government agencies to be consulted for each Construction Monitoring Program
(a)	Noise and vibration	EPA, SOPA (in respect of Sydney Olympic Park), Place Management NSW (in respect of The Bays) and Relevant Council(s)
(b)	Blasting	SOPA (in respect of Sydney Olympic Park), Place Management NSW (in respect of The Bays) and Relevant Council(s)
(c)	Surface water quality	DPIE Water, Relevant Council(s) and Sydney Water (if any Sydney Water assets are impacted)
(d)	Groundwater	DPIE Water and SOPA (in respect of Sydney Olympic Park)

*Note: The **Blasting Construction Monitoring Program** is only required to be prepared if blasting is proposed to be conducted during construction.*

C15 Each **Construction Monitoring Program** must provide:

(a) details of baseline data available including the period of baseline monitoring;
(b) details of baseline data to be obtained and when;
(c) details of all monitoring of the project to be undertaken;

(d) the parameters of the project to be monitored;
(e) the frequency of monitoring to be undertaken;
(f) the location of monitoring;
(g) the reporting of monitoring results and analysis results against relevant criteria;
(h) details of the methods that will be used to analyse the monitoring data;
(i) procedures to identify and implement additional mitigation measures where the results of the monitoring indicated unacceptable project impacts;
(j) a consideration of SMART principles; and
(k) any consultation to be undertaken in relation to the monitoring programs; and
(l) any specific requirements as required by **Conditions C16** to **C17** of this schedule.

C16 The **Noise and Vibration Construction Monitoring Program** and **Blasting Construction Monitoring Program** must include:

(a) noise and vibration monitoring determined in consultation with the **AA** to confirm the best-achievable construction noise and vibration levels with consideration of all reasonable and feasible mitigation and management measures that will be implemented;
(b) for the purposes of (a), noise monitoring must be undertaken during the day, evening and night-time periods and within the first month of work as well as throughout the construction period and cover the range of activities being undertaken at the sites; and
(c) a process to undertake real time noise and vibration monitoring. The results of the monitoring must be readily available to the construction team, the Proponent, **ER** and **AA**. The Planning Secretary and EPA must be provided with access to the results on request.

C17 **Groundwater Construction Monitoring Program** must include:

(a) groundwater monitoring networks at each construction excavation site;
(b) detail of the location of all monitoring bores with nested sites to monitor both shallow and deep groundwater levels and quality;
(c) define the location of saltwater interception monitoring where sentinel groundwater monitoring bores will be installed between the saline sources of the estuary or river and that of the stations or shafts;
(d) results from existing monitoring bores;
(e) monitoring and gauging of groundwater inflow to the excavations, appropriate trigger action response plan for all predicted groundwater impacts upon each noted neighbouring groundwater system component for each excavation construction site;
(f) trigger levels for groundwater quality, salinity and groundwater drawdown in monitoring bores and / or other groundwater users;
(g) daily measurement of the amount of water discharged from the water treatment plants;
(h) water quality testing of the water discharged from treatment plants;
(i) management and mitigation measures and criteria;
(j) groundwater inflow to the excavations to enable a full accounting of the groundwater take from the Sydney Basin Central Groundwater Source; and
(k) reporting of groundwater gauging at excavations, groundwater monitoring, groundwater trigger events and action responses; and
(l) methods for providing the data collected to Sydney Water where discharges are directed to their assets.

C18 With the exception of any **Construction Monitoring Programs** expressly nominated by the Planning Secretary to be endorsed by the **ER**, all **Construction Monitoring Programs** must be submitted to the Planning Secretary for approval.

C19 The **Construction Monitoring Programs** not requiring the Planning Secretary's approval must obtain the endorsement of the **ER** as being in accordance with the conditions of approval and all undertakings made in the documents listed in **Condition A1** of this schedule. Any of these **Construction Monitoring Programs** must be submitted to the **ER** for endorsement at least one (1) month before the commencement of construction or where construction is phased no later than one (1) month before the commencement of that phase.

C20 Any of the **Construction Monitoring Programs** which require Planning Secretary approval must be endorsed by the **ER** and then submitted to the Planning Secretary for approval at least one (1) month before the commencement of construction or where construction is phased no later than one (1) month before the commencement of that phase.

C21 Unless otherwise agreed with the Planning Secretary, construction must not commence until the Planning Secretary has approved, or the **ER** has endorsed (whichever is applicable), all of the required **Construction Monitoring Programs** and all relevant baseline data for the specific construction activity has been collected.

C22 The **Construction Monitoring Programs**, as approved by the Planning Secretary or the **ER** has endorsed (whichever is applicable), including any minor amendments approved by the **ER,** must be implemented for the duration of construction and for any longer period set out in the monitoring program or specified by the Planning Secretary or the **ER** (whichever is applicable), whichever is the greater.

C23 The results of the **Construction Monitoring Programs** must be submitted to the Planning Secretary, **ER** and relevant regulatory agencies, for information in the form of a **Construction Monitoring Report** at the frequency identified in the relevant **Construction Monitoring Program**.

*Note: Where a relevant **CEMP Sub-plan** exists, the relevant **Construction Monitoring Program** may be incorporated into that **CEMP Sub-plan**.*

PART D

KEY ISSUE CONDITIONS

AIR QUALITY

D1 All reasonably practicable measures must be implemented to minimise the emission of dust and other air pollutants during construction.

BIODIVERSITY AND TREES

Biodiversity Credits

D2 The clearing of native vegetation must be minimised to the greatest extent practicable with the objective of reducing impacts to threatened ecological communities and threatened species habitat.

D3 Impacts to plant community types must not exceed those identified in the documents listed in **Condition A1** of this schedule, unless otherwise approved by the Planning Secretary. In requesting the Planning Secretary's approval, an assessment of the additional impact(s) to plant community types and an updated ecosystem and / or species credit requirement under **Condition D4** below, if required, must be provided.

D4 Before any vegetation clearing or tree removal that must be offset, credits specified in Table 3 below must be purchased and retired. The retirement of credits must be carried out in accordance with the offset rules of the BC Act.

Table 3: Biodiversity Credits to be Retired

Credit Type	Number of Credits
Ecosystem Credits	
Mangrove Forests in estuaries of the Sydney Basin Bioregion and South East Corner Bioregion (Plant Community Type 920) - Poor	3
Species Credits for Threatened Species	
Myotis macropus / Southern Myotis (Fauna)	3

Note: Credits have been calculated using the Biodiversity Assessment Method.

D5 The requirement to retire credits in **Condition D4** above may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the Biodiversity Offsets Payment Calculator.

D6 The Proponent must submit evidence of the retirement of credits required by **Condition D4** above to the Planning Secretary for information within one (1) month of receiving evidence of the retirement of credits and / or a certificate confirming payment under **Condition D5** above before any vegetation clearing or tree removal that must be offset.

Microbat Management

D7 Before the removal or clearing of any vegetation, or the demolition of structures identified as potential roosting sites for microbats at the Clyde Stabling and Maintenance Facility site commences, pre-clearing / demolition inspections for the threatened species must be undertaken. The inspections, and any subsequent relocation of fauna and associated management / offset measures, must be undertaken under the guidance of a suitably qualified and experienced ecologist. Survey and relocation methodologies and management / offset measures must be included in the **Flora and fauna CEMP Sub-plan** required under **Condition**

C5 of this schedule or the relevant **Site Establishment Management Plan** required by **Condition A17** of this schedule.

D8 In the event roosting sites have been identified under **Condition D7** above, bat boxes must be provided or suitable habitat built within the Clyde Stabling and Maintenance Facility site.

Tree Removal

D9 As many mature trees and as much urban canopy as practicable must be retained during construction. Canopy trimming should be considered where practicable prior to any mature tree removal.

FLOODING

D10 Stage 1 of the CSSI must be designed and constructed to not worsen flooding characteristics within and in the vicinity of the CSSI. Not worsen existing flooding characteristics means the following:

(a) a maximum increase in inundation time of one hour in a one (1) per cent Annual Exceedance Probability (AEP) flood event;
(b) a maximum increase of 10 mm in inundation at properties where floor levels are currently exceeded in a one (1) per cent AEP flood event;
(c) a maximum increase of 50 mm in inundation of land at properties where floor levels would not be exceeded in a one (1) per cent AEP flood event; and
(d) no inundation of floor levels which are currently not inundated in a one (1) per cent AEP flood event.

Measures identified in the documents listed in **Condition A1** of this schedule to not worsen flooding characteristics or measures that achieve the same outcome must be incorporated into the detailed design of Stage 1 of the CSSI. The incorporation of these measures must be reviewed and endorsed by a suitably qualified and experienced person in consultation with directly affected landowners, DPIE Water, DPI Fisheries, DPIE EES, NSW State Emergency Service (SES), SOPA (in respect of Sydney Olympic Park) and Relevant Council(s).

D11 Where flooding characteristics exceed the levels identified in **Condition D10** above the Proponent must undertake the following:

(a) consult with property owners for properties adversely flood affected as a result of Stage 1 of the CSSI and mitigate where necessary; and
(b) consult with the NSW State Emergency Service (SES), SOPA (in respect of Sydney Olympic Park) and Relevant Council(s) regarding the management of any residual flood risk beyond the 1 per cent AEP flood event and up to the probable maximum flood.

D12 Flood information including flood reports, models and geographic information system outputs must be provided to the Relevant Council(s), SOPA (in respect of Sydney Olympic Park), DPIE EES and the SES in order to assist in preparing relevant documents and to reflect changes in flood behaviour as a result of Stage 1 of the CSSI. The Relevant Council(s), SOPA (in respect of Sydney Olympic Park), DPIE EES and the SES must be notified in writing that the information is available no later than one (1) month following the completion of construction.

Information requested by the Relevant Council(s), SOPA (in respect of Sydney Olympic Park), DPIE EES or the SES must be provided no later than six (6) months following the completion of construction or within another timeframe agreed with the Relevant Council(s), SOPA (in respect of Sydney Olympic Park), DPIE EES and the SES. The project flood models and data must be uploaded to the NSW Flood Data Portal and access must be provided to the Relevant Council(s), DPIE EES, SES and SOPA (in respect of Sydney Olympic Park) no later than one (1) month following the completion of construction.

HERITAGE

Non-Aboriginal Heritage

D13 The Proponent must not destroy, modify or otherwise physically affect any Heritage item not identified in documents referred to in **Condition A1** of this schedule. Unexpected heritage finds identified by Stage 1 of the CSSI must be managed in accordance with the **Unexpected Finds Protocol** outlined in **Conditions D31** to **D33** of this schedule. Consideration of avoidance and redesign to protect state significant unexpected finds must be addressed where this condition applies.

D14 Before installing protective site boundary hoarding or equipment used for vibration and noise monitoring at any Heritage item identified in the documents listed in **Condition A1** of this schedule, the advice of a suitably qualified and experienced built heritage expert must be obtained and implemented to ensure any such work does not have an adverse impact on the heritage significance of the item. The installation must also consider and avoid impacts to potential historical archaeology and seek advice from the Excavation Director approved under **Condition D27** below.

D15 Before commencement of any excavation at the Parramatta metro station construction site, a detailed investigation must be undertaken to precisely locate the Parramatta Convict Drain. All options available to retain the Parramatta Convict Drain *in situ* must be considered. If retention of any part of the Parramatta Convict Drain located *in situ* is not feasible, the Proponent must satisfactorily demonstrate to the Planning Secretary why its removal is appropriate. If it is not feasible to retain the Parramatta Convict Drain *in situ*, archival recording must be undertaken on the affected section of the item in accordance with Heritage Council of NSW guidelines.

D16 During construction, the Proponent must implement protective measures to prevent adverse impacts on the heritage significance of the Victorian Regency terraced shops at 41-45 George Street, Parramatta and Kia Ora Georgian House at 64 Macquarie Street, Parramatta. Before installing such measures, the advice of a suitably qualified and experienced built heritage expert must be obtained and implemented to ensure any such work does not have an adverse impact on the heritage significance of the item. Protection measures must also consider and avoid potential impacts to significant historical archaeology and seek the advice from the Excavation Director approved under **Condition D27** below.

D17 The Roxy Theatre, White Bay Power Station, the former State Abattoirs and the former RTA Depot facade fronting Unwin Street must not be destroyed, modified or otherwise adversely affected, except as identified in the documents listed in **Condition A1** of this schedule.

D18 Where Heritage items, or items assessed to be of local heritage significance in the documents listed in **Condition A1** of this schedule, are proposed to be fully or partially destroyed, heritage salvage must occur in consultation with a suitably qualified heritage specialist. The Proponent must develop a salvaged materials and moveable heritage register. The register must identify significant items to be salvaged. Salvage must occur where significance is retained and / or the potential for re-use, reinstatement or re-sale has been identified. The salvage from any State-listed items must be undertaken in consultation with Heritage NSW.

Aboriginal Heritage

D19 All reasonable steps must be taken not to harm, modify or otherwise impact Aboriginal objects except as authorised by this approval.

D20 The Registered Aboriginal Parties (RAPs) must be kept informed about Stage 1 of the CSSI. The RAPs must continue to be provided with the opportunity to be consulted about the Aboriginal cultural heritage management requirements of Stage 1 of the CSSI.

D21 Aboriginal archaeological test excavation must be undertaken at those areas identified in Table 25 of the revised Aboriginal Cultural Heritage Assessment Report (ACHAR) prepared by Artefact Heritage and dated November 2020.

D22 An **Aboriginal Archaeological Test Excavation Methodology(s)** must be prepared and appropriately integrated with the revised **Archaeological Research Design and Excavation Methodology**. The **Aboriginal Archaeological Salvage Excavation Methodology(s)** must be prepared after analysis of the test excavation results.

D23 At the completion of Aboriginal cultural heritage test and salvage excavations, an **Aboriginal Cultural Heritage Excavation Report(s)**, prepared by a suitably qualified expert, must be prepared in accordance with the *Guide to Investigation, assessing and reporting on Aboriginal cultural heritage in NSW*, OEH 2011 and the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, DECCW 2010. The **Aboriginal Cultural Heritage Excavation Report(s)** must document the results of the archaeological test excavations and any subsequent salvage excavations. The RAPs must be given a minimum of 28 days to consider the report and provide comments before the report is finalised. The final report must be provided to Heritage NSW within 24 months of the completion of the Aboriginal archaeological excavations (both test and salvage).

D24 Where previously unidentified Aboriginal objects are discovered, all work must immediately stop in the vicinity of the affected area and a suitably qualified and experienced Aboriginal heritage expert must be contacted to provide specialist heritage advice, before construction recommences. The measures to consider and manage this process must be specified in the **Heritage CEMP Sub-plan** required by **Condition C5** of this schedule and, where relevant, include registration in the Aboriginal Heritage Information Management System (AHIMS).

Excavation and Archaeology

D25 Before the commencement of any work at Parramatta and The Bays metro station construction sites, a revised **Archaeological Research Design and Excavation Methodology(s)** must be prepared in accordance with Heritage Council of NSW guidelines and with reference to the detailed design of Stage 1 construction of the CSSI to guide archaeological excavation. The revised **Archaeological Research Design and Excavation Methodology(s)** must be prepared by the **Excavation Director** (approved under **Condition D27** below) and must include:

(a) site specific research for the Parramatta and The Bays metro station construction sites which is conducted by a professional historian to clearly articulate the historical development of the allotments to assist with the reassessment of potential and significance;
(b) comparative analysis from archaeological investigations in Parramatta (including theses, publications and grey literature reports);
(c) preparation of research questions based on the additional site-specific research required by this condition, and relevant research agendas from previously excavated early historical occupation in Parramatta including recovered artefact assemblages; and
(d) a reconsideration of archaeological methods to manage the sites based on this additional assessment.

The revised **Archaeological Research Design and Excavation Methodology(s)** must apply to both Parramatta and The Bays metro station construction sites and be prepared in consultation with Heritage NSW and Place Management NSW (in respect of The Bays) and submitted to the Planning Secretary for approval.

The revised **Archaeological Research Design and Excavation Methodology(s)** must be implemented throughout the archaeological excavation programs.

*Note: Nothing in these conditions prevents the **Archaeological Research Design and Excavation Methodology** to be separate procedures.*

D26 The revised **Archaeological Research Design and Excavation Methodology(s)** must include provision for early physical investigation of areas of impact identified as likely to contain State significant archaeology or subterranean Heritage items in the research design to inform excavation in these areas. This must include the Parramatta and The Bays metro station sites, including Parramatta Convict Drain, Parramatta Sand Body, White Bay Power Station (inlet) Canal and Beattie Street Stormwater Channel.

D27 Before commencement of archaeological excavation, the Proponent must nominate a suitably qualified **Excavation Director**, who complies with Heritage Council of NSW's *Criteria for Assessment of Excavation Director* (September 2019), to oversee and advise on matters associated with historical archaeology for the approval of the Planning Secretary, in consultation with Heritage NSW. The **Excavation Director** must be present to oversee excavation, advise on archaeological issues, advise on the duration and extent of oversight required during archaeological excavations consistent with the approved **Archaeological Research Design and Excavation Methodology(s)** required under **Condition D25** of this schedule. Aboriginal archaeological excavations must be conducted by a suitably qualified person in accordance with the requirements of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW 2010). More than one **Excavation Director** may be engaged for Stage 1 of the CSSI to exercise the functions required under the conditions of this approval.

D28 Following completion of archaeological excavation programs, a **Final Excavation Report** and an **Aboriginal Cultural Heritage Excavation Report** must be prepared that includes further detailed and site-specific historical research undertaken to enhance the final reporting, and results of archaeological excavations. The report must include details of any significant artefacts recovered (salvaged), where they are located and details of their ongoing conservation. The **Final Excavation Report** must document significant results and artefacts which may be re-used in future stages of the CSSI. The **Final Excavation Report** must be prepared in accordance with guidelines and standards required by Heritage Council of NSW.

D29 The **Final Excavation Report** and **Aboriginal Cultural Heritage Excavation Report** must be submitted to the Planning Secretary, Heritage NSW and the Relevant Council for information no later than 24 months after the completion of the archaeological excavation.

D30 In the event the CSSI salvages state significant historical archaeology associated with early convict occupation at the Parramatta metro station construction site for which retention and future conservation is not possible:

(a) the key findings of the archaeological investigations must be documented which explain their significance within the context of Parramatta and NSW no later than two (2) years after the completion of the archaeological excavations; and
(b) provide for the curation, display and public access of artefacts, site records and final reports.

Note: In reference to (b) above, this may involve partnerships with museums, local heritage centres and/or universities.

Unexpected Finds

D31 An **Unexpected Heritage Finds and Human Remains Procedure** must be prepared to manage unexpected heritage finds (heritage items and values) in accordance with any guidelines and standards prepared by the Heritage Council of NSW or Heritage NSW.

D32 The **Unexpected Heritage Finds and Human Remains Procedure** must be prepared by a suitably qualified and experienced heritage specialist in consultation with the Heritage Council of NSW (with respect to non-Aboriginal cultural heritage) and in relation to Aboriginal cultural heritage, in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW 2010) and submitted to the Planning Secretary for information no later than one (1) month before the commencement of construction.

D33 The **Unexpected Heritage Finds and Human Remains Procedure**, as submitted to the Planning Secretary, must be implemented for the duration of construction.

Note: Human remains that are found unexpectedly during the carrying out of work may be under the jurisdiction of the NSW State Coroner and must be reported to the NSW Police immediately. Management of human remains in NSW is subject to requirements set out in the Public Health Act 2010 *(NSW) and Public Health Regulation 2012 (NSW). Nothing in these conditions prevents separate procedures for the* ***Unexpected Heritage Finds and Human Remains Procedure****.*

NOISE AND VIBRATION

Land Use Survey

D34 A detailed land use survey must be undertaken to confirm sensitive receivers (including critical working areas such as operating theatres and precision laboratories) potentially exposed to construction noise and vibration and construction ground-borne noise. The survey may be undertaken on a progressive basis but must be undertaken in any one area before the commencement of work which generates construction noise, vibration or ground-borne noise in that area. The results of the survey must be included in the **Noise and Vibration CEMP Sub-plan** required under **Condition C5** of this schedule.

Construction Hours

D35 Work must only be undertaken during the following hours:

(a) 7:00am to 6:00pm Mondays to Fridays, inclusive;
(b) 8:00am to 6:00pm Saturdays; and
(c) at no time on Sundays or public holidays.

Highly Noise Intensive Work

D36 Except as permitted by an EPL, highly noise intensive work that results in an exceedance of the applicable NML at the same receiver must only be undertaken:

(a) between the hours of 8:00 am to 6:00 pm Monday to Friday;
(b) between the hours of 8:00 am to 1:00 pm Saturday; and
(c) if continuously, then not exceeding three (3) hours, with a minimum cessation of work of not less than one (1) hour.

For the purposes of this condition, 'continuously' includes any period during which there is less than one (1) hour between ceasing and recommencing any of the work.

Variation to Work Hours

D37 Notwithstanding **Conditions D35** and **D36** of this schedule work may be undertaken outside the hours specified in the following circumstances:

(a) **Safety and Emergencies**, including:
  (i) for the delivery of materials required by the NSW Police Force or other authority for safety reasons; or
  (ii) where it is required in an emergency to avoid injury or the loss of life, to avoid damage or loss of property or to prevent environmental harm.

On becoming aware of the need for emergency work in accordance with **(a)(ii)** above, the **AA**, the **ER**, the Planning Secretary and the EPA must be notified of the reasons for such work. The Proponent must use best endeavours to notify as soon as practicable all noise and/or vibration affected sensitive land user(s) of the likely impact and duration of those work.

(b) **Low impact**, including:
  (i) construction that causes $L_{Aeq(15\ minute)}$ noise levels:
    - no more than 5 dB(A) above the rating background level at any residence in accordance with the ICNG, and
    - no more than the 'Noise affected' NMLs specified in Table 3 of the ICNG at other sensitive land user(s); and
  (ii) construction that causes $L_{AFmax(15\ minute)}$ noise levels no more than 15 dB(A) above the rating background level at any residence; or
  (iii) construction that causes:
    - continuous or impulsive vibration values, measured at the most affected residence are no more than the preferred values for human exposure to vibration, specified in Table 2.2 of *Assessing Vibration: a technical guideline* (DEC, 2006), or

- intermittent vibration values measured at the most affected residence are no more than the preferred values for human exposure to vibration, specified in Table 2.4 of *Assessing Vibration: a technical guideline* (DEC, 2006).

(c) **By Approval**, including:
  (i) where different construction hours are permitted or required under an EPL in force in respect of the CSSI; or
  (ii) works which are not subject to an EPL that are approved under an **Out-of-Hours Work Protocol** as required by **Condition D38** of this schedule; or
  (iii) negotiated agreements with directly affected residents and sensitive land user(s).

(d) **By Prescribed Activity**, including:
  (i) tunnelling (excluding cut and cover tunnelling and surface works) are permitted 24 hours a day, seven days a week; or
  (ii) concrete batching at the Clyde construction site is permitted 24 hours a day, seven days a week; or
  (iii) delivery of material that is required to be delivered outside of standard construction hours in **Condition D35** of this schedule to directly support tunnelling activities, except between the hours 10:00 pm and 7:00 am to / from the Five Dock and Westmead construction sites and to / from Burwood North construction site using any roads / streets other than directly from Parramatta Road; or
  (iv) haulage of spoil except between the hours of 10:00 pm and 7:00 am to / from the Five Dock and Westmead construction sites and to / from Burwood North construction site using any roads / streets other than directly from Parramatta Road; or
  (v) work within an acoustic shed where there is no exceedance of noise levels under **Low impact** circumstances identified in (b) above, unless otherwise agreed by the Planning Secretary.

Note: Tunnelling does not include station box excavation.

Out-of-Hours Work Protocol – Work not subject to an EPL

D38 An **Out-of-Hours Work Protocol** must be prepared to identify a process for the consideration, management and approval of work which are outside the hours defined in **Conditions D35** and **D36** of this schedule. The Protocol must be approved by the Planning Secretary before commencement of the out-of-hours work. The Protocol must be prepared in consultation with the **ER**, **AA** and **EPA**. The Protocol must provide:

(a) identification of low and high-risk activities and an approval process that considers the risk of activities, proposed mitigation, management, and coordination, including where:
  (i) the **ER** and **AA** review all proposed out-of-hours activities and confirm their risk levels;
  (ii) low risk activities can be approved by the **ER** in consultation with the **AA**; and
  (iii) high risk activities that are approved by the Planning Secretary;
(b) a process for the consideration of out-of-hours work against the relevant NML and vibration criteria;
(c) a process for selecting and implementing mitigation measures for residual impacts in consultation with the community at each affected location, including respite periods consistent with the requirements of **Condition D50** of this schedule. The measures must take into account the predicted noise levels and the likely frequency and duration of the out-of-hours works that sensitive land user(s) would be exposed to, including the number of noise awakening events;
(d) procedures to facilitate the coordination of out-of-hours work including those approved by an EPL or undertaken by a third party, to ensure appropriate respite is provided; and
(e) notification arrangements for affected receivers for all approved out-of-hours works and notification to the Planning Secretary of approved low risk out-of-hours works.

This condition does not apply if the requirements of **Condition D37(b)** of this schedule are met.

*Note: Out-of-hours work is any work that occurs outside the construction hours identified in **Condition D35** and **D36** of this schedule.*

Construction Noise Management Levels and Vibration Criteria

D39 All reasonable and feasible mitigation measures must be implemented with the aim of achieving the following construction noise management levels and vibration criteria:

(a) construction 'Noise affected' noise management levels established using the *Interim Construction Noise Guideline* (DECC, 2009);
(b) vibration criteria established using the *Assessing vibration: a technical guideline* (DEC, 2006) (for human exposure);
(c) Australian Standard AS 2187.2 - 2006 "*Explosives - Storage and Use - Use of Explosives*" (for human exposure);
(d) BS 7385 Part 2-1993 "*Evaluation and measurement for vibration in buildings Part 2*" as they are "applicable to Australian conditions"; and
(e) the vibration limits set out in the *German Standard DIN 4150-3: Structural Vibration- effects of vibration on structures* (for structural damage for structurally unsound heritage items).

Any work identified as exceeding the noise management levels and / or vibration criteria must be managed in accordance with the **Noise and Vibration CEMP Sub-plan**.

Note: The ICNG identifies 'particularly annoying' activities that require the addition of 5 dB(A) to the predicted level before comparing to the construction Noise Management Level.

D40 All reasonable and feasible mitigation measures must be applied when the following residential ground-borne noise levels are exceeded:

(a) evening (6:00 pm to 10:00 pm) — internal $L_{Aeq(15\ minute)}$: 40 dB(A); and
(b) night (10:00 pm to 7:00 am) — internal $L_{Aeq(15\ minute)}$: 35 dB(A).

The mitigation measures must be outlined in the **Noise and Vibration CEMP Sub-plan,** including in any **Out-of-Hours Work Protocol**, required by **Condition D38** of this schedule.

D41 Noise generating work in the vicinity of potentially-affected community, religious, educational institutions and noise and vibration-sensitive businesses and critical working areas (such as theatres, laboratories and operating theatres) resulting in noise levels above the NMLs must not be timetabled within sensitive periods, unless other reasonable arrangements with the affected institutions are made at no cost to the affected institution.

Construction Noise and Vibration Mitigation and Management

D42 Industry best practice construction methods must be implemented where reasonably practicable to ensure that noise levels are minimised around sensitive land user(s). Practices must include, but are not limited to:

(a) use of regularly serviced low sound power equipment;
(b) temporary noise barriers (including the arrangement of plant and equipment) around noisy equipment and activities such as rock hammering and concrete cutting; and
(c) use of alternative construction and demolition techniques.

D43 **Detailed Noise and Vibration Impact Statements** (**DNVIS**) must be prepared for any work that may exceed the NMLs, vibration criteria and / or ground-borne noise levels specified in **Conditions D39** and **D40** of this schedule at any residence outside construction hours identified in **Condition D35** of this schedule, or where receivers will be highly noise affected. The **DNVIS** must include specific mitigation measures identified through consultation with affected sensitive land user(s) and the mitigation measures must be implemented for the duration of the works. A copy of the **DNVIS** must be provided to the **AA** and **ER** before the commencement of the associated works. The Planning Secretary and the EPA may request a copy (ies) of the **DNVIS**.

D44 **DNVIS** must be prepared for each construction site before construction noise and vibration impacts commence and include specific mitigation measures identified through consultation with affected sensitive land users.

D45 Owners and occupiers of properties at risk of exceeding the screening criteria for cosmetic damage must be notified before works that generate vibration commences in the vicinity of those properties. If the potential exceedance is to occur more than once or extend over a period of 24 hours, owners and occupiers are to be provided a schedule of potential exceedances on a monthly basis for the duration of the potential exceedances, unless otherwise agreed by the owner and occupier. These properties must be identified and considered in the **Noise and Vibration CEMP Sub-plan**.

Construction Vibration Mitigation – Heritage

D46 Vibration testing must be conducted during vibration generating activities that have the potential to impact on Heritage items to identify minimum working distances to prevent cosmetic damage. In the event that the vibration testing and attended monitoring shows that the preferred values for vibration are likely to be exceeded, the Proponent must review the construction methodology and, if necessary, implement additional mitigation measures. Such measures must include, but not be limited to, review or modification of excavation techniques.

D47 The Proponent must seek the advice of a heritage specialist on methods and locations for installing equipment used for vibration, movement and noise monitoring at Heritage items.

D48 Before conducting at-property treatment at any Heritage item identified in the documents listed in **Condition A1** of this schedule, the advice of a suitably qualified and experienced built heritage expert must be obtained and implemented to ensure any such work does not have an adverse impact on the heritage significance of the item.

D49 If a Heritage item is found to be structurally unsound (following inspection) a more conservative cosmetic damage criterion of 2.5 mm/s peak component particle velocity (from DIN 4150) must be applied.

Utility Coordination and Respite

D50 All work undertaken for the delivery of Stage 1 of the CSSI, including those undertaken by third parties (such as utility relocations), must be coordinated to ensure respite periods are provided. The Proponent must:

(a) reschedule any work to provide respite to impacted noise sensitive receivers so that the respite is achieved in accordance with **Condition D51** of this schedule; or
(b) consider the provision of alternative respite or mitigation to impacted noise sensitive receivers; and
(c) provide documentary evidence to the **AA** in support of any decision made by the Proponent in relation to respite or mitigation.

The consideration of respite must also include all other approved Critical SSI, SSI and SSD projects which may cause cumulative and / or consecutive impacts at receivers affected by the delivery of Stage 1 of the CSSI.

Out-of-Hours Works – Community Consultation on Respite

D51 In order to undertake out-of-hours work outside the work hours specified under **Condition D35** of this schedule, appropriate respite periods for the out-of-hours work must be identified in consultation with the community at each affected location on a regular basis. This consultation must include (but not be limited to) providing the community with:

(a) a progressive schedule for periods no less than three (3) months, of likely out-of-hours work;
(b) a description of the potential work, location and duration of the out-of-hours work;
(c) the noise characteristics and likely noise levels of the work; and

(d) likely mitigation and management measures which aim to achieve the relevant NMLs under **Condition D39** (including the circumstances of when respite or relocation offers will be available and details about how the affected community can access these offers).

The outcomes of the community consultation, the identified respite periods and the scheduling of the likely out-of-hour work must be provided to the **AA**, EPA and the Planning Secretary.

Note: Respite periods can be any combination of days or hours where out-of-hours work would not be more than 5 dB(A) above the RBL at any residence.

Traffic Noise Mitigation at Westmead

D52 Sensitive land uses located along local roads used to divert traffic from the closure of Alexandra Avenue in Westmead that will be affected by additional road traffic noise from the diverted traffic in excess of the criteria identified in the *NSW Road Noise Policy* (the RNP criteria) during construction of Stage 1 of the CSSI (the Affected Properties) are eligible to receive at-property noise mitigation treatments.

Owners of Affected Properties must be advised of the range of noise mitigation options that can be installed at or in their property and given a choice as to which of these they agree to have installed. A copy of all noise mitigation guidelines and procedures that will be used to determine at-property treatment at each Affected Property must be provided to the property owner.

At property mitigation measures and packages must be determined based on the measured exceedance levels above the RNP criteria. Road traffic noise levels must be measured before and after the altered traffic flow detour.

Blasting

D53 Blasting associated with Stage 1 of the CSSI must only be undertaken during the following hours:

(a) 9:00am to 5:00pm, Monday to Friday, inclusive;
(b) 9:00am to 1:00pm on Saturday; and
(c) at no time on Sunday or public holidays; or
(d) as authorised through an EPL.

This condition does not apply in the event of a direction from the NSW Police Force or other relevant authority for safety or emergency reasons to avoid loss of life, property loss and / or to prevent environmental harm.

Blasting Management Strategy

D54 A **Blast Management Strategy** must be prepared and must include:

(a) sequencing and review of trial blasting to inform blasting;
(b) regularity of blasting;
(c) intensity of blasting;
(d) periods of relief; and
(e) blasting program.

D55 The **Blast Management Strategy** must be endorsed by a suitably qualified and experienced person.

D56 The **Blast Management Strategy** must be prepared in accordance with relevant guidelines in order to ensure that all blasting and associated activities are carried out so as not to generate unacceptable noise and vibration impacts or pose a significant risk to sensitive land user(s).

D57 The **Blast Management Strategy** must be submitted to the Planning Secretary for information no later than one (1) month before the commencement of blasting. The **Blast Management Strategy** as submitted to the Planning Secretary, must be implemented for all blasting activities.

SOCIO-ECONOMIC, LAND USE AND PROPERTY

D58 Stage 1 of the CSSI must be designed and constructed with the objective of minimising impacts to, and interference with, third party property and infrastructure, and that such infrastructure and property is protected during construction.

D59 The utilities and services (hereafter "services") potentially affected by construction must be identified to determine requirements for diversion, protection and / or support. Alterations to services must be determined by negotiation between the Proponent and the service providers. Disruption to services resulting from construction must be avoided, wherever possible, and advised to customers where it is not possible.

Condition Survey

D60 A suitably qualified and experienced person must undertake condition surveys of all buildings, structures, utilities and the like identified in the documents listed in **Condition A1** of this schedule as being at risk of damage before commencement of any work that could impact on the subject surface / subsurface structure. The results of the surveys must be documented in a **Pre-construction Condition Survey Report** for each item surveyed. Copies of **Pre-construction Condition Survey Reports** must be provided to the relevant owners of the items surveyed in the vicinity of the proposed work, and no later than one (1) month before the commencement of the work that could impact on the subject surface / subsurface structure.

D61 Condition surveys of all items for which condition surveys were undertaken in accordance with **Condition D60** of this schedule must be undertaken by a suitably qualified and experienced person after completion of the work identified in **Condition D60** of this schedule. The results of the surveys must be documented in a **Post-construction Condition Survey Report** for each item surveyed. Copies of **Post-construction Condition Survey Reports** must be provided to the landowners of the items surveyed, and no later than three (3) months following the completion of the work that could impact on the subject surface / subsurface structure unless otherwise agreed by the Planning Secretary.

D62 The Proponent, where liable, must rectify any property damage caused directly or indirectly (for example from vibration or from groundwater change) by the work at no cost to the owner. Alternatively, the Proponent may pay compensation for the property damage as agreed with the property owner. Rectification or compensation must be undertaken within 12 months of completion of the work identified in **Condition D60** of this schedule unless another timeframe is agreed with the owner of the affected surface or sub-surface structure or recommended by the **IPIAP**.

D63 Appropriate equipment to monitor areas in proximity of construction sites and the tunnel route during construction must be installed with particular reference to at risk buildings, structures and utilities identified in the condition surveys required by **Condition D60** of this schedule and / or geotechnical analysis as required. If monitoring during construction indicate exceedance of the vibration criteria identified in the **DNVIS** prepared under **Condition D43** of this schedule, then all construction affecting settlement must cease immediately and must not resume until fully rectified or a revised method of construction is established that will ensure protection of affected buildings.

D64 An **Independent Property Impact Assessment Panel** (**IPIAP**) must be established. The Planning Secretary must be informed of the members of the **IPIAP** and the **IPIAP** must comprise geotechnical and engineering experts independent of the design and construction team. The **IPIAP** will be responsible for independently verifying condition surveys undertaken under **Conditions D60** and **D61** of this schedule, the resolution of property damage disputes and the establishment of ongoing settlement monitoring requirements.

D65 Either the affected property owner or the Proponent may refer unresolved disputes arising from potential and/or actual property impacts to the **IPIAP** for resolution. All costs incurred in the establishing and implementing of the panel must be borne by the Proponent regardless of which party makes a referral to the **IPIAP**. The findings and recommendations of the **IPIAP** are final and binding on the Proponent.

D66 Settlement must be monitored for any period beyond the minimum timeframe requirements of **Condition D63** of this schedule if directed so by the **IPIAP** following its review of the monitoring data from the period not less than six (6) months after settlement has stabilised, consistent with **Condition D63** of this schedule. The results of the monitoring must be made available to the Planning Secretary upon request.

Community Benefit Plan(s)

D67 A **Community Benefit Plan(s)** must be prepared, by a suitably qualified and experienced person, to guide the delivery of measures identified in the documents listed in **Condition A1** of this schedule relating to social impacts and the development of community benefit initiatives. The **Community Benefit Plan(s)** must aim to:

(a) make a positive contribution to the potentially affected community;
(b) respond to community priorities and needs;
(c) create positive community or environmental outcomes; and
(d) prioritise consideration of achieving outcomes for enhancing community character, community culture and the local surroundings.

Nothing in this condition prevents the preparation of individual **Community Benefit Plans** for each station precinct.

D68 The **Community Benefit Plan(s)** must be submitted to the Planning Secretary for information before construction. The **Community Benefit Plan(s)** must be implemented for the duration of construction.

D69 Potential impacts on the operation of festivals or events at Parramatta, Sydney Olympic Park or Five Dock must be limited as reasonably practicable.

Small Business Owners Engagement Plan(s)

D70 **Small Business Owners Engagement Plan(s)** must be implemented in accordance with the **Overarching Community Communication Strategy** to minimise impact on small businesses adjacent to major construction sites during construction of Stage 1 of the CSSI. These plans must be prepared and submitted to the Planning Secretary for information before construction at the relevant construction site.

SOILS AND CONTAMINATION

Contaminated sites

D71 Before commencement of any construction that would result in the disturbance of moderate to high risk contaminated sites as identified in the documents identified in **Condition A1** of this schedule, **Detailed Site Investigations** (for contamination) must be conducted to determine the full nature and extent of the contamination. The **Detailed Site Investigation Report(s)** and the subsequent report(s), must be prepared, or reviewed and approved, by consultants certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme. The **Detailed Site Investigations** must be undertaken in accordance with guidelines made or approved under section 105 of *Contaminated Land Management Act 1997* (NSW). The **Detailed Site Investigation** for Sydney Olympic Park metro construction site must be prepared in consultation with SOPA.

*Note: Nothing in this condition prevents the Proponent from preparing individual **Detailed Site Investigation Reports** (for contamination) for separate sites.*

D72 Should remediation be required to make land suitable for the final intended land use, a **Remedial Action Plan** must be prepared, or reviewed and approved, by consultants certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional

Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme. The **Remedial Action Plan** must be prepared in accordance with relevant guidelines made or approved by the EPA under section 105 of the *Contaminated Land Management Act 1997* (NSW) and must include measures to remediate the contamination at the site to ensure the site will be suitable for the proposed use when the **Remedial Action Plan** is implemented. The **Remedial Action Plan** for Sydney Olympic Park metro construction site must be prepared in consultation with SOPA.

*Note: Nothing in this condition prevents the Proponent from preparing individual **Remedial Action Plans** for separate sites.*

D73 Before commencing remediation, a **Section B Site Audit Statement(s)** must be prepared by an NSW EPA-accredited Site Auditor that certifies that the **Remedial Action Plan(s)** is/are appropriate and that the site can be made suitable for the proposed use. The **Remedial Action Plan(s)** must be implemented and any changes to the **Remedial Action Plan(s)** must be approved in writing by the NSW EPA-accredited Site Auditor.

*Note: Nothing in this condition prevents the Proponent from engaging an NSW EPA-accredited Site Auditor to prepare individual **Site Audit Statements** for **Remedial Action Plans** for separate sites.*

D74 **Validation Report(s)** must be prepared in accordance with *Consultants Reporting on Contaminated Land: Contaminated Land Guidelines* (EPA, 2020) and relevant guidelines made or approved under section 105 of the *Contaminated Land Management Act 1997* (NSW).

*Note: Nothing in this condition prevents the Proponent from preparing individual **Validation Reports** for separate sites.*

D75 A **Section A1 or Section A2 Site Audit Statement** (accompanied by an **Environmental Management Plan**) and its accompanying **Site Audit Report**, which state that the contaminated land disturbed by the work has been made suitable for the intended land use, must be submitted to the Planning Secretary, SOPA (in respect of Sydney Olympic Park) and the Relevant Council(s) after remediation and before the commencement of operation of the CSSI.

*Note: Nothing in this condition prevents the Proponent from obtaining **Section A Site Audit Statements** for individual parcels of remediated land.*

D76 A copy of **Detailed Site Investigation Report(s)**, **Remedial Action Plan(s)**, **Validation Report(s)**, **Site Audit Report(s)** and **Site Audit Statement(s)** must be submitted to the Planning Secretary, SOPA (in respect of Sydney Olympic Park) and the Relevant Council(s) for information.

D77 An **Unexpected Contaminated Land and Asbestos Finds Procedure** must be prepared before the commencement of construction and must be followed should unexpected contaminated land or asbestos (or suspected contaminated land or asbestos) be excavated or otherwise discovered during construction.

D78 The **Unexpected Contaminated Land and Asbestos Finds Procedure** must be implemented throughout construction.

SUSTAINABILITY

D79 A **Water Reuse Strategy** must be prepared, which sets out options for the reuse of collected stormwater and groundwater during Stage 1 of the CSSI. The Water Reuse Strategy must include, but not be limited to:

(a) evaluation of reuse options;
(b) details of the preferred reuse option(s), including volumes of water to be reused, proposed reuse locations and/or activities, proposed treatment (if required), and any additional licences or approvals that may be required;

(c) measures to avoid misuse of recycled water as potable water;
(d) consideration of the public health risks from water recycling; and
(e) time frame for the implementation of the preferred reuse option(s).

The **Water Reuse Strategy** must be prepared based on best practice and advice sought from relevant agencies, as required. The Strategy must be applied during construction.

Justification must be provided to the Planning Secretary if it is concluded that no reuse options prevail.

A copy of the **Water Reuse Strategy** must be made publicly available.

Nothing in this condition prevents the Proponent from preparing separate **Water Reuse Strategies** for the construction phases of Stage 1 of the CSSI.

TRAFFIC AND TRANSPORT

D80 Access to all utilities and properties must be maintained during works, unless otherwise agreed with the relevant utility owner, landowner or occupier.

D81 Any property access physically affected by the CSSI must be reinstated to at least an equivalent standard, unless otherwise agreed by the landowner or occupier. Property access must be reinstated within one (1) month of the work that physically affected the access is completed or in any other timeframe agreed with the landowner or occupier.

D82 Construction vehicles (including light vehicles) must not use Robert Street, Rozelle to access The Bays metro station construction site, unless required in the event of an emergency or in association with the delivery of the Rozelle power supply from the Rozelle sub-transmission substation to The Bays metro station construction site.

D83 The locations of all Heavy Vehicles used for spoil haulage must be monitored in real time and the records of monitoring be made available electronically to the Planning Secretary and the EPA upon request for a period of no less than one (1) year following the completion of construction.

D84 The primary egress routes for spoil haulage trucks at Sydney Olympic Park metro station construction site must be determined in consultation with SOPA.

D85 **Construction Traffic Management Plans** (**CTMPs**) must be prepared in accordance with the Construction Traffic Management Framework. A copy of the **CTMPs** must be submitted to the Planning Secretary for information before the commencement of any construction in the area identified and managed within the relevant **CTMP**.

D86 Local roads proposed to be used by Heavy Vehicles to directly access construction sites that are not identified in the documents listed in **Condition A1** of this schedule must be approved by the Planning Secretary and be included in the **CTMPs**.

D87 All requests to the Planning Secretary for approval to use local roads under **Condition D86** above must include the following:

(a) a swept path analysis;
(b) demonstration that the use of local roads by Heavy Vehicles for the CSSI will not compromise the safety of pedestrians and cyclists of the safety of two-way traffic flow on two-way roadways;
(c) details as to the date of completion of the road dilapidation surveys for the subject local roads; and
(d) measures that will be implemented to avoid where practicable the use of local roads past schools, aged care facilities and child care facilities during their peak operation times; and

(e) written advice from an appropriately qualified professional on the suitability of the proposed Heavy Vehicle route which takes into consideration items (a) to(d) of this condition.

Road Dilapidation

D88 Before any local road is used by a Heavy Vehicle for the purposes of construction of Stage 1 of the CSSI, a **Road Dilapidation Report** must be prepared for the road. A copy of the **Road Dilapidation Report** must be provided to the Relevant Road Authority(s) within three (3) weeks of completion of the survey and at no later than one (1) month before the road being used by Heavy Vehicles associated with the construction of Stage 1 of the CSSI.

D89 If damage to roads occurs as a result of the construction of Stage 1 of the CSSI, the Proponent must either (at the Relevant Road Authority's discretion):

(a) compensate the Relevant Road Authority for the damage so caused; or
(b) rectify the damage to restore the road to at least the condition it was in pre-work as identified in the **Road Dilapidation Report**.

Construction Parking and Access Management

D90 Vehicles associated with the project workforce (including light vehicles and Heavy Vehicles) must be managed to:

(a) minimise parking on public roads;
(b) minimise idling and queueing on state and regional roads;
(c) not carry out marshalling of construction vehicles near sensitive land user(s);
(d) not block or disrupt access across pedestrian or shared user paths at any time unless alternate access is provided; and
(e) ensure spoil haulage vehicles adhere to the nominated haulage routes identified in the **CTMPs**.

D91 A **Construction Parking and Access Strategy** must be prepared to identify and mitigate impacts resulting from on- and off-street parking changes during construction. The **Construction Parking and Access Strategy** must include, but not necessarily be limited to:

(a) achieving the requirements of **Condition D90** above;
(b) confirmation and timing of the removal of on- and off-street parking associated with construction of Stage 1 of the CSSI;
(c) parking surveys of all parking spaces to be removed or occupied by the project workforce to determine current demand during peak, off-peak, school drop off and pickup, weekend periods and during special events;
(d) consultation with affected stakeholders utilising existing on- and off-street parking stock which will be impacted as a result of construction;
(e) assessment of the impacts to on- and off-street parking stock taking into consideration, occupation by the project workforce, outcomes of consultation with affected stakeholders and considering the impacts of special events;
(f) identification of reasonable and practicable mitigation measures to manage impacts to stakeholders as a result of on- and off-street parking changes including, but not necessarily limited to, staged removal and replacement of parking, provision of alternative parking arrangements, managed staff parking arrangements and working with relevant council(s) to introduce parking restrictions adjacent to work sites and compounds or appropriate residential parking schemes;
(g) where residential parking schemes already exist, off-road parking facilities must be provided for the project workforce;
(h) mechanisms for monitoring, over appropriate intervals (not less than 6 months), to determine the effectiveness of implemented mitigation measures;
(i) details of shuttle bus service(s) to transport the project workforce to construction sites from public transport hubs and off-site car parking facilities (where these are provided) and between construction sites;
(j) provision of contingency measures should the results of mitigation or monitoring indicate implemented measures are ineffective; and

(k) provision of reporting of monitoring results to the Planning Secretary and Relevant Council(s) at six (6) monthly intervals.

D92 The **Construction Parking and Access Strategy** must be submitted to the Planning Secretary for approval at least one (1) month before the commencement of any construction that reduces the availability of existing parking. The approved **Construction Parking and Access Strategy** must be implemented before impacting on on-street parking and incorporated into the **CTMPs**.

D93 During construction, all reasonably practicable measures must be implemented to maintain pedestrian, cyclist and vehicular access to, and parking in the vicinity of, businesses and affected properties. Disruptions are to be avoided, and where avoidance is not possible, minimised. Where disruption cannot be minimised, alternative pedestrian, cyclist and vehicular access, and parking arrangements must be developed in consultation with affected businesses and implemented before the disruption. Adequate signage and directions to businesses must be provided before, and for the duration of, any disruption.

Road Safety

D94 A **Traffic and Transport Liaison Group(s)** must be established in accordance with the Construction Traffic Management Framework to inform the development of **CTMPs**.

D95 Supplementary analysis and modelling as required by TfNSW and / or the **Traffic and Transport Liaison Group(s)** must be undertaken to demonstrate that construction and operational traffic can be managed to minimise disruption to traffic network operations including changes to and the management of pedestrian, bicycle and public transport networks, public transport services, and pedestrian and cyclist movements. Revised traffic management measures must be incorporated into the **CTMPs**.

D96 The permanent road works at Clyde / Rosehill must be designed, constructed and operated with the objective of integrating with existing and proposed road and related transport networks and minimising adverse changes to the safety, efficiency and, accessibility of the networks, and avoid deterioration in peak period levels of service in relation to permanent and operational changes. Design and assessment of related traffic, parking, pedestrian and cycle accessibility impacts and changes shall be undertaken:

(a) in consultation with, and to the reasonable requirements of the relevant **Traffic and Transport Liaison Group**;
(b) in consideration of existing and future demand, connectivity (in relation to permanent changes), performance and safety requirements;
(c) to minimise and manage local area traffic impacts;
(d) to ensure access is maintained to property and infrastructure; and
(e) to meet relevant design, engineering and safety guidelines, including Austroads, Australian Standards, and TfNSW requirements.

Copies of civil, structural and traffic signal design plans shall be submitted to the Relevant Road Authority for consultation during design development and before completion of construction of Stage 1 of the CSSI.

D97 Permanent road works, including vehicular access, signalised intersection works, and works relating to pedestrians, cyclists, and public transport users must be subject to safety audits demonstrating consistency with relevant design, engineering and safety standards and guidelines. Safety audits must be prepared in consultation with the relevant **Traffic and Transport Liaison Group** before the completion and use of the subject infrastructure and must be made available to the Planning Secretary upon request.

Pedestrian and Cyclist Access

D98 Safe pedestrian and cyclist access must be maintained around construction sites during construction. In circumstances where pedestrian and cyclist access is restricted or removed due to construction activities, a proximate alternate route which complies with the relevant standards, must be provided and signposted before the restriction or removal of the impacted access.

Spoil Movement

D99 Opportunities to maximise spoil material removal by non-road methods must be investigated and implemented where reasonably practicable to minimise movements by road.

Emergency Vehicle Access

D100 The Proponent must maintain emergency vehicle access, in consultation with TfNSW, emergency services and NSW Health, to Westmead Hospital at all times throughout Stage 1 of the CSSI. Measures must be outlined in the **Construction Parking and Access Strategy** required under **Condition D91** above.

UTILITIES MANAGEMENT

D101 Utilities, services and other infrastructure potentially affected by construction must be identified before works affecting the item, to determine requirements for access to, diversion protection, and / or support. The relevant owner(s) and / or provider(s) of services must be consulted to make suitable arrangements for access to diversion, protection, and / or support of the affected infrastructure as required. The Proponent must ensure that disruption to any service is minimised and be responsible for advising local residents and businesses affected before any planned disruption of service.

Utility Coordination Manager

D102 A **Utility Coordination Manager** must be appointed for the duration of work associated with Stage 1 of the CSSI. The role of the **Utility Coordination Manager** must include, but not be limited to:

(a) the management and coordination of all utility work associated with the delivery of Stage 1 of the CSSI, to ensure respite is provided to the community;
(b) providing advice to the Sydney Metro Place Manager regarding upcoming utility work, including the scope of the work and the responsibility for the work; and
(c) investigating complaints received from the Community Complaints Mediator or the Project communication team relating to utility work and providing a response as required.

URBAN DESIGN AND VISUAL AMENITY

Ancillary Facilities

D103 Wayfinding information must be incorporated on temporary hoardings to guide pedestrians around ancillary facilities and enhance their understanding and experience of the locality and space.

D104 Nothing in this approval permits advertising on any element of Stage 1 of the CSSI.

Temporary Activations

D105 The Proponent must undertake temporary placemaking initiatives for the benefit of the community, such as commercial "pop up" spaces, information booths, art installations, around the perimeter or in the vicinity of construction sites at Parramatta and Five Dock with the objective of temporarily enhancing visual amenity, providing gathering places in the local area and creating temporary active frontages to construction sites during Stage 1 of the CSSI.

Five Dock Metro Station Eastern Construction Site

D106 The acoustic shed at the Five Dock metro station eastern construction site must be designed and constructed in a manner that minimises visual amenity, solar access and overshadowing impacts to the residential apartments at 110 Great North Road, Five Dock facing the acoustic shed. The potential visual amenity, solar access and overshadowing impacts of the acoustic shed on the

affected residential apartments must be assessed in a **Visual Amenity, Solar Access and Overshadowing Report** prepared by the Proponent.

D107 The **Visual Amenity, Solar Access and Overshadowing Report** must include:

(a) visual amenity impact assessments from the relevant residential apartments to the acoustic shed at the Five Dock metro station eastern construction site;
(b) solar access assessments of the relevant residential apartments, with consideration for the relevant development controls in the City of Canada Bay Development Control Plan (Version 4, 21 October 2020) and the Apartment Design Guide; and
(c) a consultation plan to detail how potential impacts and mitigation measures will be discussed and negotiated with potentially affected property owners.

The **Visual Amenity, Solar Access and Overshadowing Report** must be provided to the Planning Secretary for approval within (1) month prior to the installation of the acoustic shed at the Five Dock metro station eastern construction site.

D108 Where the acoustic shed causes a moderate (or greater) adverse visual amenity impact and / or unreasonable overshadowing and solar access impacts to any of the subject residential apartments, the Proponent must consult with the relevant affected property owners and occupiers to identify appropriate mitigation measures and an agreed implementation program. A copy of agreed implementation programs must be provided to the Planning Secretary for information.

Lighting and Security

D109 Stage 1 of the CSSI must be constructed with the objective of minimising light spill to surrounding properties including from headlights of construction vehicles. All lighting associated with the construction of Stage 1 of the CSSI must be consistent with the requirements of *Australian Standard 4282-1997 Control of the obtrusive effects of outdoor lighting* and relevant Australian Standards in the series *AS/NZ 1158 – Lighting for Roads and Public Spaces*. Additionally, mitigation measures must be provided to manage any residual night lighting impacts to protect properties adjoining or adjacent to the CSSI, in consultation with affected landowners.

Visual Amenity

D110 Stage 1 of the CSSI must be constructed in a manner that minimises visual impacts of construction sites including, providing temporary landscaping and vegetative screening, minimising light spill, minimising impacts to identified significant view lines in respect of The Bays metro station construction site and incorporating architectural treatment and finishes within key elements of temporary structures that reflect the context within which the construction sites are located, wherever practicable.

WASTE

D111 Waste generated during construction and operation must be dealt with in accordance with the following priorities:

(a) waste generation must be avoided and where avoidance is not reasonably practicable, waste generation must be reduced;
(b) where avoiding or reducing waste is not possible, waste must be re-used, recycled, or recovered; and
(c) where re-using, recycling or recovering waste is not possible, waste must be treated or disposed of.

D112 The importation of waste and the storage, treatment, processing, reprocessing or disposal of such waste must comply with the conditions of the current EPL for Stage 1 of the CSSI, or be done in accordance with a Resource Recovery Exemption or Order issued under the *Protection of the Environment Operations (Waste) Regulation 2014*, as the case may be.

D113 Waste must only be exported to a site licensed by the EPA for the storage, treatment, processing, reprocessing or disposal of the subject waste, or in accordance with a Resource Recovery Exemption or Order issued under the *Protection of the Environment Operations (Waste) Regulation 2014*, or to any other place that can lawfully accept such waste.

D114 All waste must be classified in accordance with the EPA's *Waste Classification Guidelines*, with appropriate records and disposal dockets retained for audit purposes.

WATER

D115 Work on waterfront land must be carried out in accordance with controlled activity guidelines.

Stormwater

D116 Before undertaking any works and during maintenance or construction activities, erosion and sediment controls must be implemented and maintained to prevent water pollution consistent with LandCom's *Managing Urban Stormwater* series (The Blue Book).

Water Quality

D117 Stage 1 of the CSSI must be designed and constructed so as to maintain the *NSW Water Quality Objectives* (NSW WQO) where they are being achieved as at the date of this approval, and contribute towards achievement of the NSW WQO over time where they are not being achieved as at the date of this approval, unless an EPL in force in respect of the CSSI contains different requirements in relation to the NSW WQO, in which case those requirements must be complied with.

D118 Unless an EPL is in force in respect to Stage 1 of the CSSI and that licence specifies alternative criteria, discharges from wastewater treatment plants to surface waters must not exceed:

(a) the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2018* (ANZG (2018)) default guideline values for toxicants at the 95 per cent species protection level;
(b) for physical and chemical stressors, the guideline values set out in Tables 3.3.2 and 3.3.3 of the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000* (ANZECC/ARMCANZ); and
(c) for bioaccumulative and persistent toxicants, the ANZG (2018) guidelines values at a minimum of 99 per cent species protection level.

Where the ANZG (2018) does not provide a default guideline value for a particular pollutant, the approaches set out in the ANZG (2018) for deriving guideline values, using interim guideline values and/or using other lines of evidence such as international scientific literature or water quality guidelines from other countries, must be used.

D119 If construction stage stormwater discharges are proposed, a **Water Pollution Impact Assessment** will be required to inform licensing consistent with section 45 of the POEO Act. Any such assessment must be prepared in consultation with the EPA and be consistent with the National Water Quality Guidelines, with a level of detail commensurate with the potential water pollution risk.

D120 Drainage feature crossings (permanent and temporary watercourse crossings and stream diversions) and drainage swales and depressions must be carried out in accordance with relevant guidelines and designed by a suitably qualified and experienced person.

Groundwater

D121 Make good provisions for groundwater users must be provided in the event of a material decline in water supply levels, quality or quantity from registered existing bores associated with groundwater changes from construction.

D122 The Proponent must submit a revised **Groundwater Modelling Report** in association with Stage 1 of the CSSI to the Planning Secretary for information before bulk excavation at the relevant construction location. The **Groundwater Modelling Report** must include:

(a) for each construction site where excavation will be undertaken, cumulative (additive) impacts from nearby developments, parallel transport projects and nearby excavation associated with the CSSI;
(b) predicted incidental groundwater take (dewatering) including cumulative project effects;
(c) potential impacts for all latter stages of the CSSI or detail and demonstrate why these later stages of the CSSI will not have lasting impacts to the groundwater system, ongoing groundwater incidental take and groundwater level drawdown effects;
(d) actions required after Stage 1 to minimise the risk of inflows (including in the event latter stages of the CSSI are delayed or do not progress) and a strategy for accounting for any water taken beyond the life of the operation of the CSSI;
(e) saltwater intrusion modelling analysis, from estuarine and saline groundwater in shale, into The Bays metro station site and other relevant metro station sties; and
(f) a schematic of the conceptual hydrogeological model.

Appendix A

WRITTEN INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

1. A written incident notification addressing the requirements set out below must be submitted to the Planning Secretary via the Major Projects website within seven (7) days after the Proponent becomes aware of an incident. Notification is required to be given under this condition even if the Proponent fails to give the notification required under **Condition A43** or, having given such notification, subsequently forms the view that an incident has not occurred.
2. Written notification of an incident must:
   (a) identify the CSSI and application number;
   (b) provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);
   (c) identify how the incident was detected;
   (d) identify when the Proponent became aware of the incident;
   (e) identify any actual or potential non-compliance with conditions of approval;
   (f) describe what immediate steps were taken in relation to the incident;
   (g) identify further action(s) that will be taken in relation to the incident; and
   (h) identify a project contact for further communication regarding the incident.
3. Within 30 days of the date on which the incident occurred or as otherwise agreed to by the Planning Secretary, the Proponent must provide the Planning Secretary and any relevant public authorities (as determined by the Planning Secretary) with a detailed report on the incident addressing all requirements below, and such further reports as may be requested.
4. The Incident Report must include:
   (a) a summary of the incident;
   (b) outcomes of an incident investigation, including identification of the cause of the incident;
   (c) details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and
   (d) details of any communication with other stakeholders regarding the incident.

SCHEDULE D4

Approval Conditions

(Clauses 1.5, 7.2(a)(ii) and 7.2(c))

1. The Principal's obligations in respect of Approvals

The Tunnelling Contractor must, in performing the Tunnelling Contractor's Activities, comply with all of the obligations, conditions and requirements of the Approvals except to the extent that:

(a) this Schedule D4 provides that the Principal will comply with the obligation, condition or requirement or Schedule D4 limits the Tunnelling Contractor's obligation in respect of that obligation, condition or requirement;

(b) this Schedule D4 indicates otherwise.

For the avoidance of doubt, compliance with this Schedule D4 may require the Tunnelling Contractor to undertake activities after the Portion Handover Date.

Terms which have been defined or described in the Project Planning Approval and the REF Approval, or documents referred to therein, have the same meaning where used in this Schedule D4.

1.1 Allocations under the Project Planning Approval

[redacted]

[redacted]

1.2 Allocations under the REF Approval

[redacted]

SCHEDULE D5

Requirements of Third Party Agreements

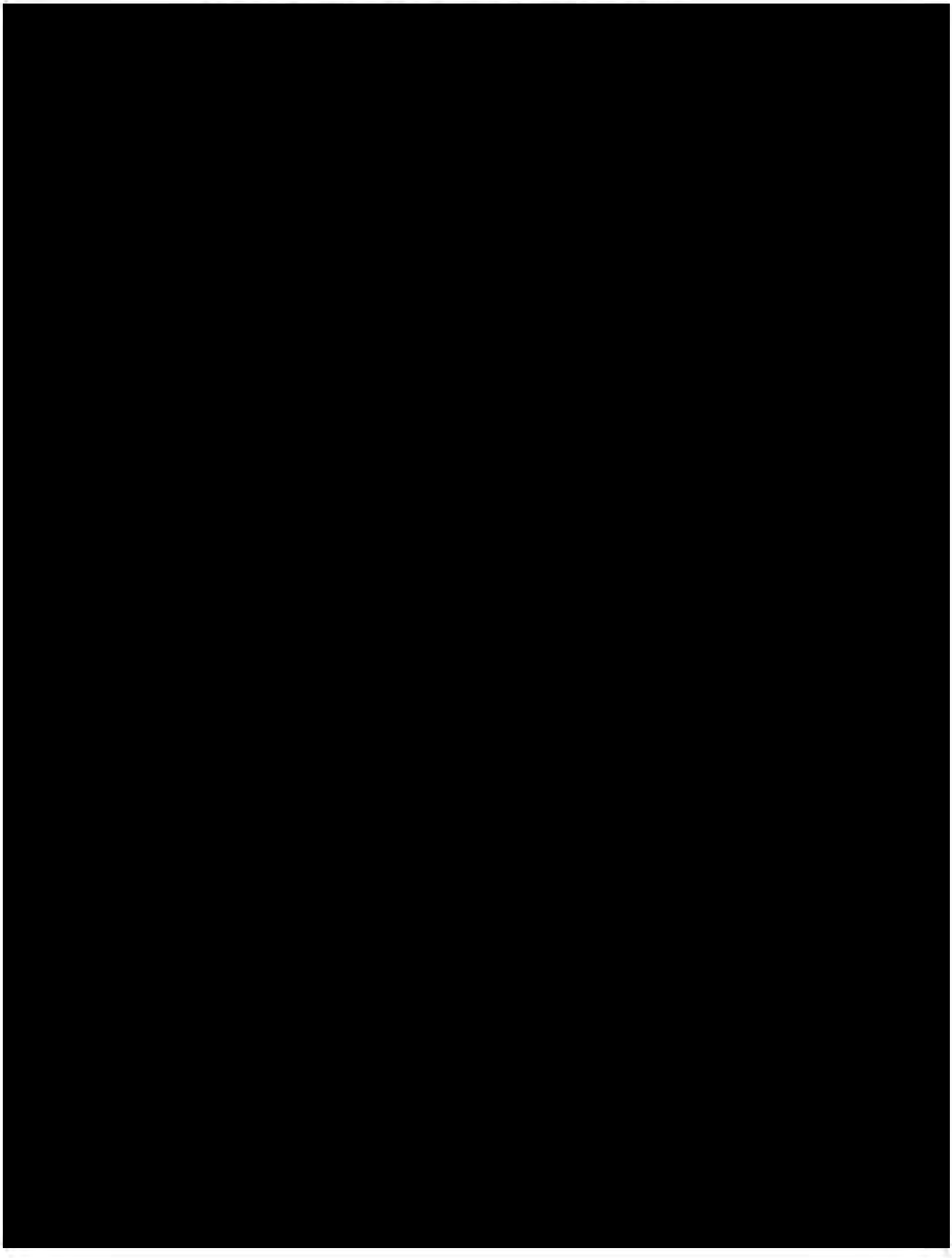
(Clause 12.22)

[redacted]

SCHEDULE D6

Requirements of Adjoining Property Owner Agreements

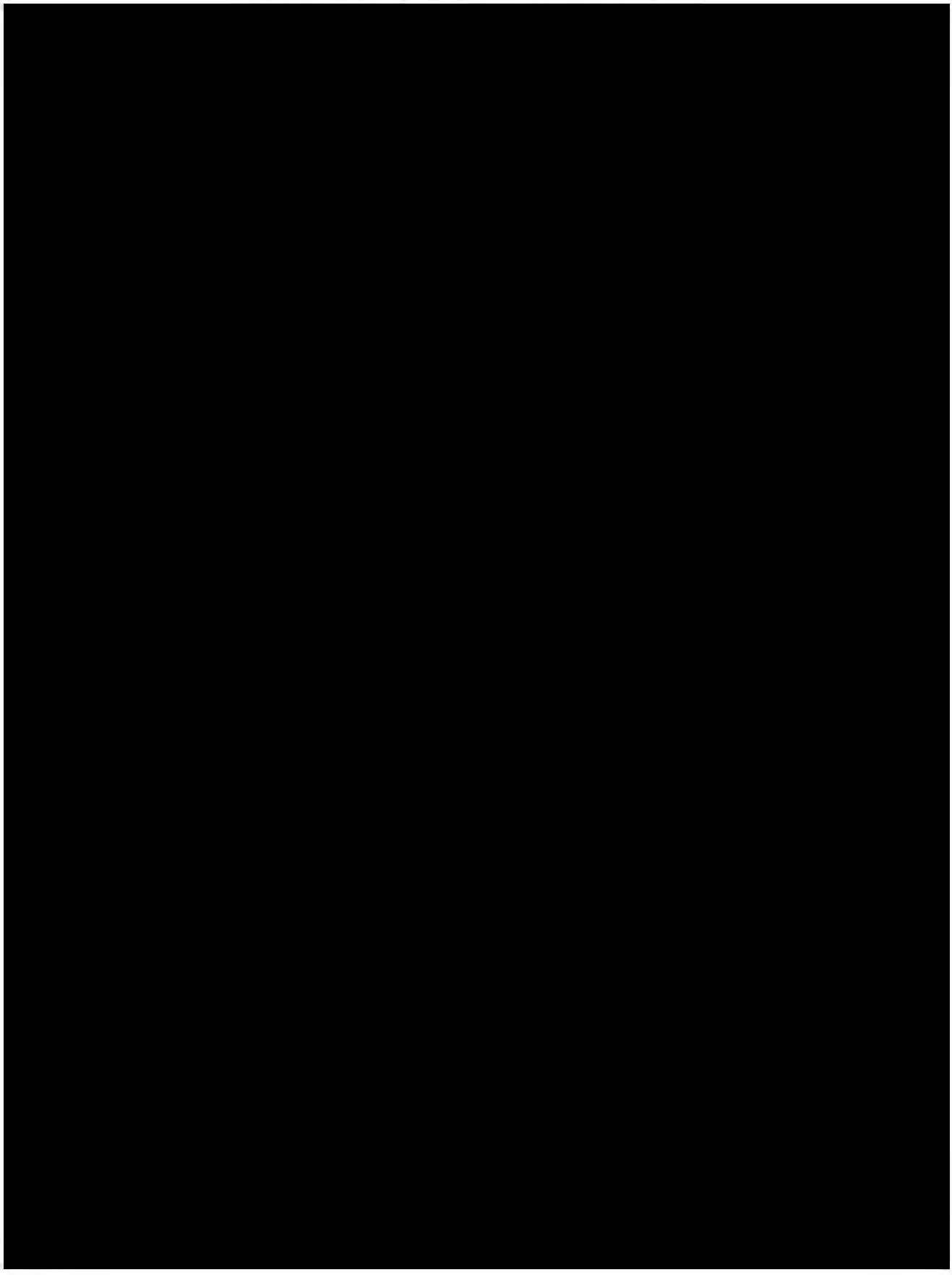
(Clauses 1.1, 4.2, 12.24, 25.14 and Schedule A26)



SCHEDULE D7

Requirements of Adjoining Property Easements

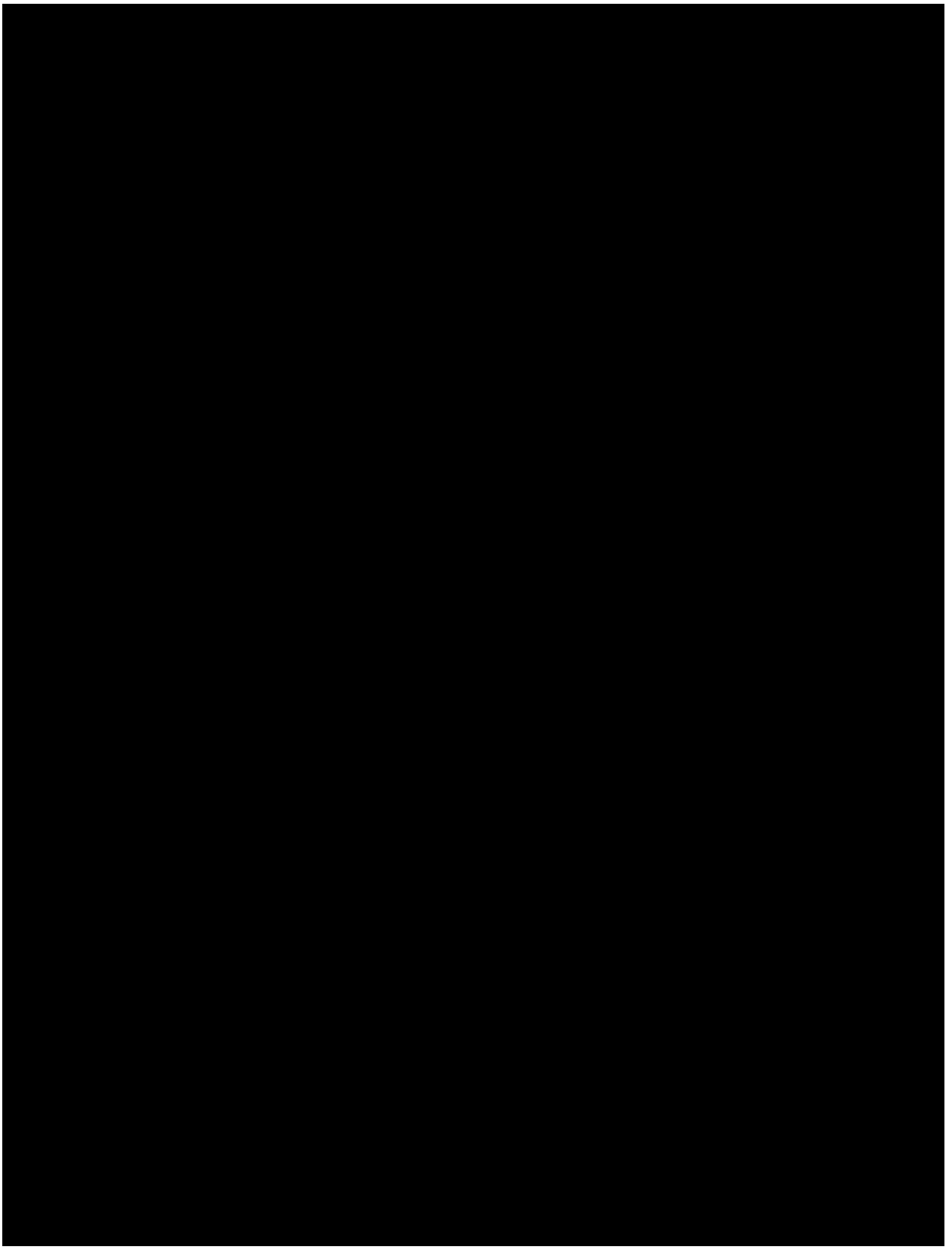
(Clauses 1.1, 4.2, 12.24 and Schedule A26)



SCHEDULE D9

Pro-forma Adjoining Property Owner Agreement

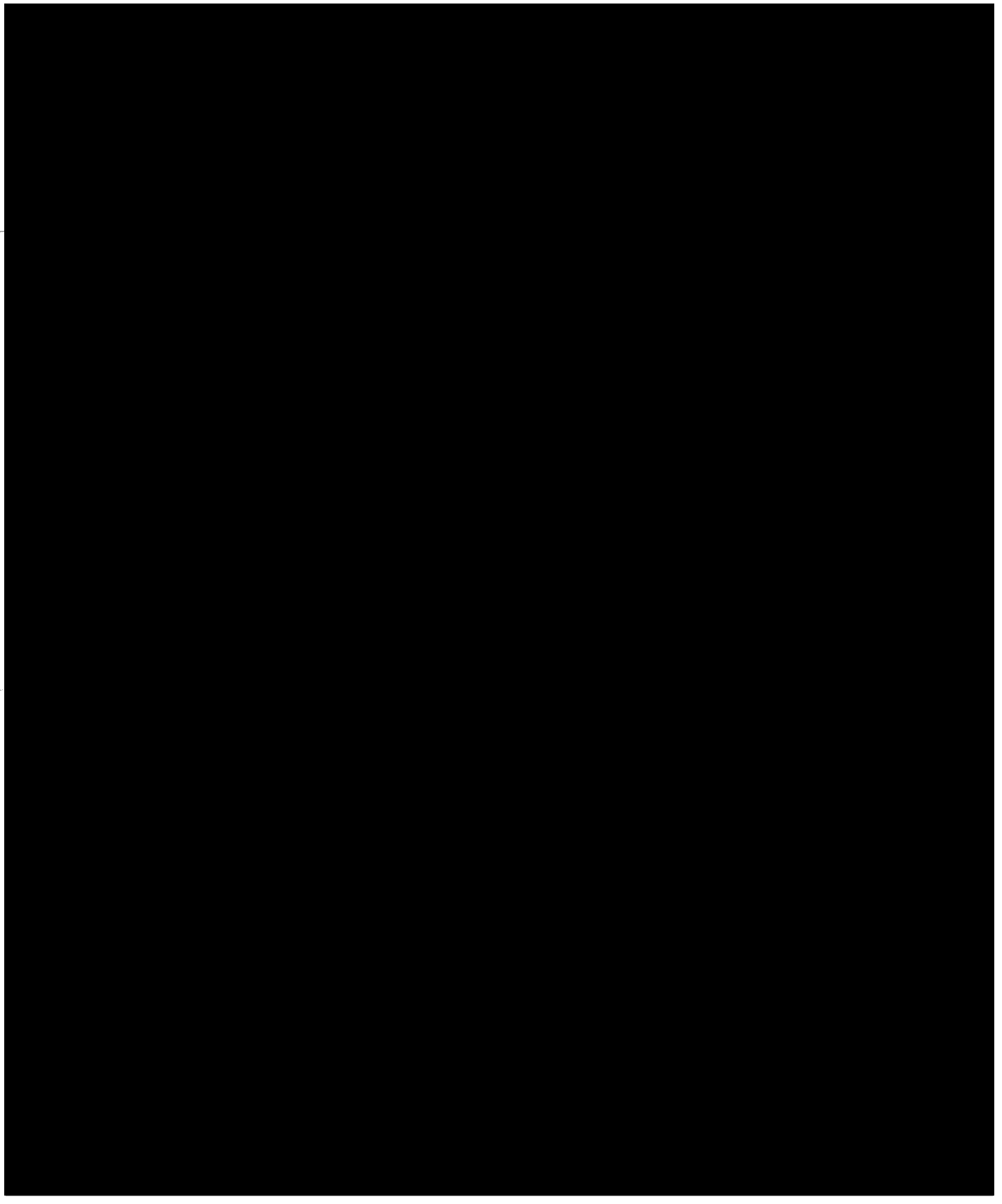
(Clauses 1.1, 12.24 and 12.25)



SCHEDULE D10

Pro-forma Easement

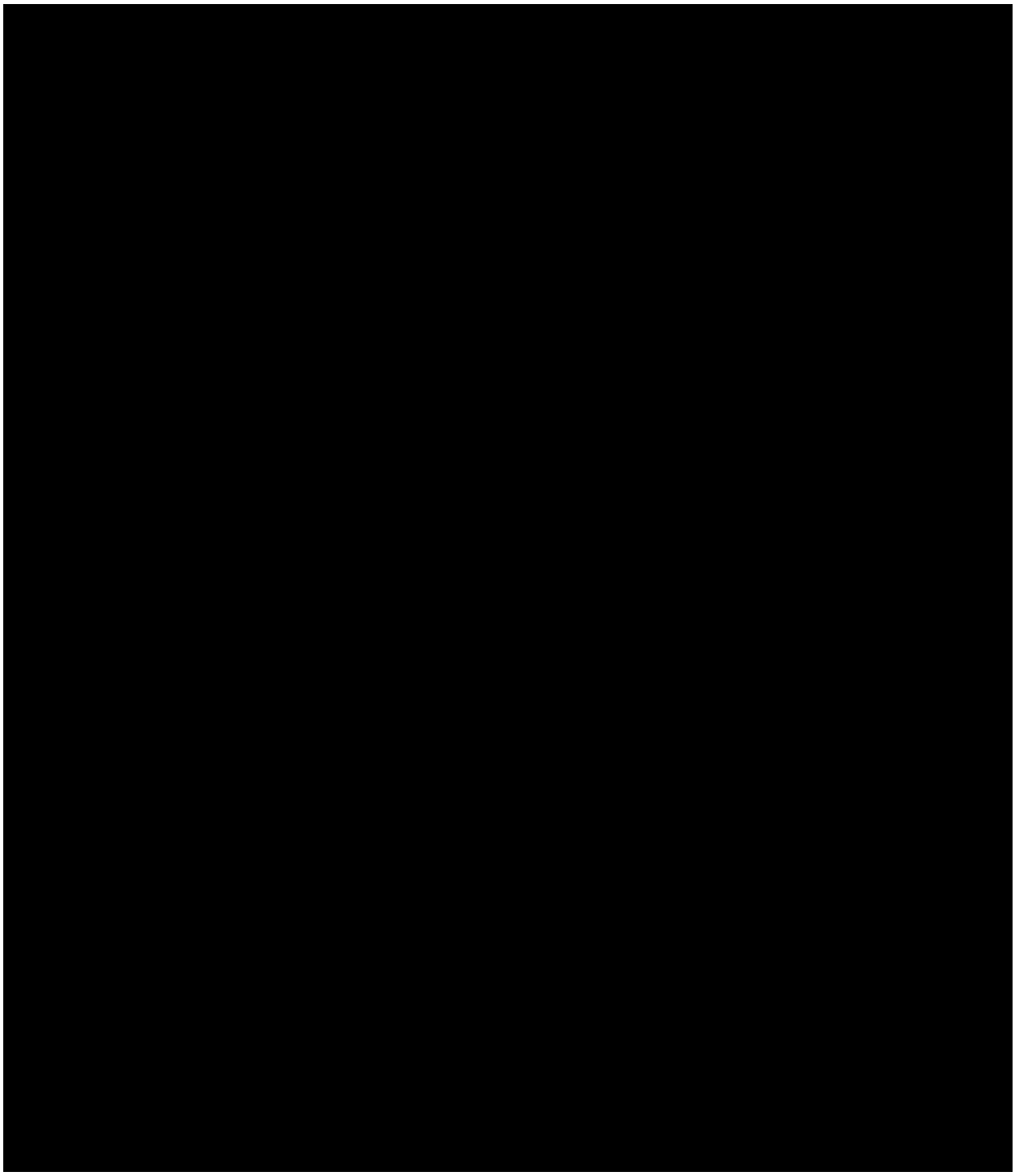
(Clauses 1.1, 12.24 and 12.25)



SCHEDULE D11

Adjoining Properties

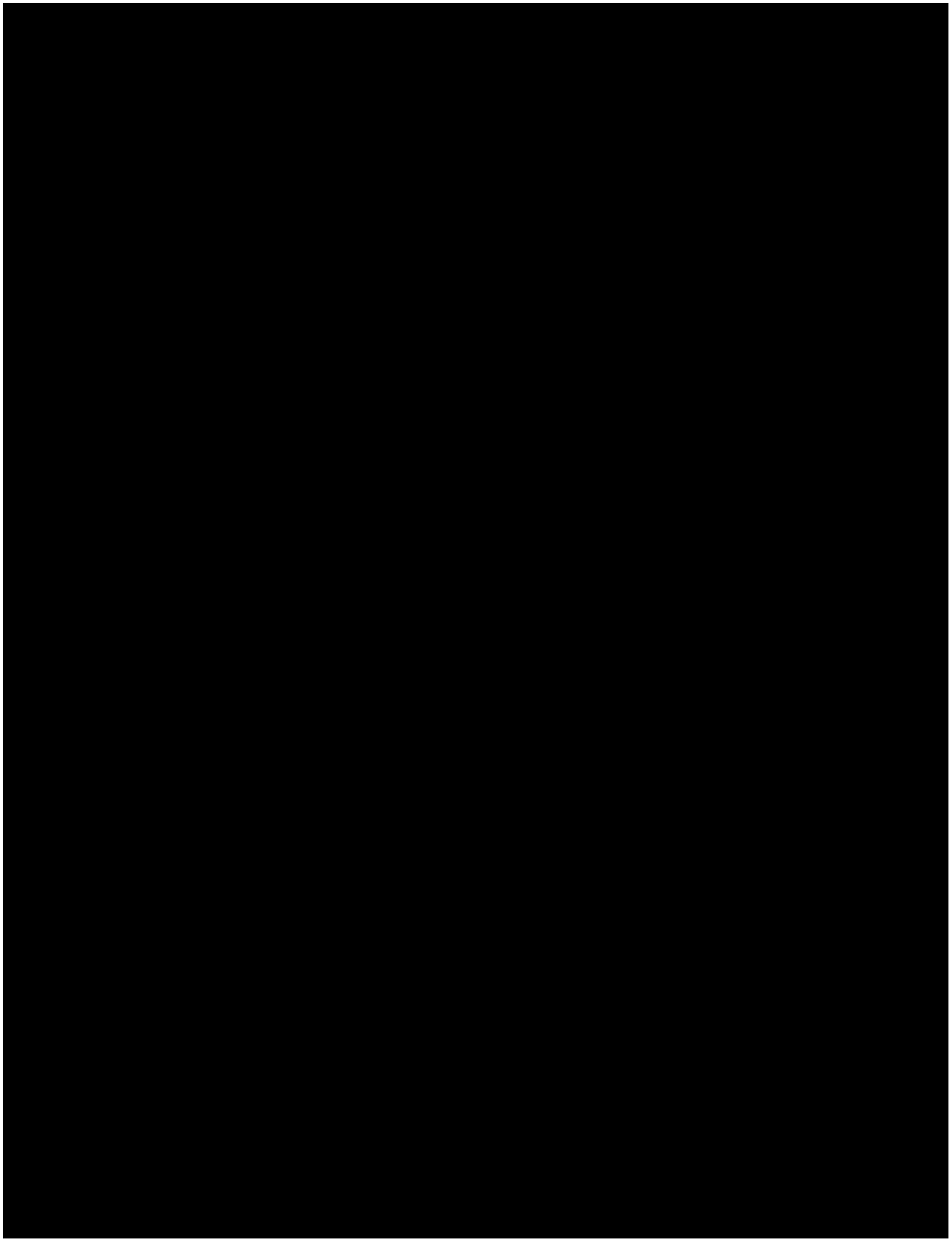
(Clauses 1.1, 12.24 and 12.25)



SCHEDULE D12

Adjoining Property Easements

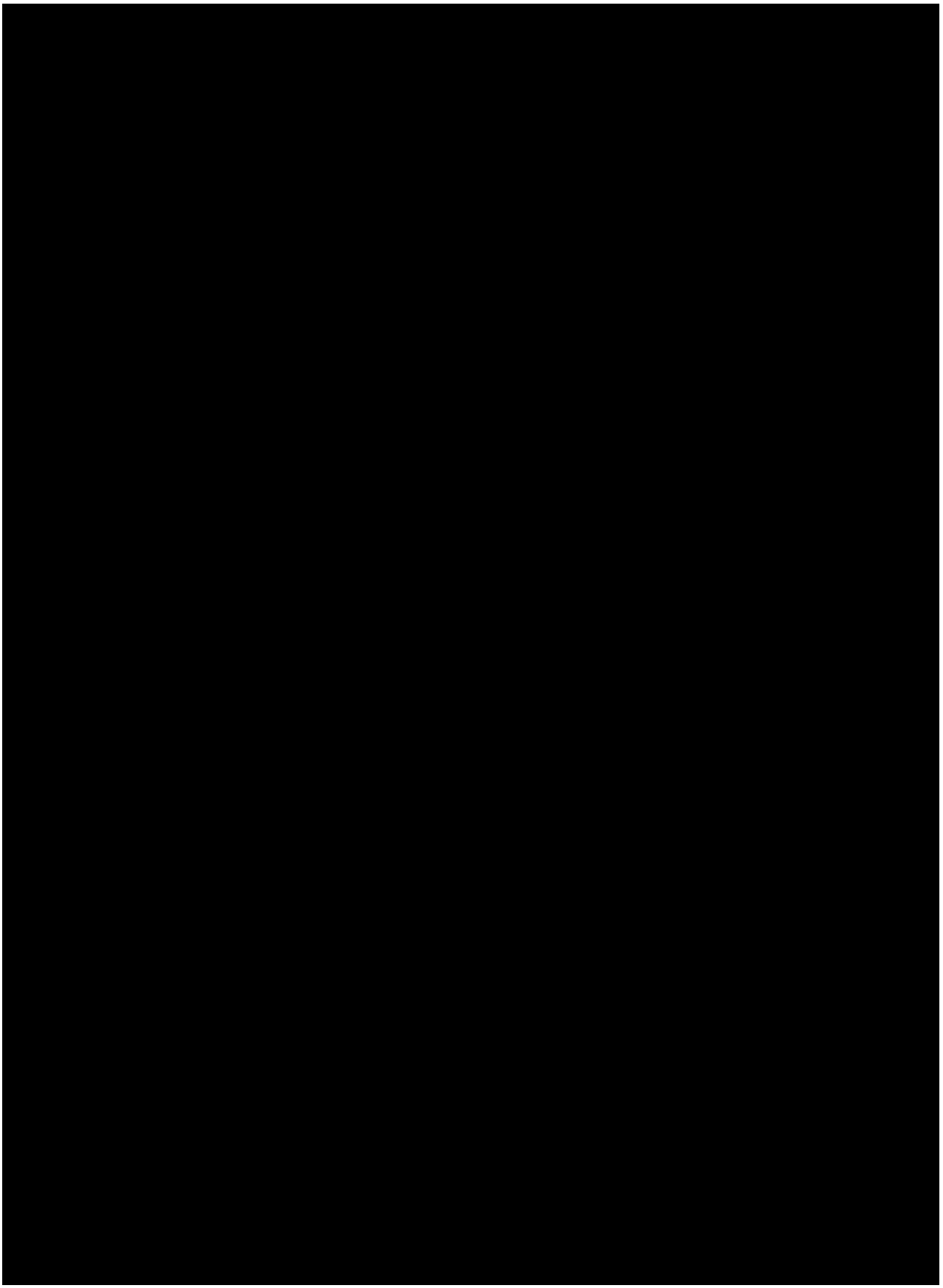
(Clauses 1.1, 12.24 and 12.25)



SCHEDULE D14

Areas of Contamination Concern

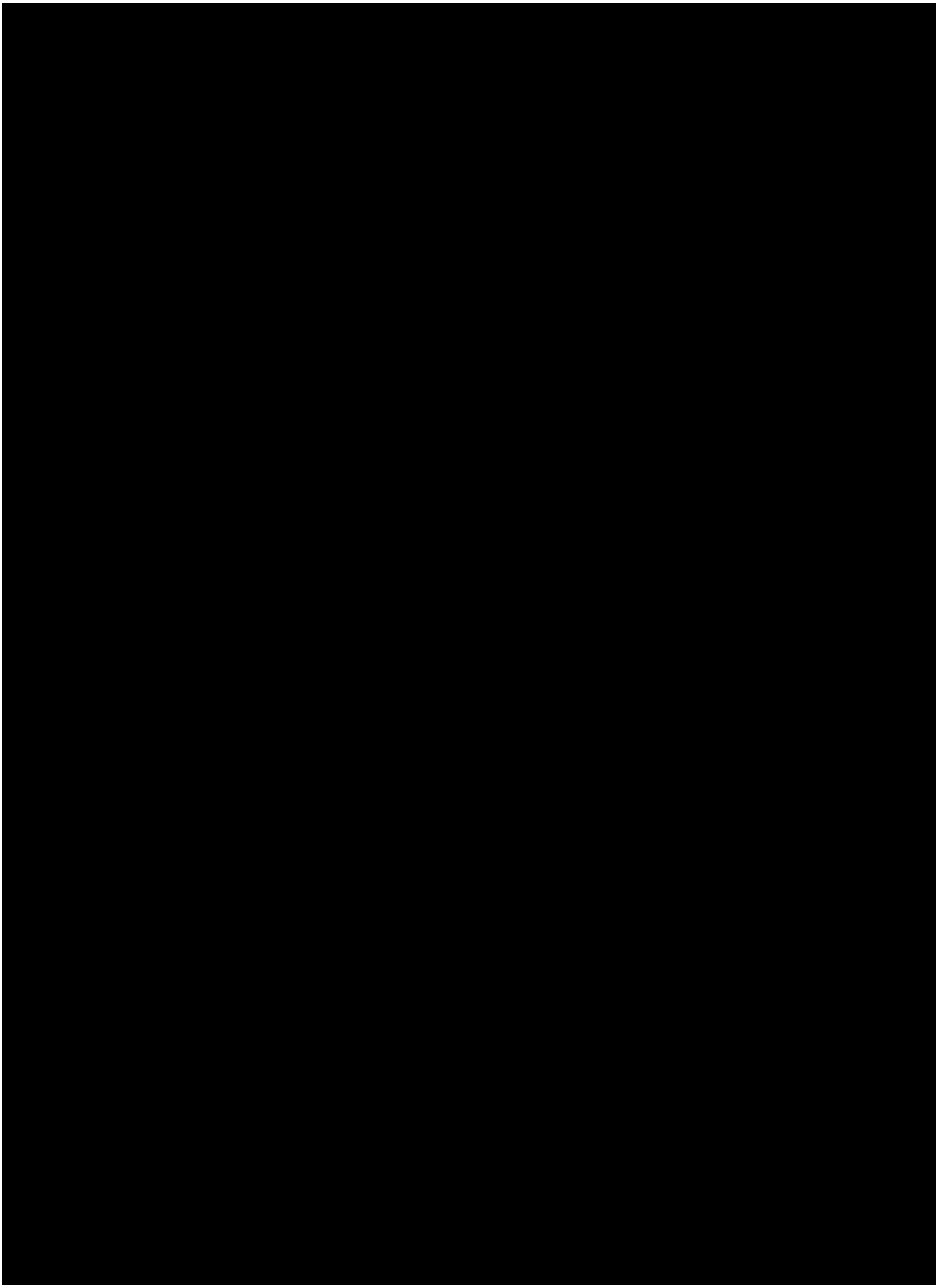
(Clauses 1.1, 12.19, 12.20 and 12.21)



SCHEDULE D15

Key Contaminated Areas

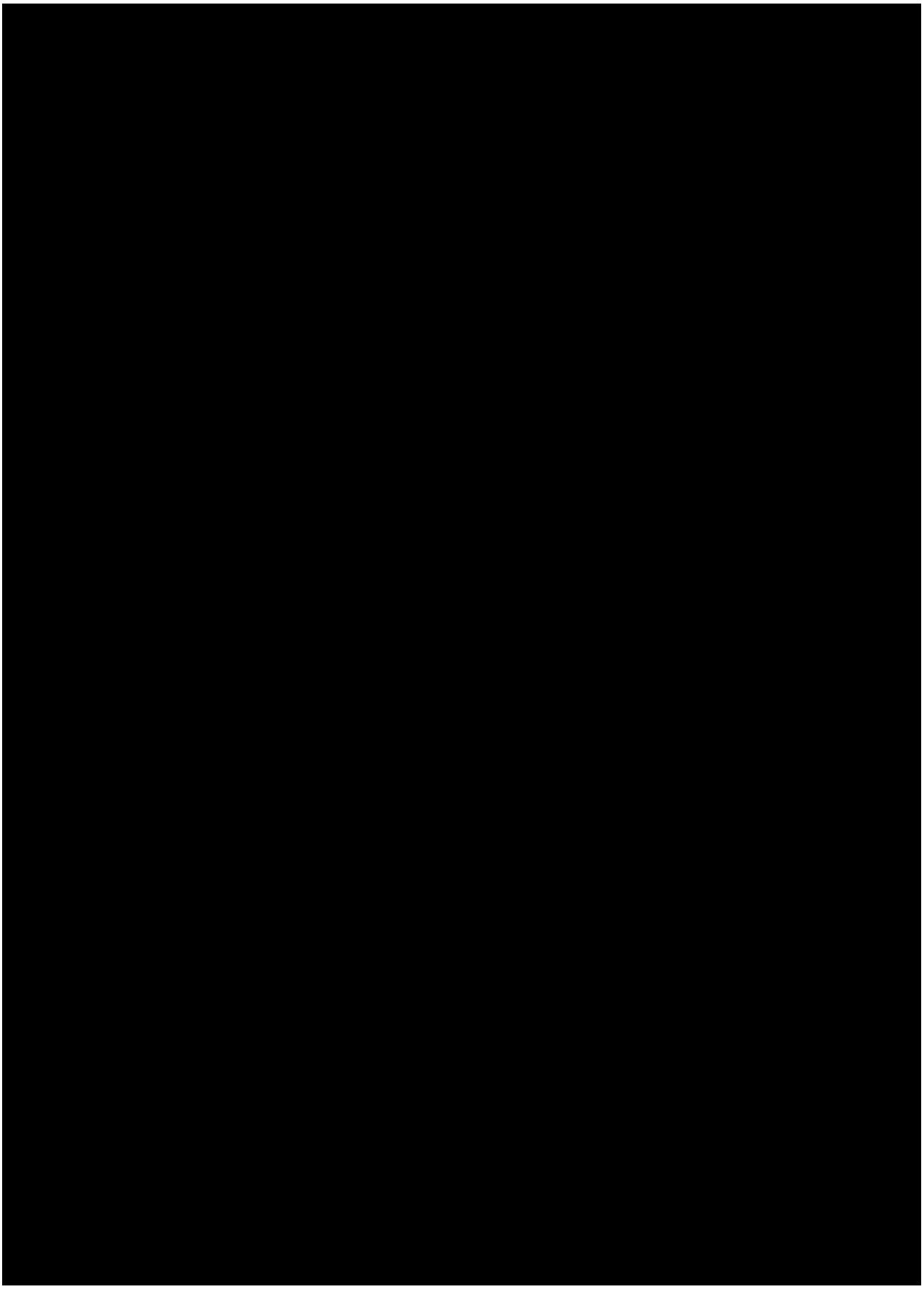
(Clauses 1.1, 12.17, 12.17A, 12.18, 12.19 and 12.20)



SCHEDULE D16

Contaminated Future Development Sites

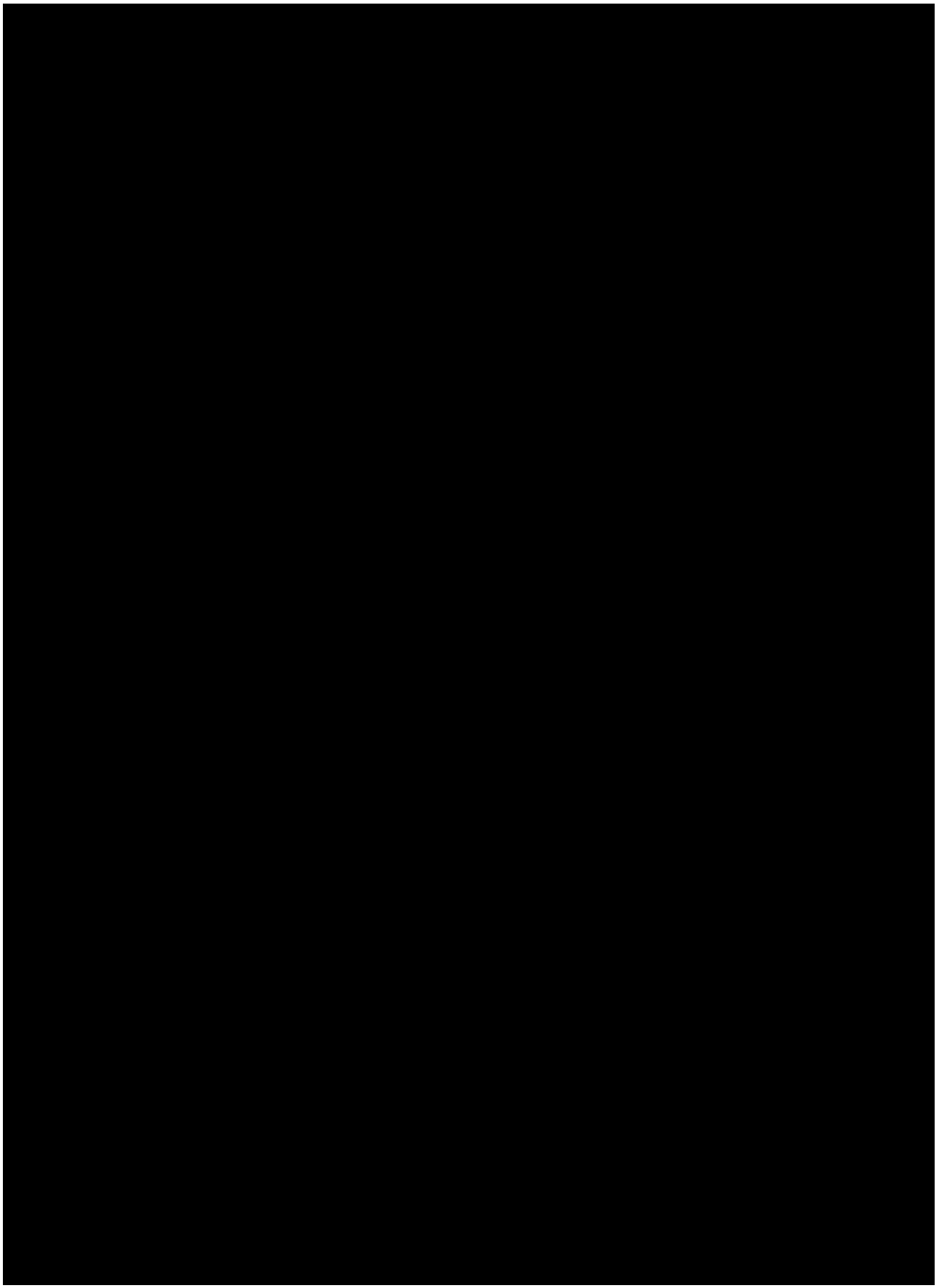
(Clauses 1.1 and 12.23)



SCHEDULE D17

Artefact Risk Areas

(Clauses 1.1, 12.12 and 12.13)



SCHEDULE D18

Identified Utilities Register

(Clauses 1.1 and 4.4)

A. Utilities Register

This Section A consists of the document entitled "SMW-UT-REG-WT-Utilities Asset Register-RevB", which is included in Schedule F1 as an electronic file.

B. Utility Investigation Works Documents

This Section B consists of any of the investigation reports listed in the document entitled "SMW-REG-UT-Western Tunnelling-UIW Register-Rev6", which is included in Schedule F1 as an electronic file.

Each of the documents listed in the document entitled "SMW-REG-UT-Western Tunnelling-UIW Register-Rev6" are also included in Schedule F1 as electronic files.

SCHEDULE D19

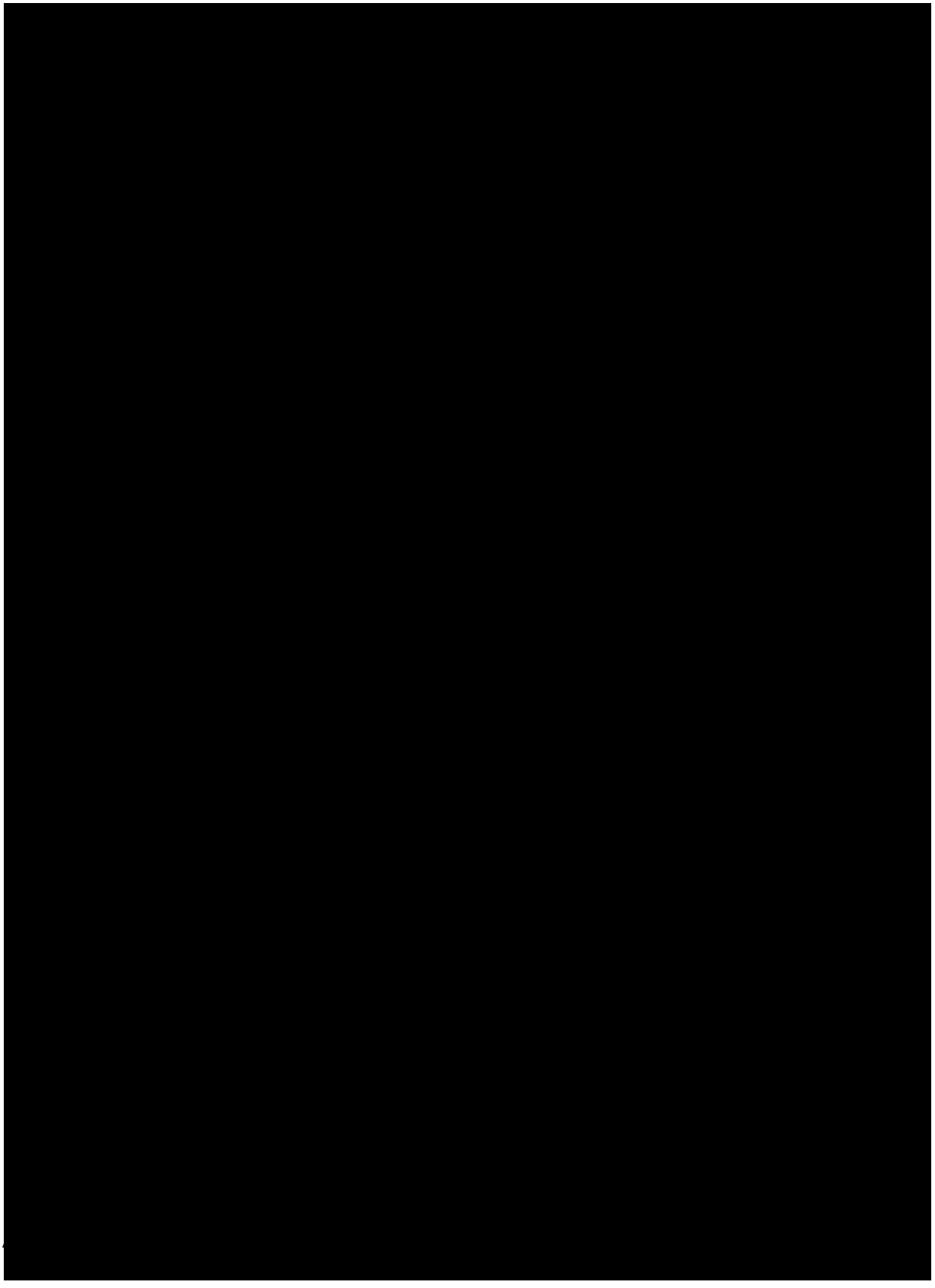
Compensable Hazardous Materials

(Clauses 1.1 and 12.15)

SCHEDULE D20

Principal Hazardous Material Reports

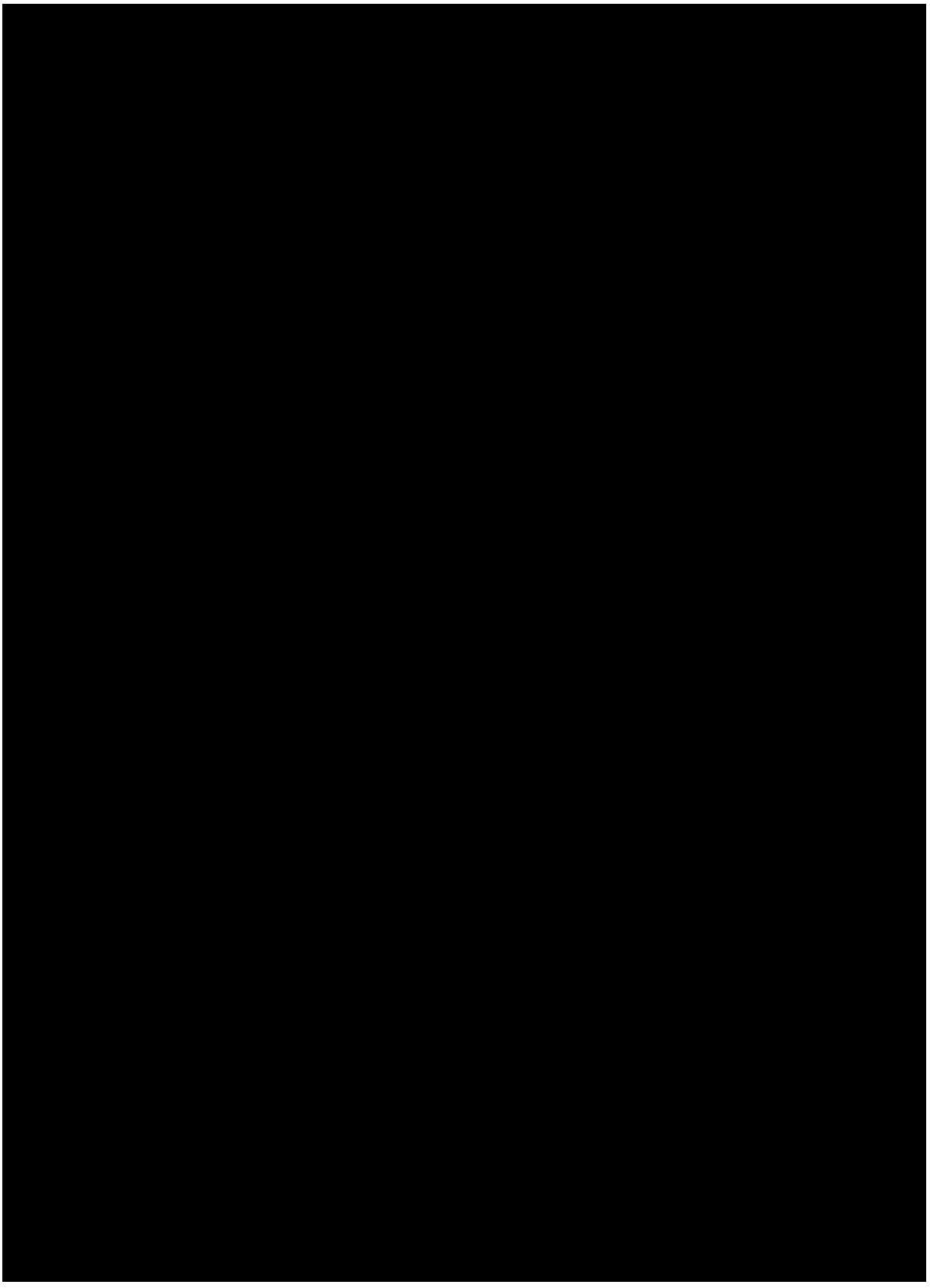
(Clause 12.15)



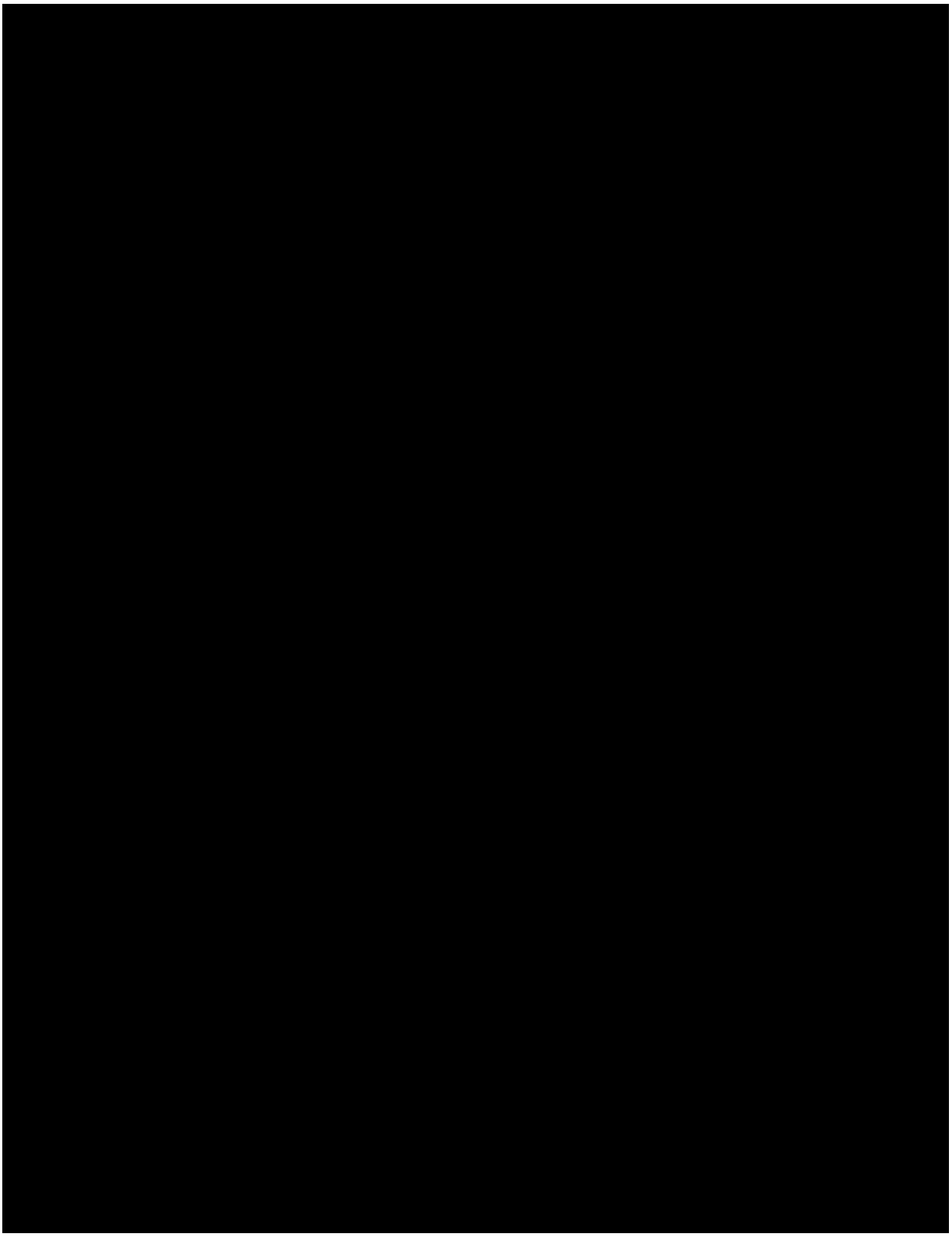
SCHEDULE D21

Certified Utility Services Designs

(Clauses 1.1, 4.4(g)-(h) and 20.12(d))



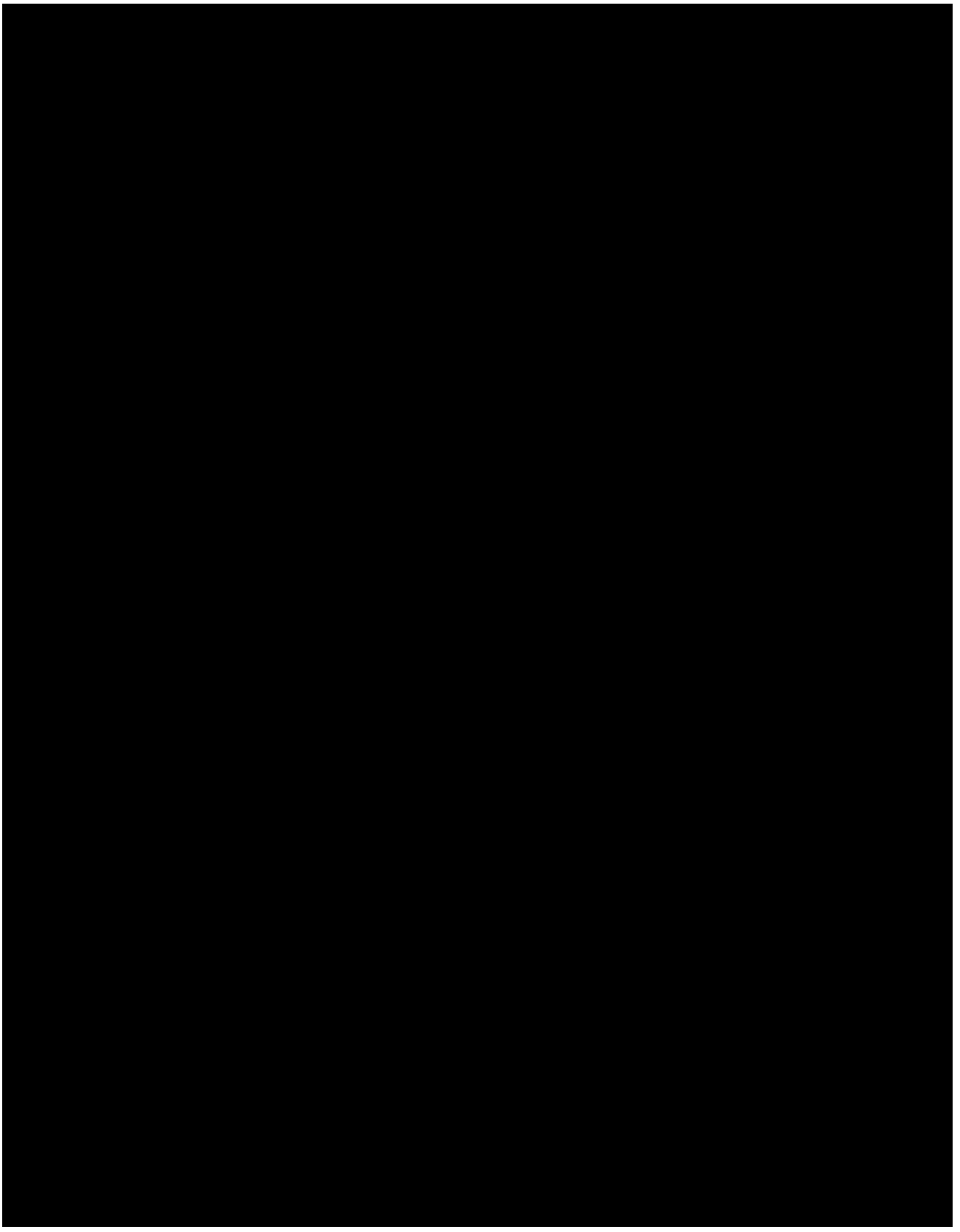
SCHEDULE D22



SCHEDULE E1

Design Payment Schedule

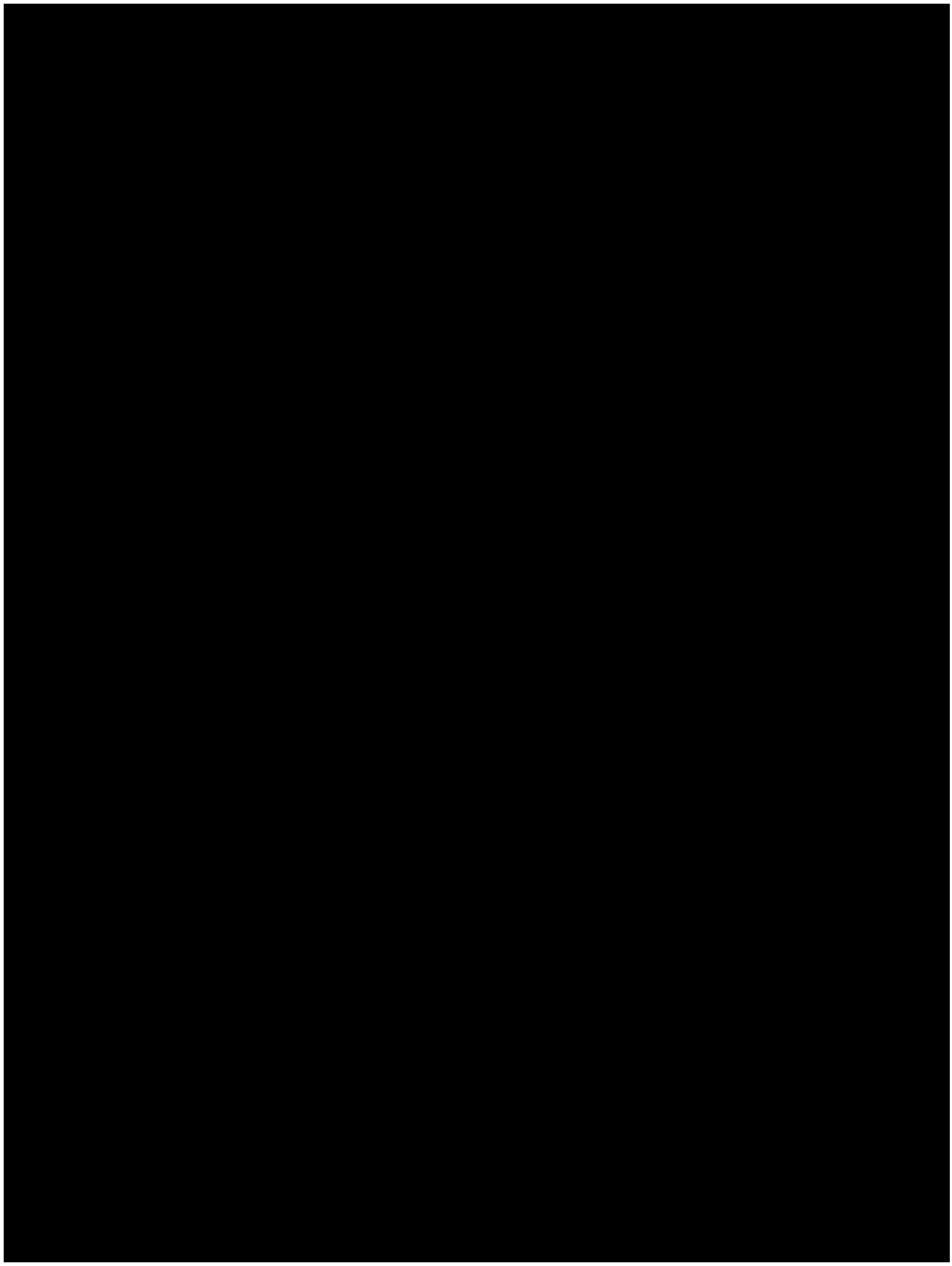
(Clauses 1.1 and 20)



SCHEDULE E2

Construction Payment Schedule

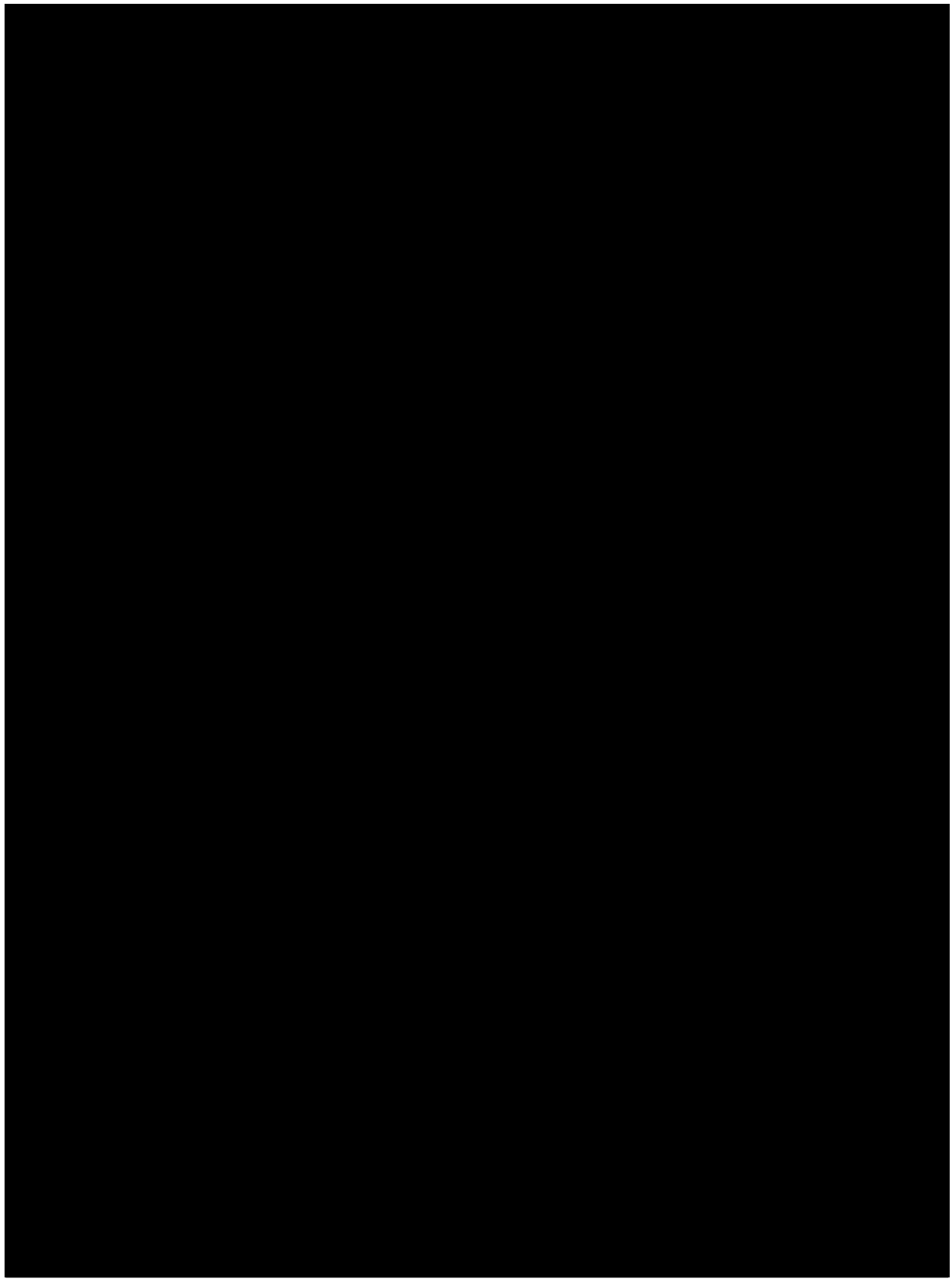
(Clauses 1.1 and 20)



SCHEDULE E3

Transitional Handover Services Payment Schedule

(Clauses 1.1 and 19.16(a)(ii))



SCHEDULE E4

Unconditional Undertaking

(Clause 6.2)

THIS DEED POLL (Undertaking) made the day of 20

IN FAVOUR OF: Sydney Metro (ABN 12 354 063 515) (the Principal)

GIVEN BY: (**Financial Institution**)

The Tunnelling Contractor: » .....

ABN » .....

Security Amount $ » .....

The Contract: The Tunnelling Contract between the Principal and the Tunnelling Contractor

Contract Title: Sydney Metro West, Western Tunnelling Works Design and Construction Deed

Contract Number: » .....

Undertaking

1. At the request of the Tunnelling Contractor, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.

2. Demands under this Undertaking may be made:

   (a) at [***Insert current address of Bank***];

   (b) at any other office maintained by the Financial Institution in Sydney from time to time; or

   (c) by any other method agreed to by the parties, acting reasonably.

3. The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Tunnelling Contractor and despite any notice from the Tunnelling Contractor not to pay.

4. The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.

5. This Undertaking continues until one of the following occurs:

   (a) the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;

   (b) this Undertaking is returned to the Financial Institution;

   (c) the Financial Institution pays the Principal the whole of the Security Amount; or

(d) [4.00pm Sydney time on [***insert date***] at the counter of the Financial Institution]. [***Note: This clause should only be included where the relevant Undertaking has an expiry date.*** [redacted]]

6. At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking, and the liability of the Financial Institution will then immediately end.

7. [The Financial Institution accepts, and submits to, the jurisdiction of the New South Wales courts in relation to any disputes associated with the Undertaking.] [***Note: This clause is to be included in the Undertaking where the Financial Institution is headquartered outside Australia.***]

8. This Undertaking is governed by the laws of the State of New South Wales.

SIGNED as a deed poll.

Signed sealed and delivered for and on behalf of [***Insert name of Financial Institution***] by its Attorney under a Power of Attorney dated , and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:	_____ Signature of Attorney
_____ Signature of Witness	_____ Name of Attorney in full
_____ Name of Witness in full	

SCHEDULE E4A

Notice of Release (Unconditional Undertakings)

(Clause 6.4(e))

[ON SYDNEY METRO LETTERHEAD]

[***insert date***]

[***insert name of Acceptable Banking Institution***]
[***insert address***]

With a copy to:

Tunnelling Contractor
[***insert address***]

Dear [***insert name***]

NOTICE OF RELEASE (UNCONDITIONAL UNDERTAKINGS)
Sydney Metro West
Western Tunnelling Works Design and Construction Deed

This notice is given in accordance with the "Sydney Metro West, Western Tunnelling Works Design and Construction Deed" (Contract No: 00013/13065) dated [***insert date***] (**Tunnelling Contract**). Words defined in the Tunnelling Contract have the same meaning in this notice.

In accordance with clause 6.4(e) of the Tunnelling Contract, the Principal confirms that the unconditional undertaking[s] referred to in **Attachment 1** [is/are] no longer required under the Tunnelling Contract and [is/are] hereby released.

Yours sincerely

.....

Name: [ ]

Position: [ ]

for and on behalf of **Sydney Metro** (ABN 12 354 063 515) as the Principal

ATTACHMENT 1
Description of Unconditional Undertaking(s)

Unconditional Undertaking #1	
Name of Acceptable Banking Institution	[*insert*]
Reference Number	[*insert*]
Date of issuance	[*insert*]
Security Amount	[*insert*]
Entity the Unconditional Undertaking was issued on behalf of	[*insert*]

[Unconditional Undertaking #2]	
Name of Acceptable Banking Institution	[*insert*]
Reference Number	[*insert*]
Date of issuance	[*insert*]
Security Amount	[*insert*]
Entity the Unconditional Undertaking was issued on behalf of	[*insert*]

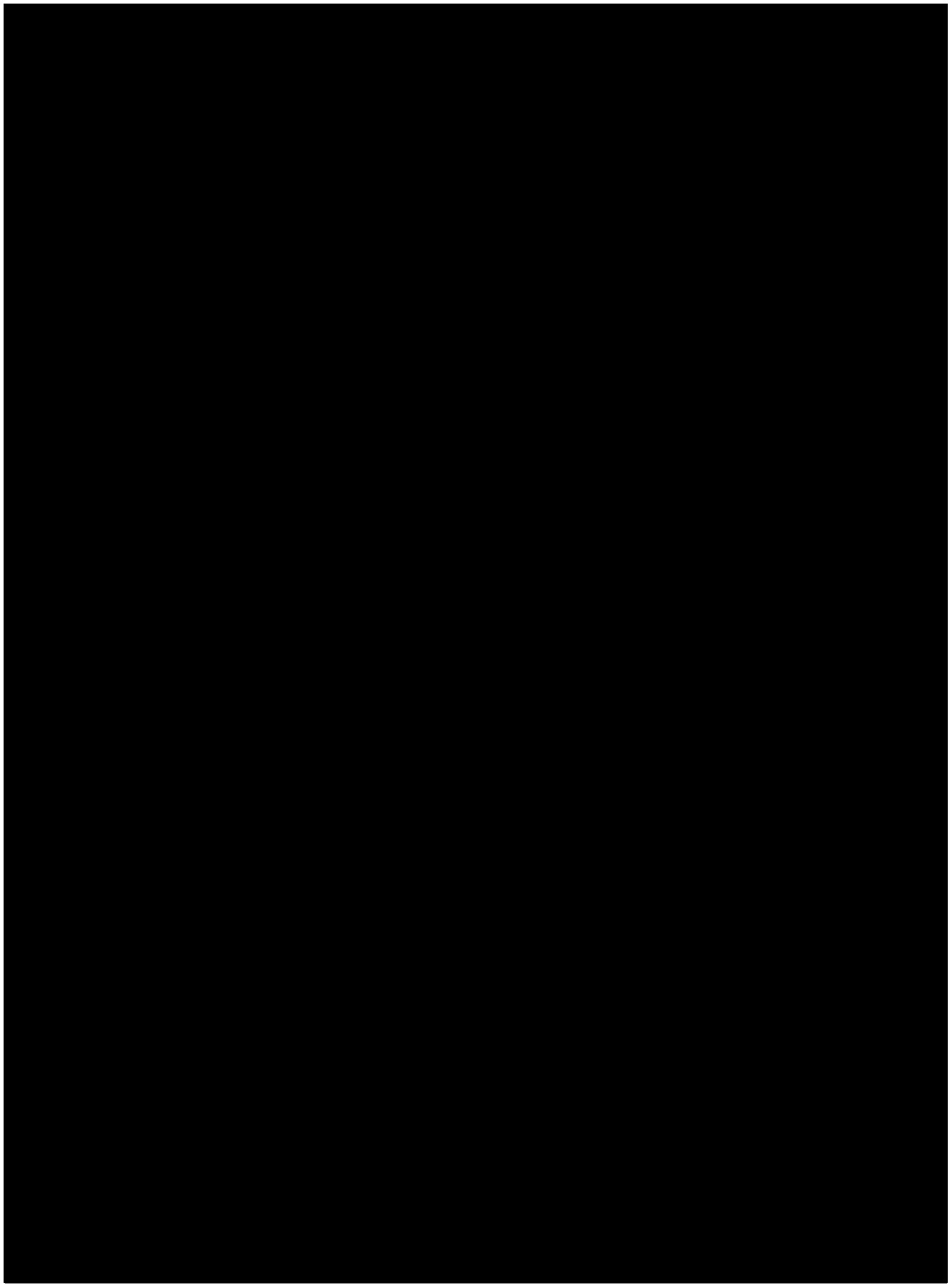
SCHEDULE E5

Not used

SCHEDULE E6

Insurance Policies

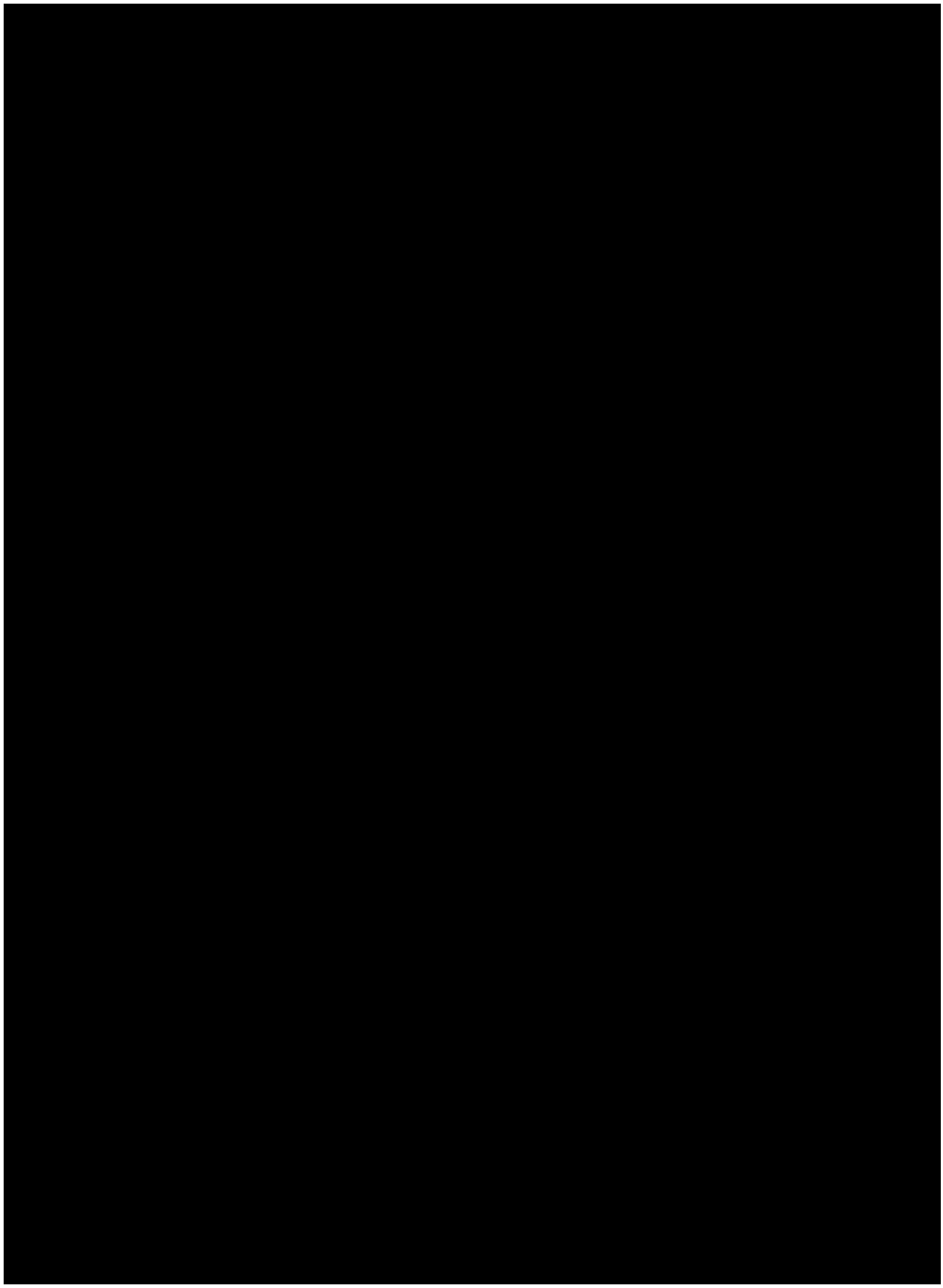
(Clause 23.4)



SCHEDULE E7

Target Remediation Costs

(Clauses 1.1, 12.17(d), 12.18(d) and 12.20)



SCHEDULE E8

Financial Reporting Form

(Clause 27.1(c))

This Schedule E8 contains the form that is required to be completed and provided by the Tunnelling Contractor on the last Business Day of March, June, September and December in accordance with Clause 27.1(c) of this deed (**Financial Reporting Form**).

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

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
1. Group Structure	• Diagram of group structure/wider corporate tree including relationship between the Tunnelling Contractor, each Designated Significant Subcontractor and ultimate owners. • Details of the ownership structure of the Tunnelling Contractor and each Designated Significant Subcontractor and their relationship to other group entities, including: any inter-group commercial relationships that are material or critical to the completion of the Tunnelling Contractor's Activities or the continual operation of the group.	[Y / N]	Microsoft PowerPoint, Microsoft Excel and/or searchable PDF
2. Wider Corporate Tree Liabilities	• Schedule of all guarantees, charges or other relevant security provided to any group entities / related parties to the Tunnelling Contractor and each Designated Significant Subcontractor, including the nature and quantum of any such security. • Include details of any off-balance sheet liabilities, including where the Tunnelling Contractor or any Designated Significant Subcontractor is a guarantor for financing arrangements of a related entity to the Tunnelling Contractor or any Designated Significant Subcontractor, and/or has provided parent company or cross guarantees for the obligations of a	[Y / N]	Microsoft Excel and/or searchable PDF

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
	related party to the Tunnelling Contractor or any Designated Significant Subcontractor.		
3. Related Party Loans, Payables and Receivables	As at the date of the audited financial statements or, when not available, management accounts, provided under clause 27.1(a) of this deed for the Tunnelling Contractor and, when requested by the Principal, each Designated Significant Subcontractor: • Aged accounts payable and accounts receivable ledgers as at the most recent quarter end including a breakdown of any related party entities to the Tunnelling Contractor and each Designated Significant Subcontractor (entity name, amount and aging). • Schedule of all intercompany loans (that are not included in the accounts payable or accounts receivable ledgers) as at the most recent quarter end. Include name of entity, amounts broken down by current/non-current assets and liabilities, repayment terms and any security taken or given.	[Y / N]	Microsoft Excel and/or searchable PDF
4. Significant Shareholders	• Schedule of significant shareholders and effective percentage holding of the Tunnelling Contractor and each Designated Significant Subcontractor. • Details of any shareholder changes that have not been reported to ASIC or the respective corporate regulator and are therefore inconsistent with their records.	[Y / N]	Microsoft Excel and/or searchable PDF
5. Company Directors	For the Tunnelling Contractor and each Designated Significant Subcontractor: • Statement of solvency by company director/s • Schedule of outgoing directors (name, date of birth, date of resignation). • Schedule of incoming directors including name, date of birth, appointment date, history with the business, extent of experience in the sector, previous companies, project experience (size and nature), whether they are a key person to the business and details of the mitigation plans should they leave (details of succession planning, other contingency plans).	[Y / N]	Microsoft Excel and/or searchable PDF

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
	• Details of any directorship changes that have not been reported to ASIC or the respective regulator and are therefore inconsistent with their records. • Whether any of the incoming directors have previously been directors of a company that has entered insolvency proceedings.		
6. Executive Management	**Executive Management (the Tunnelling Contractor and each Designated Significant Subcontractor):** • Organisational chart, setting out the management structure including key delivery personnel required to perform the Tunnelling Contractor's Activities.	[Y / N]	Microsoft PowerPoint, Microsoft Excel and/or searchable PDF
7. Key Person Risk	For the Tunnelling Contractor: • Identify key person risk in relation to individuals in executive management roles or key contract personnel. • Information about how the company mitigates key person risk and reliance on any one person to perform functions that are critical to completion of this deed or the continued operation of the business. • Overview of succession or contingency plans that are in place to mitigate the risk of a key person departure. • Updated workforce number and breakdown by key division (including employees and contractors).	[Y / N]	Microsoft Excel and/or searchable PDF
8. Core Offerings and Markets	For the Tunnelling Contractor: • Breakdown of total revenue by markets / industry subsectors in which the entity operates for the most recent half year. • Breakdown of total revenue by geography in which the entity operates for the most recent half year. • Updated high level commentary on economic trends in the industry and whether favourable, unfavourable, flat etc. • Updated information about any new products, services or markets entered in last 12 months or under consideration.	[Y / N]	Microsoft Excel and/or searchable PDF

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
9. Regulatory Environment	• Summary of any proposed or likely regulatory changes that could impact the Tunnelling Contractor's ability to achieve Milestone Achievement, Substantial Completion and/or Completion in accordance with this deed, or continuance of the company's business in key markets. • Describe the Tunnelling Contractor's risk mitigation strategies to address regulatory environment risk.	[Y / N]	Microsoft Excel and/or searchable PDF
10. Claims and Associated Contingencies	For the Tunnelling Contractor and each Designated Significant Subcontractor: • Litigation, arbitration, mediation, conciliation, criminal or administrative procedures that are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial and other obligations under the Contract. • Contract terminations for cause against the company. • Schedules of statutory demands, judgements, winding up applications or other applications in the last 12 months, by creditors or shareholders to place the company into liquidation, administration, judicial management, receivership or equivalent (whether voluntary or involuntary). • Material changes in the financial condition of the company (since the date of its last audited accounts) which would prejudice the ability of the company to perform its obligations under the Contract.	[Y / N]	Microsoft Excel and/or searchable PDF
11. Normalisation of Earnings	The following information is only required where audited financial statements, or, when not available, management accounts, under clause 27.1(a) of this deed were provided since the previous quarter: • Details and amount of any material non-recurring or one-off income or expenses that occurred in the period that are not representative of normal operations. • Details and amount of any material expenses incurred in the period due to natural disasters or other events that could not have reasonably been predicted or mitigated.	[Y / N]	Microsoft Excel and/or searchable PDF

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
	• Details and amount of any material income that was earned in the period, that was not representative of normal operations going forward.		
12. Key Financial Metrics	• For the Tunnelling Contractor and each Designated Significant Subcontractor, as at the date of the most recent audited financial statements, or, when not available, management accounts, provided under clause 27.1(a) of this deed: - Estimated delivery portion percentage of the Tunnelling Contractor's Activities; - Net Assets; - Net Tangible Assets; - Current Ratio; - Net Operating Cash Flow (based on most recent full year accounts); - Annual Revenue (based on most recent full year accounts); - EBITDA as a percentage of Annual Revenue (based on most recent full year accounts); and - Number of months backlog (total backlog divided by annual sales multiplied by 12).	[Y / N]	Microsoft Excel and/or searchable PDF
13. Work on Hand	For the Tunnelling Contractor and each Designated Significant Subcontractor: • Schedule as at the most recent quarter end, of total work on hand (revenue) including a breakdown of the top 10 projects including: - Project name, customer, project location (country/state); - Total project value; - Amount completed; - Percentage completed; - Amount remaining; - Percentage remaining; and - Estimated year of completion.	[Y / N]	Microsoft Excel and/or searchable PDF

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
	• Details of any material delays or cost overruns on the top 10 projects on hand including the nature of those issues and how they have been resolved or mitigated going forward.		
14. Backlog	As at the most recent quarter end for the Tunnelling Contractor and each Designated Significant Subcontractor: • Total value and number of months backlog (total backlog divided by annual sales multiplied by 12). Note: Backlog is defined as the pending production, i.e. contractual amounts or customer orders after having deducted the amounts already accounted for as income in the income statement. Backlog is calculated on the basis of orders and contracts awarded, deducting the realised portion that is accounted for in revenue and adding or subtracting other variations that correspond to modifications to the initial contracts.	[Y / N]	Microsoft Excel and/or searchable PDF
15. Pipeline	As at the most recent quarter end for the Tunnelling Contractor and each Designated Significant Subcontractor: • Pipeline summary containing the following information: - Bids Submitted (# bids/opportunities, gross value $, historical win rate, Net value $); - Identified Opportunities (# bids/opportunities, gross value $, historical win rate, Net value $); - Estimated pipeline value (sum of Bids Submitted and Identified Opportunities) gross value $ and net value $. • Breakdown of Bids Submitted (gross value $) including: - Other Sydney Metro West packages and Sydney Metro – Western Sydney Airport packages; - Other Transport for NSW projects; - Other Australian projects; - International projects. • Breakdown of Identified Opportunities (gross value $) including:	[Y / N]	Microsoft Excel and/or searchable PDF

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
	- Other Sydney Metro West packages and Sydney Metro – Western Sydney Airport packages; - Other Transport for NSW projects; - Other Australian projects; and - International projects.		
16. Customer Concentration	As at the most recent quarter end for the Tunnelling Contractor and each Designated Significant Subcontractor: • Schedule of Major Customers/Projects for YTD including total YTD sales and a breakdown of each of the top 10 projects (by YTD revenue) include: - Project name and customer; - Status (i.e. complete/ongoing); - Revenue YTD; and - Percentage of total sales for the period.	[Y / N]	Microsoft Excel and/or searchable PDF
17. Supplier concentration	As at the most recent quarter end for the Tunnelling Contractor: • Schedule of all suppliers and subcontractors for the period, including total spend for the period (on all suppliers and subcontractors) and breakdown of each of the top 10 suppliers and subcontractors including: - Supplier/subcontractor name; - Whether the services provided by the supplier/subcontractor are specialised or generic; - Whether the supplier/subcontractor is a Significant Subcontractor to this deed? - Purchases/spend during the period; - Percentage of total spend (all suppliers and subcontractors); and - Payment terms (days).	[Y / N]	Microsoft Excel and/or searchable PDF

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
	• Where supplies are specialised, are they critical to the Tunnelling Contractor's Activities under this deed? If so, are there any contingency plans in place to mitigate breaks in supply?		
18. Cash Flow	For the Tunnelling Contractor and each Designated Significant Subcontractor, as at the date of the most recent audited financial statements or, when not available, management accounts, provided under clause 27.1(a) of this deed: • Dividends/interim dividends paid. • Forecast dividends during current financial year (if applicable).	[Y / N]	Microsoft Excel and/or searchable PDF
19. Working Capital Management	For the Tunnelling Contractor and each Designated Significant Subcontractor: • Aged receivables summary ledger as at most recent quarter end including breakdown of top 10 debtors by value. Ledger should reconcile to accounts receivable on balance sheet in the audited financial statements or, when not available, management accounts, provided under clause 27.1(a) of this deed (i.e. up to the most recent half year); and • Aged payable summary ledger as at most recent quarter end including breakdown of top 10 creditors by value. Ledger should reconcile to accounts payable on balance sheet in the audited financial statements or, when not available, management accounts, provided under clause 27.1(a) of this deed (i.e. up to the most recent half year).	[Y / N]	Microsoft Excel and/or searchable PDF
20. COVID-19 Impact	• Updated information about the impact of COVID-19 on the Tunnelling Contractor and each Designated Significant Subcontractor, including: - Description of the impact of COVID-19 on business performance and financial position; - Description of the impact of COVID-19 on each of the company's core offerings and markets; - Description of the impact of COVID-19 on contracts delivery and pipeline delays; - Description of the company's COVID-19 response to date and any material strategic decisions made;	[Y / N]	Microsoft Excel and/or searchable PDF

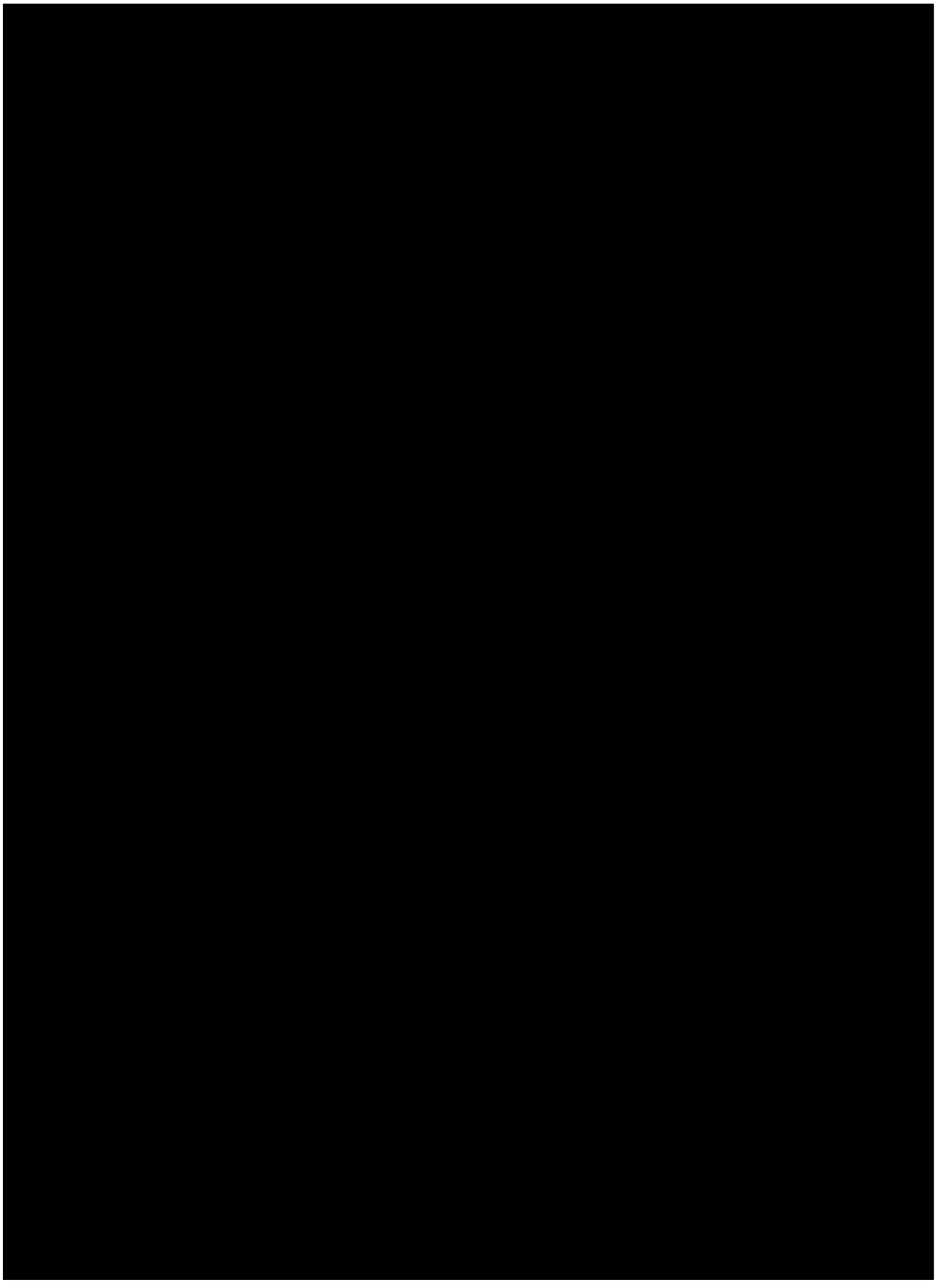
Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
	- Description of the company's COVID-19 outlook for business performance during the current and subsequent financial year; and - Description of the capacity of the business to absorb continued impact and disruptions due to COVID-19.		
21. Forecast Review	For the Tunnelling Contractor and each Designated Significant Subcontractor: • High level, summary Profit and Loss management forecast for the current financial year, including the following line items only: - Total Revenue; - Total Cost of Sales; - Total Gross Margin; - Total EBITDA; and - Total NPAT. • High level, summary Cash Flow Statement management forecast for the current financial year, including the following line items only: - Total NPAT; - Total of non-cash items; - Net cash flow operations; - Net cash flow from investing; - Net cash flow from financing; - Total forecast dividends; and - Closing cash balance.	[Y / N]	Microsoft Excel and/or searchable PDF
22. Facilities Schedule	For the Tunnelling Contractor and each Designated Significant Subcontractor, as at the date of the most recent audited financial statements or, when not available, management accounts, provided under clause 27.1(a) of this deed: • Schedule of financing facilities, including for each facility: - Facility type;	[Y / N]	Microsoft Excel and/or searchable PDF

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
	- Financier; - Facility limit; - Security given; - Amount drawn; - Available balance; - Remaining term; - If expiring <6 months, is renewal expected on similar or better terms (Y/N); - Whether any alternative facilities are being arranged? If yes, have letters of offers been received? and - Is refinancing required during the contract period associated with this deed (Y/N)? • Does the company forecast to be in compliance with covenants for the duration of this deed (Y/N)?		
23. Sources of Liquidity	For the Tunnelling Contractor and each Designated Significant Subcontractor: • Information regarding equity as a source of additional liquidity: - Whether there are any equity raising initiatives/requests underway; - Shareholder capacity and willingness to inject further equity for liquidity if required; - Summary of how the company would raise additional cash, by way of equity capital, if required; and - Current credit ratings and basis/ratings agency. • Information regarding debt as a source of additional liquidity: - Details of any breaches in debt covenants or events of default (monetary and non-monetary) in the past five years; - Issues that may restrict the company's ability to borrow additional funds (e.g. gearing levels, credit history); and	[Y / N]	Microsoft Excel and/or searchable PDF

Item	Financial Reporting Form information requirements	Information submitted in previous quarter is still current and accurate (Y/N)	Required Format
	- Details of any material refinancing required in the next three years and confirmation that there is no forthcoming refinancing that may affect the ability of the company to meet its obligations in relation to this deed.		

SCHEDULE E9

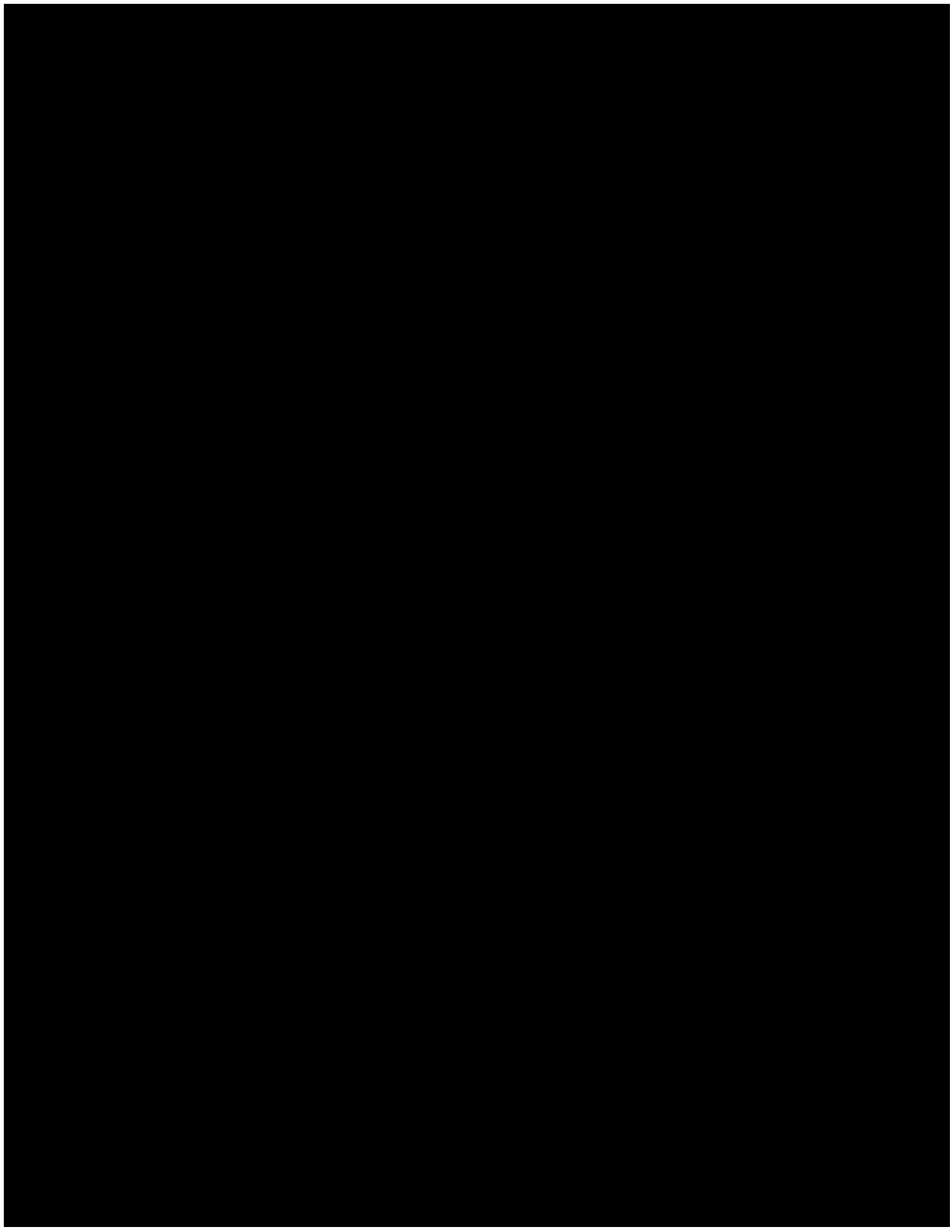
Valuation Mechanism



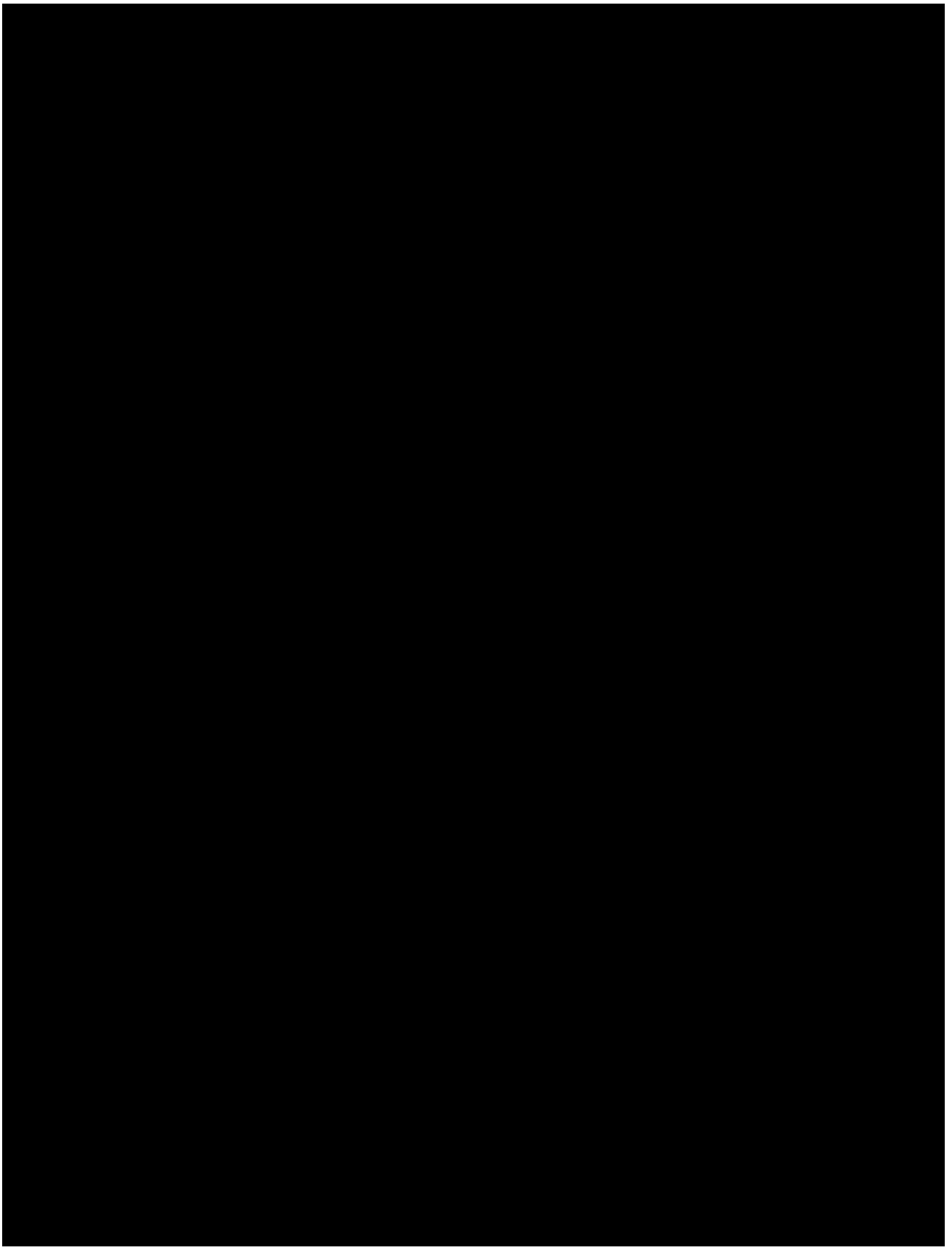
SCHEDULE E10

Performance Incentive Regime

(Clauses 1.1 and 20.15)



SCHEDULE E11



SCHEDULE E12