



**Transport
for NSW**



Volume 1 of 6

**SYDNEY METRO CITY & SOUTHWEST
DEMOLITION CONTRACT**

Contract Number: SMCSW-132

General Conditions

Between

Transport for NSW

(PRINCIPAL)

ABN 18 804 239 602

and

Delta Pty Ltd

(CONTRACTOR)

ABN 67 007 069 794

22 Giffnock Avenue Macquarie Park NSW 2113

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Parties

1. **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency, and a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 22 Giffnock Avenue, Macquarie Park NSW 2113 (**Principal**).
2. **Delta Pty Ltd** (ABN 67 007 069 794) registered in Victoria of 577 Plummer Street, Port Melbourne, VIC 3207 (**Contractor**).

Recitals

- A Transport for NSW is a NSW Government agency, and a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), and is responsible for developing certain major railway systems and other major projects.
- B Transport for NSW is responsible for developing Sydney Metro City & Southwest.
- C The Contractor's Activities comprise the demolition of buildings and structures located on the Sites and Temporary Works.
- D The Contractor has agreed to undertake the Contractor's Activities for the Principal in accordance with this Contract.

It is agreed as follows

1. Definitions and Interpretation

1.1 Definitions

In this Contract, unless the context otherwise indicates:

"ABCC" means the Australian Building and Construction Commission referred to in section 29 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

"Access Date" means the date on which access to part of the Site is granted in accordance with clause 3.1A(b).

"Access Period" means a period within which the Principal will provide access to part of the Site as set out in Schedule E1.

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

"Additional Third Party Agreement" has the meaning given to that term in clause 2.11.

"Adjoining Property" means a property specified in Schedule E7 (*Adjoining Properties*).

"Adjoining Property Easement" means an easement referred to in clause 2.12 in respect of an Adjoining Property that the Principal acquires by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

"Artefacts" means any and all:

- (a) valuable minerals, fossils, or coins;
- (b) articles or objects of value or antiquity; and
- (c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological or other special interest,

found on or under the surface of the Site.

"Assumed Working Hours" means 60 hours per week in a 5.5 day working week, with work carried out from 7am to 6pm on Monday to Friday and from 8am to 1pm on Saturdays.

"Authority" includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Contractor's Activities.

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

- (a) carry out the Contractor's Activities including for the avoidance of doubt all things required for dealing with, transporting and disposing of Contamination or waste; or
- (b) occupy a completed Portion,

and for the avoidance of doubt includes the Planning Approval.

"Building Code" means the Building Code 2013 as preserved under section 5 of the *Building and Construction Industry (Consequential and Transitional Provisions) Rules 2016 (Cth)*, or any subsequent code of practice which takes effect and supersedes the Building Code 2013.

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

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

"Chain of Responsibility Management Plan" means the plan which forms part of the Project Health and Safety Management Plan which is required to be provided and implemented by the Contractor pursuant to the SMRs.

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

"Change" means any change to the Contractor's Activities (including the Temporary Works) including:

- (a) any addition or increase to, or decrease, omission or deletion from, the Contractor's Activities (including the Temporary Works);
- (b) any change to the character or quality, or demolition or removal, of any material or work; or
- (c) any change to the levels, lines, positions or dimensions of any part of the Contractor's Activities (including the Temporary Works).

"Change in Authority Approval" means a change:

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

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

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

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

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

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

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

compliance with which:

- (c) has a direct effect on the Contractor carrying out the Contractor's Activities; and
- (d) directly results in an increase or decrease in the Contractor's costs of carrying out the Contractor's Activities, or a delay to the Contractor achieving Completion of the Contractor's Activities or a Portion by the relevant Date for Completion in accordance with clause 10.6(a),

but excludes:

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

"Change Order" has the meaning given in clause 6.2.

"Change Proposal Request" has the meaning given in clause 6.1.

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

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

"Codes and Standards" means:

- (a) the relevant building codes (including the Building Code of Australia), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract (including

the Disability (Access to Premises – Buildings) Standards 2010), including any specified or required by this Contract;

- (b) the NSW Government Policy on Aboriginal Participation in Construction (May 2015), NSW Procurement Code, NSW Guidelines, Environmental Management Systems Guidelines (3rd edition) (August 2013), Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (May 2014), Training Management Guidelines (February 2009), Quality Management System Guidelines for Construction (August 2013), GREP and any other NSW Government guidelines and requirements specified or required by this Contract; and
- (c) if (and to the extent) the codes and standards referred to in paragraphs (a) or (b) are irrelevant, then relevant international codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract.

"Commissioner" means the Australian Building and Construction Commissioner referred to in section 15 of the *Building and Construction Industry (Improving Productivity) Act 2016*.

"Commonwealth" means the Commonwealth of Australia.

"Community Communication Strategy" means the document referred to as the Community Communication Strategy in the SMRs, as updated from time to time.

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

- (a) the Contractor's Activities are, or a Portion is, complete in accordance with this Contract except for minor Defects:
 - (i) that do not prevent the Site or the Portion from being reasonably capable of being used for the intended purpose of the Site or the Portion;
 - (ii) that can be rectified without prejudicing the convenient intended use of the Site or the Portion; and
 - (iii) in respect of which the Contractor has reasonable grounds for not promptly rectifying;
- (b) the Contractor has:
 - (i) carried out and passed all tests that:
 - A. are required under this Contract to be carried out and passed before the Contractor's Activities or a Portion reaches Completion; or
 - B. must necessarily be carried out and passed to verify that the Contractor's Activities or a Portion is in the condition this Contract

requires the Site or a Portion (as the case may be) to be in at Completion;

- (ii) without limiting clause 2.3(c)(iv) , obtained all Authority Approvals that it is required under this Contract to obtain before Completion of the Contractor's Activities or a Portion and provided such Authority Approvals to the Principal's Representative;
 - (iii) given to the Principal's Representative all other documents and information:
 - A. required (including in accordance with the SMRs and the SWTC for the use, operation, maintenance and repair of any Temporary Works or a Portion); and
 - B. that are to be handed over to the Principal's Representative before Completion of the Contractor's Activities or a Portion, including condition surveys under clause 3.13 and the Survey Plan and Survey Certificate required by clause 7.6;
 - (iv) complied with all performance requirements that this Contract requires to be verified before Completion of the Contractor's Activities or a Portion; and
 - (v) provided the Principal's Representative with the Contractor's Certificate of Completion in the form of Schedule B3 for the Contractor's Activities or a Portion; and
- (c) the Contractor has done everything else that it is required to do under this Contract before Completion of the Contractor's Activities or a Portion.

"Construction Environmental Management Plan" means the plan which forms part of the Management Plans which is required to be provided and implemented by the Contractor pursuant to the SMRs.

"Construction Plant" means equipment, appliances, machinery and things used in the execution of the Contractor's Activities.

"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) a Hazardous Chemical.

"Contract" means the contract between the Principal and the Contractor in respect of the Contractor's Activities constituted by the documents referred to in Schedule A1.

"Contract Control Group" means the group described in clause 9.17.

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

- (a) the SWTC and all Design Documentation; and
- (b) all plans, manuals, programs and other documents, including those required by the SMRs.

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

"Contractor" means the person named as the Contractor in Schedule A1.

"Contractor's Activities" means all things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Contract, including as specified in the SWTC and SMRs.

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

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

"Control" means:

- (a) the ability to control, directly or indirectly, the composition of the board of an entity;
- (b) the ability to exercise, or control the exercise of, the rights to vote in relation to more than 25% of the voting shares, or other form of voting equity, in an entity;
- (c) the ability to dispose, or exercise control over the disposal of, more than 25% of the shares or other form of equity in an entity; or
- (d) the capacity to determine the outcome of decisions about the financial and operating policies of an entity as defined in section 50AA of the *Corporations Act 2001* (Cth).

"Corporate WHS Management System" has the meaning given in the WHS Guidelines, or any document issued from time to time which amends or replaces this document.

"Crown Building Work" has the meaning given to that term in section 109R of the *EP&A Act*.

"Date for Completion" means in respect of a Portion the date specified in Schedule A2 for that Portion, as adjusted under this Contract:

- (a) as contemplated in clause 3.1A; or
- (b) by an extension of time determined by the Principal's Representative or pursuant to any determination under clause 15.

"Date of Completion" means:

- (a) the date of Completion of the Contractor's Activities or a Portion, set out in a Notice of Completion; or
- (b) where another date is determined under clause 15 as the date upon which Completion was achieved, that date.

"Date of Final Completion" means;

- (a) the date determined in accordance with clause 12.8(e)(i) as the date Final Completion was achieved; or
- (b) where another date is determined under clause 15 as the date upon which Final Completion was achieved, that date.

"Deed of Disclaimer" means the deed of disclaimer signed by the Contractor in favour of the Principal, a copy of which appears in Schedule A16.

"Defect" means any:

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

"Defects Rectification Period" means the period stated in Schedule A1 and in clause 8.2, as extended by clause 8.6.

"Demolition Management Plan" means the document referred to as the demolition management plan in the SMRs, as updated from time to time.

"Demolition Methodology" means the document referred to as the Demolition Methodology in the SMRs and SWTC, as updated from time to time.

"Demolition Site" means that part of Site identified in Schedule E1.

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

"Determined Provisional Sum Amount" is the amount calculated under clause 7.3(b)(ii)B.1).

"Direct Costs" means the costs directly incurred by the Contractor excluding Overhead Costs and profit.

"Direction Dispute" has the meaning given to that term in clause 15.1(d).

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

"Document" means any document which is required to be submitted for the review of the Principal's Representative under this Contract, including all Management Plans and Design Documentation.

"Draft Adjoining Owner Deed" means the draft adjoining owner deed set out in Schedule E5.

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

"Environment" means components of the earth, including:

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

"Environmental Representative" means the person identified in Schedule A1 as the environmental manager appointed by the Principal, or any replacement notified to the Contractor by the Principal's Representative.

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

"EPBC Act" means *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

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

"Excepted Risk" means any one of:

- (a) war, invasion, act of public enemies, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, terrorism (other than where declared under the *Terrorism Insurance Act 2003* (Cth)), insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority, all of which occurring in Australia;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its Subcontractors or either's employees or agents, all of which occurring in Australia; or
- (c) a negligent act or omission of the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor (other than an Interface Contractor).

"Excluded Claim" means any claim:

- (a) with respect to a Change in Law under clause 2.3(d);
- (b) for a Change directed in accordance with clause 6.2 or a direction by the Principal's Representative to which clause 18.1 applies;
- (c) for an extension of time to any Date for Completion under clause 10.6; or
- (d) for payment under clause 11, including claims under clauses 11.9 and 11.11.

"Executive Negotiators" means the persons described in Schedule A1.

"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 Site.

"Existing Operator" means:

- (a) RailCorp;
- (b) Sydney Trains;
- (c) NSW Trains;
- (d) RMS and other roads authorities;

- (e) Ausgrid;
- (f) Sydney Water;
- (g) State Transit Authority;
- (h) Telstra and other telecommunication operators;
- (i) owners and occupiers of Adjoining Properties;
- (j) Transurban;
- (k) Sydney Light Rail operator; or
- (l) 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 Site,

and any of their related bodies corporate (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) and contractors.

"Extra Land" means the land referred to in clause 3.4.

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

- (a) all Defects Rectification Periods (including any extension under clause 8.6) have expired and the Contractor has rectified all Defects in accordance with the Contract;
 - (b) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this Contract to be carried out and passed before the Contractor's Activities reach Final Completion; or
 - B. must necessarily be carried out and passed to verify that the Contractor's Activities are in the condition this Contract requires them to be in at Final Completion;
 - (ii) obtained all Authority Approvals that it is required under this Contract to obtain which:
 - A. were not obtained before Completion of the Contractor's Activities or the last Portion to reach Completion; or
 - B. are to be obtained prior to Final Completion,
- and provided such Authority Approvals to the Principal's Representative;

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

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

"Force Majeure Event" means:

- (a) an Excepted Risk;
- (b) an earthquake;
- (c) a flood which might at the date of this Contract be expected to occur less frequently than once every 100 years (based on the 1:100 year average recurrence interval flood event); or
- (d) fire or explosion resulting from any event referred to in paragraphs (a) to (c) above,

which is beyond the reasonable control of the Contractor and prevents or delays the Contractor from performing an obligation under the Contract, where that event or the consequence of that event does not arise from any act or omission of the Contractor (including from any breach by the Contractor of a term of the Contract).

"General Conditions" means clauses 1 to 18 of this Contract.

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

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

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

"GREP" means the NSW Government Resource Efficiency Policy.

"GST" means the same as "GST" means in the GST Law.

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

"Hazardous Chemical" means any substance which would or might reasonably be expected to cause damage or injury to human beings, any property or the Environment and includes those matters contained in the definition of hazardous chemical in the WHS Legislation.

"Heavy Vehicle National Law" means the *Heavy Vehicle National Law (NSW) (2013 No. 42a)* and associated regulations.

"Incident" means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Contractor's Activities including:
 - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW or any 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 Site, Remote Sites or Extra Land;
 - (iv) a security breach;
 - (v) a non-compliance with an Authority Approval; or
 - (vi) 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;
- (d) a "notifiable incident" under the WHS Legislation and a "notifiable occurrence" under the Rail Safety National Law; and
- (e) any accidents involving damage to persons or property occurring upon or in the vicinity of the Site or in the supply chain where the Heavy Vehicle National Law applies.

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

"Independent Temporary Works Checker" means the Independent Temporary Works Checker referred to in section 5 of the SWTC.

"Information Documents and Materials" means:

- (a) the items specified in Schedule A17; and
- (b) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor unless expressly identified as forming part of this Contract,

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

"Insolvency Event" means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Contract for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed company arrangement or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;

- (vi) a sequestration order or winding up order is made in respect of the corporation;
- (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
- (viii) a mortgagee of any property of the corporation takes possession of that property; or
- (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

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

"Institution" means any:

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

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

"Interface Contractor" means an Other Contractor listed in Schedule A1 or otherwise identified by the Principal's Representative, as an Interface Contractor that is carrying out, or that will carry out, Interface Work.

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

"Investigative Authority" means any Authority having a statutory right to investigate the Contractor's Activities or any activities of the Principal which are affected by the Contractor's Activities.

"Law" means:

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

- (b) principles of law or equity established by decisions of courts; and
- (c) Authority Approvals (including any condition or requirement under them).

"Latest Date for Access" means the final day of the last Access Period for a Portion.

"Management Plans" means the documents to be provided and implemented by the Contractor pursuant to the SMRs as developed, amended or updated from time to time in accordance with the Contract.

"Mitigation Measure" means a measure, action, standard or precaution to mitigate the impact of the Contractor's Activities, as specified in Schedule E3.

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

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

"Nominated Interface Contractors" means an Interface Contractor as described in Schedule A1.

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

"NSW Guidelines" has the meaning given in clause 4.12.

"NSW Procurement Code" has the meaning given in clause 4.12.

"NSW Trains" means the corporation by that name constituted by part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

"Optus" means Optus Networks Pty Limited ABN 92 008 570 330.

"Original Contract Price" means the amount set out in Schedule A1, which is, and all components of which are, exclusive of GST.

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

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

"Overhead Costs" means the costs referable to the items described in Schedule F6, including preliminaries.

"Parent Company Guarantee" means the form of deed which appears in Schedule F4.

"Payment Breakdown Schedule" means the table set out in Schedule F1.

"Payment Claim Date" means the following dates:

- (a) prior to the time for submission of the Final Payment Claim, the 6th Business Day of each month;
- (b) for the Completion Payment Claim, within the time required by clause 11.9; and
- (c) for the Final Payment Claim, within the time required by clause 11.11.

"Planning Approval" means:

- (a) the Authority Approval set out in Schedule E3 as it may be modified from time to time, and any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning and Infrastructure (acting in their capacity as determining authority) under the under the *EP&A Act* in respect of the Contractor's Activities; and
- (b) any Mitigation Measures and statement of commitments that are required to be complied with or fulfilled in the documents referred to in paragraph (a).

"POEO Act" means *Protection of the Environment Operations Act 1997 (NSW)*.

"Pollution" has the meaning given to "pollution" in the dictionary to the POEO Act.

"Portion" means a part of the Contractor's Activities or Contractor's Activities, as described in Schedule A2 or as determined under clause 12.6(a).

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

"PPS Law" means:

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

"Pre-agreed Change" means a pre-agreed change referred to in Schedule A15.

"Principal's Representative" means:

- (a) the person nominated in Schedule A1; or
- (b) any other person appointed from time to time by the Principal under clause 9.2,

and includes any appointee under clause 9.3.

"Prohibited Subcontractor" means:

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

corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or
- (b) any Subcontractor employing an employee in respect of whom paragraph (a)(i) or (a)(ii) apply.

"Project Health and Safety Management Plan" means the plan which forms part of the Management Plans which is required to be provided and implemented by the Contractor pursuant to the SMRs and which must:

- (a) set out in adequate detail the policies and procedures the Contractor will implement to manage the Contractor's Activities and the performance of the Contractor's Activities from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities and Contractor's Activities are performed consistently with Law in relation to work health and safety the WHS Legislation, applicable Codes of Practice and Australian Standards and any other Law (such as the Heavy Vehicle National Law);
- (c) address the matters specified in the WHS Legislation, applicable Codes of Practice and Australian Standards and any other Law (such as the Heavy Vehicle National Law) (and include the Chain of Responsibility Management Plan);
- (d) comply with the Sydney Metro Principal Contractor Health and Safety Standard SM PS-ST-221 (which forms part of the Sydney Metro Program Safety Management Plan), as amended from time to time; and
- (e) comply with the requirements applicable to a "Project WHS Management Plan" set out in the WHS Guidelines.

"Project Values" means the values that will guide the delivery of Sydney Metro City & Southwest, being:

- (a) safety & wellbeing;
- (b) collaboration;
- (c) integrity;
- (d) innovation;

- (e) excellence; and
- (f) achievement.

"Provisional Sum Work" means the work detailed in Schedule F1.

"RailCorp" means Rail Corporation New South Wales, a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

"RCTI" means a recipient created tax invoice.

"Referral Date" has the meaning given to that term in clause 15.5(a).

"Relevant Matters" has the meaning given to that term in clause 9.15(a).

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

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

"Remote Activities" means those parts of the Contractor's Activities that must be carried out on Remote Sites, including any item of work required by any Authority Approval to be carried out outside the Site.

"Remote Sites" means lands other than the Site on which Remote Activities must be undertaken.

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

"Revised Allocation" has the meaning given to that term in clause 2.11(a)(v)D.

"Risk Register" means a register of risks which the parties have notified in accordance with clause 9.16.

"Rock Anchors" means rock anchors, rock pinning, rock nails and other structures or equipment for the purpose of temporarily supporting or temporarily protecting the Contractor's Activities on the Site and temporarily underpinning and supporting improvements erected on the adjoining lands.

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

"Security Interest" has the meaning given to that term in clause 17.21(a).

"Site" means:

- (a) the lands and other places described in Schedule E1; and
- (b) any other lands and places made available to the Contractor by the Principal for the purpose of this Contract.

"Site Conditions" means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Site, Remote Sites 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 or other spoil or waste;
- (f) topography of the Site, Remote Sites and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site, Remote Sites 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.

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

"SOP Regulation" means the *Building and Construction Industry Security of Payment Regulation 2008* (NSW).

"Specified Provisional Sum Work" means the work described in clauses 3.3.3.4, 3.3.4.5, 3.5.2.4, 3.5.3.5 and 3.5.4.5 of the SWTC.

"Statement of Business Ethics" means TfNSW's Statement of Business Ethics, which may be obtained from TfNSW and is located at: www.transport.nsw.gov.au.

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

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

"Supporting Guidelines" means the Building Code 2013 - Supporting Guidelines (April 2016), any subsequent amendments to the Building Code 2013 – Supporting Guidelines (April 2016) and any other guidelines which take effect and supersede the Building Code 2013 – Supporting Guidelines (April 2016).

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

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

"Sustainability Management Plan" means the document referred to as the Sustainability Management Plan in the SMRs, as updated from time to time.

"SWTC" means the Scope of Works and Technical Criteria for the Contractor's Activities described in Schedule C1.

"Sydney Metro City & Southwest" means the railway line from Bankstown to Chatswood, including the upgrade and conversion of the existing Bankstown line to metro standard, stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure.

"Sydney Metro Construction Environmental Management Framework" means the document referred to as the Sydney Metro Construction Environmental Management Framework set out in the SMRs, as updated from time to time.

"Sydney Metro Environmental Incident Classification and Reporting Procedure" means the procedure referred to as the Sydney Metro Environmental Incident Classification and Reporting Procedure set out in the SMRs, as updated 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 in the SMR, as updated from time to time. .

"Sydney Metro Program Safety Management Plan" means the document referred to as the Sydney Metro Program Safety Management Plan in the SMR, as updated from time to time.

"Sydney Metro Requirements" or **"SMRs"** means the documents which appear as Schedule D1 to this Contract.

"Sydney Trains" means the corporation by that name constituted by part 2A of the *Transport Administration (General) Regulation 2005* (NSW).

"Taxes" means income, stamp, indirect or other taxes levies, imposts, deductions, charges, duties (including import duty), compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by,

payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

"Telstra" means Telstra Corporation Limited ABN 33 051 775 556.

"Temporary Works" means any temporary works required to be carried out or provided by the Contractor as described in the SWTC.

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

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

"Third Party Agreement" means an agreement referred to in Schedule E4 to be entered into by the Principal with a Third Party.

"Training Management Plan" means the document referred to as the Training Management Plan in the SMRs, as updated from time to time.

"TSE Contract" means the contract between the Principal and the TSE Contractor for the carrying out of the TSE Works.

"TSE Contractor" means the parties engaged by TfNSW under the TSE Contract.

"TSE Works" means the design and construction of the tunnel and station excavation works for Sydney Metro City & Southwest.

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

"WHS" means work health and safety.

"WHS Accreditation Scheme" means the Work Health and Safety Accreditation Scheme referred to in section 43 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

"WHS Guidelines" means the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (5th edition), May 2014 or any document issued from time to time which amends or substitutes this document.

"WHS Legislation" means:

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

"Workforce Development and Industry Participation Plan" means the document referred to as the Workforce Development and Industry Participation Plan in the SMRs, as updated from time to time.

"working day" means Monday to Saturday excluding public holidays in Sydney and rostered days off.

"Workplace Relations Management Plan" means the plan described in the NSW Guidelines developed in relation to the Contractor's Activities.

"Workplace Relations Management Plan Assessment" means the Workplace Relations Management Plan Assessment prepared by the CCU and set out in Schedule D2.

1.2 Interpretation

In this Contract unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Contract includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Contract or to any other deed, agreement, document or instrument is deemed to include a reference to this Contract or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and

- (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Contract;
- (i) a reference to:
 - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit to this Contract; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) subject to clause 3.6, a reference to this Contract includes all Schedules and Exhibits;
- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) where under this Contract:
 - (i) a direction is required to be given or must be complied with;
 - (ii) payment of money must be made;
 - (iii) an unconditional undertaking must be released; or
 - (iv) a default must be remedied,

within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;
- (m) for the purposes of clauses 10.9, 10.10, 10.11 and 10.12:
 - (i) any extension of time to any Date for Completion stated in days; or
 - (ii) any reference to "day",

will include only those days indicated in Schedule A1, or otherwise approved by the Principal's Representative, as working days;
- (n) for all purposes (other than as set out in clauses 1.2(l) and 1.2(m), or where otherwise designated as a Business Day), "day" means calendar day;
- (o) for the avoidance of doubt, a reference to an Other Contractor includes an Interface Contractor;
- (p) a reference to "\$" is to Australian currency;

- (q) a reference to "direction" in the definition of "Claim" in clause 1.1 or in any of clauses 7.1(a)(i)B, 9.1, 9.8(i), 15 and 18 will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document;
- (r) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Contract or any part;
- (s) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) the interpretations of the terms Date for Completion, Date of Completion and Completion, and clauses 8, 10, 12 and 13, will apply separately to each Portion and references therein to the Contractor's Activities as is comprised in the relevant Portion;
- (u) any reference to "intended purpose" in:
- (i) the definition of "Completion" in clause 1.1; or
 - (ii) clauses 1.4, 2.1, 2.3(c), 3.2, 4.1, 5.1 or 7.1,
- will be read as referring to the intended use or intended purpose having regard to any intended use or intended purpose stated in, contemplated by or ascertainable from the terms of this Contract including the requirement that the Contractor's Activities will be carried out in compliance with all health and safety requirements of the WHS Legislation;
- (v) words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (w) on the basis that the Principal is notionally liable to pay GST under the GST Law, a reference in this Contract 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
- (x) 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 Ambiguous terms

- (a) If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in the Contract (including in any

Schedule or Exhibit), the Principal's Representative must, subject to clause 1.4, direct the interpretation of this Contract which the Contractor must follow.

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

1.4 Order of Precedence

- (a) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Contract then:
 - (i) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the SWTC, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and
 - (ii) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in Schedule A1 applies.
- (b) The SWTC and the Planning Approval are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Contractor's Activities comply with this Contract.

1.5 Not used

1.6 Authorities

- (a) This Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its respective functions and powers pursuant to any legislation.
- (b) Without limiting clause 1.6(a), anything the Principal does, or fails to do or purports to do, pursuant to their respective functions and powers, including or under any legislation, will be deemed not to be an act or omission by the Principal under this Contract.

1A. Project Values

The parties:

- (a) acknowledge that:
 - (i) the Contractor's Activities form part of Sydney Metro City & Southwest;
 - (ii) adhering to and upholding 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 Contract.

2. Contractor's obligations

2.1 General

The Contractor:

- (a) must execute the Contractor's Activities, including the hand-over of each Portion, in accordance with this Contract;
- (b) warrants that the Temporary Works (to the extent they are designed by the Contractor) will at all reasonable times be, and remain, fit for their intended purposes;
- (c) must exercise reasonable skill, care and diligence in the performance of the Contractor's Activities;
- (d) must, unless otherwise agreed by the Principal's Representative in writing, employ the person or persons specified in Schedule A1, including the Contractor's Representative, in the performance of the Contractor's Activities;
- (e) must use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Contractor's Activities;
- (f) must liaise, cooperate and confer with others as directed by the Principal; and
- (g) must co-operate and co-ordinate with the Principal in carrying out its obligations under this Contract.

2.2 Subcontracts

- (a) Subject to clause 2.2(b), the Contractor may enter into Subcontracts for the vicarious performance of its obligations under this Contract.
- (b) The Contractor must not enter into any Subcontract:
 - (i) with a Prohibited Subcontractor; or
 - (ii) with an initial subcontract price equal to or over the amount specified in Schedule A1 without the prior written approval of the Principal's Representative (which may be conditional but which will not be unreasonably withheld).

Any request by the Contractor for approval to subcontract under this clause 2.2(b) must be in writing and include such details as may be required by the Principal's Representative, including details of the proposed Subcontract conditions, and the proposed Subcontractor's capacity to

undertake the relevant work, past performance in undertaking similar work, safety (including work health, safety and rehabilitation issues and providing evidence of compliance with clause 2.2(h)), environmental compliance (including any environmental management system) and other performance, management systems and proposed safe working procedures.

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

- (c) Not used.
- (d) The Contractor will be:
 - (i) fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and
 - (ii) vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities.
- (e) The Contractor must:
 - (i) without limiting clause 17.17(c), ensure that each of its Subcontracts that has an initial subcontract price of the amount specified in Schedule A1 or more includes provisions to the effect set out in Schedule A4 and a clause to the same effect as this clause 2.2(e)(i) that is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative;
 - (ii) where a Subcontractor is to carry out design work or other professional services, unless not required by the Principal's Representative, procure that Subcontractor to execute a Deed in the form of Schedule A13 and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor;
 - (iii) ensure that each Subcontractor (and their Subcontractors) executes a Confidentiality Undertaking in the form of Schedule B7 and provides this to the Principal's Representative within 7 days of the engagement of that Subcontractor;
 - (iv) procure that each of its Subcontractors:
 - A. engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule A1; or
 - B. in respect of the categories of work set out in Schedule A1 (regardless of subcontract price),

- executes a deed in the form of Schedule A9 and provides this to the Principal's Representative within 7 days of being engaged by the Contractor;
- (v) in respect of all Subcontracts in which it holds retention money from the Subcontractor, comply with all requirements under the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW); and
 - (vi) ensure that each Subcontractor (and their Subcontractors) agrees to:
 - A. comply with all of the Contractor's obligations in clauses 4.12 and 9.7;
 - B. comply with all plans and policies referred to in clauses 4.12 and 9.7; and
 - C. co-operate and co-ordinate with the Principal in carrying out its obligations.
 - (f) Not used.
 - (g) Not used.
 - (h) The Contractor must:
 - (i) ensure that if any Law, including in the State or Territory in which the Site is situated or the Contractor's Activities are carried out (as the case may be), requires that:
 - A. a person:
 - 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - B. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (ii) not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of clause 2.2(h)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

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

2.3 Compliance with Law

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

- B. direct a Change under clause 6.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 6.4.

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

(c) The Contractor must:

- (i) obtain all Authority Approvals required for the execution of the Contractor's Activities (and for that purpose prepare and submit all applications and associated documents to relevant Authorities), except for those Authority Approvals specified in Schedule E3 that either:

- A. were obtained by the Principal prior to the date of this Contract;
or

- B. will be obtained by the Principal after the date of this Contract where required;

- (ii) unless otherwise expressly specified in Schedule E3, comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, including the Planning Approval, to comply with, satisfy, carry out and fulfil;

- (iii) in respect of any:

- A. Authority Approvals which are to be obtained by the Principal after the date of this Contract; or

- B. conditions and requirements of Authority Approvals which pursuant to Schedule E3 are to be satisfied or fulfilled by the Principal,

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

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

- (v) as a condition precedent to Completion of the Contractor's Activities or a Portion, ensure that it has:
 - A. obtained all Authority Approvals it is required to obtain under this Contract;
 - B. complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Contract;
 - C. without limiting clauses 2.3(c)(v)A and 2.3(c)(v)B, complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including obtaining the approval of any person for anything) under this Contract; and
 - D. unless it is included in Schedule E3 as an Authority Approval which the Principal will obtain, obtained and supplied to the Principal's Representative certification that the Contractor's Activities, comply with the requirements of the Building Code of Australia to the extent applicable.

- (d) Where there is a Change in Law:
 - (i) if either party wishes this clause 2.3(d)(i) to apply, then that party must, within 14 days of the Change in Law, give a written notice to the other and the Principal's Representative stating that clause 2.3(d)(i) applies and containing details of the Change in Law including where the notice is given by the Contractor, its impact on the Contractor's costs of carrying out the Contractor's Activities and any effect it will have on the Contractor's Program;
 - (ii) if such a notice is given the Principal's Representative will determine:
 - A. where the Change in Law decreases the Contractor's costs of carrying out the Contractor's Activities in compliance with the Change in Law, a reasonable amount as the amount of the decrease; or
 - B. where the Change in Law increases the Contractor's costs of carrying out the Contractor's Activities in compliance with the Change in Law, the amount of the additional Direct Costs reasonably incurred by the Contractor on the basis that the Contractor took all reasonable steps to mitigate those additional Direct Costs,and the Contract Sum will be increased or decreased by that amount;
 - (iii) the Contractor will be entitled to make a claim for an extension of time under clause 10.6 in respect of any delays the Contractor suffers as a direct result of the Change in Law; and

- (iv) the Contractor must comply with the Change in Law.
- (da) The Contractor's entitlement under clause 2.3(d)(ii)(B) will be its only right to payment arising out of or in any way in connection with the Change in Law.
- (e) If a Change in Authority Approval occurs which necessitates a Change, the Contractor must:
 - (i) if the relevant Authority Approval was obtained by the Principal, within 14 days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or
 - (ii) otherwise within 14 days of the Change in Authority Approval taking effect,

notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Authority Approval necessitates a Change. If the Contractor gives such a notice and the Change in Authority Approval does necessitate a Change the Principal's Representative will direct a Change under clause 6.2(a) after which relevant adjustments will be made under clause 6.4.
- (f) Other than as set out in clause 2.3(e), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
 - (i) any Change in Authority Approval;
 - (ii) an Authority Approval obtained or issued or which otherwise takes effect after the date of this Contract;
 - (iii) a change in an Authority Approval after the date of this Contract; or
 - (iv) any:
 - A. assumptions the Contractor makes; or
 - B. failure by the Contractor to adequately satisfy itself,

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

2.4 Legal Challenge to Approval

- (a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for an Authority Approval or a modification of an Authority Approval, performance of the Contractor's Activities, or compliance with any Authority Approval under:
 - (i) the *EP&A Act*;

- (ii) the *POEO Act*;
- (iii) the *EPBC Act*; or
- (iv) any other Law,

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

- (v) ordered or directed by an Authority;
 - (vi) ordered by a court or tribunal; or
 - (vii) directed by the Principal or the Principal's Representative.
- (b) The Contractor will be entitled to make a claim for an extension of time under clause 10.6 in respect of any delays the Contractor suffers as a direct result of an Authority order, court order or direction by the Principal in accordance with clause 2.4(a)(v), 2.4(a)(vi) or 2.4(a)(vii).
- (c) Subject to clause 2.4(d), the Contractor will be entitled to payment of the additional Direct Costs reasonably incurred by the Contractor as a direct result of an Authority order, court order or direction by the Principal in accordance with clause 2.4(a)(v), 2.4(a)(vi) or 2.4(a)(vii).
- (ca) The Contractor's entitlement under clause 2.4(c) will be its only right to payment arising out of or in any way in connection with an Authority order, court order or direction by the Principal in accordance with clause 2.4(a)(v), 2.4(a)(vi) or 2.4(a)(vii).
- (d) Clause 2.4(b) does not apply to the extent that a legal challenge, proceedings or action of the kind referred to in clause 2.4(a) is brought or upheld due to the Contractor's non-compliance with any Authority Approval or a negligent act or omission of, or breach of Contract by, the Contractor.

2.5 Utility Services

The Contractor must:

- (a) obtain and pay for any Utility Service it needs to perform its obligations under this Contract;
- (b) investigate, relocate, remove, modify, disconnect, support, protect, reinstate and provide all Utility Services necessary for the Contractor to comply with its obligations under this Contract;
- (c) assume the risk of the existence, location, condition and availability of all Utility Services required for the execution of the Contractor's Activities;
- (d) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations

under this Contract, including any such devices reasonably required by the Principal's Representative;

- (e) make inquiries that any experienced and competent contractor would make to satisfy itself as to the existence of Utility Services;
- (f) despite any other provision in the Contract to the contrary, ensure that no Utility Services are:
 - (i) damaged or destroyed; or
 - (ii) disconnected, disrupted, interfered with or interrupted during normal operating hours,

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

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

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

2.6 Crown Building Work

- (a) The Contractor must, in relation to any part of the Contractor's Activities that is a Crown Building Work, certify (on behalf of the Principal) as required by section 109R of the *EP&A Act*.
- (b) Any certification under clause 2.6(a) will not lessen or otherwise affect:
 - (i) the Contractor's other liabilities or responsibilities under this Contract or otherwise according to law; or
 - (ii) the Principal's rights against the Contractor, whether under this Contract or otherwise according to law.

2.7 Unconditional Undertakings and Parent Company Guarantee

- (a) Without limiting clause 2.7(d), the unconditional undertakings to be provided under this clause 2.7 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Contract.
- (b) The Contractor must give the Principal within 10 days of the date of this Contract, two unconditional undertakings:
- (i) each for ■■■% of the Original Contract Price;
 - (ii) each in the form of Schedule F3;
 - (iii) each in favour of the Principal;
 - (iv) each issued by an Institution approved by the Principal that maintains the Required Rating; and
 - (v) where required by Law, duly stamped.
- (c) Subject to its rights to have recourse to the unconditional undertakings and subject to clauses 2.7(g), 14.10 and 14.12, the Principal must:
- (i) within 28 days after the Date of Completion of the Contractor's Activities or the last Portion to reach Completion, release so much of the unconditional undertakings provided by the Contractor under clause 2.7(b) as may be then held by the Principal, so that it then holds ■■■% of the Original Contract Price; and
 - (ii) within 28 days after the expiration of all the Defects Rectification Periods (excluding any extensions under clause 8.6), release so much of the unconditional undertakings provided by the Contractor under clause 2.7(b) as may be then held by the Principal, to such amount as the Principal's Representative determines to be reasonable, having regard to the work to which the remaining Defects Rectification Periods (including any extensions under clause 8.6) apply; and
 - (iii) within 28 days after the Date of Final Completion, release the balance of the unconditional undertakings provided by the Contractor under clause 2.7(b) as may be then held by the Principal.
- (d) The Principal:
- (i) may have recourse to any unconditional undertaking provided under this clause 2.7 at any time;
 - (ii) is not obliged to pay the Contractor interest on:
 - A. any unconditional undertaking; or
 - B. the proceeds of any unconditional undertaking if it is converted into cash; and

- (iii) does not hold the proceeds referred to in clause 2.7(d)(ii)B on trust for the Contractor.
- (e) The Contractor must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of any unconditional undertaking provided under this clause 2.7 from paying the Principal pursuant to the unconditional undertaking;
 - (ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 2.7 or receiving payment under any such unconditional undertaking; or
 - (iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.7.
- (f) The Contractor must within 10 days of the date of this Contract give the Principal a guarantee duly executed by the person referred to in Schedule A1 in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped.
- (g) Despite any other provision of this Contract to the contrary, where this Contract may otherwise require the Principal to release an unconditional undertaking or this Contract is terminated by the Principal either pursuant to clause 14 or by reason of the Contractor repudiating this Contract (or otherwise at law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this Contract to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this Contract or the Contractor's Activities whether for damages (including liquidated damages) or otherwise.
- (h) If there is a Change in Control of the Contractor:
 - (i) the Contractor must procure a replacement Parent Company Guarantee from an entity, and on terms, approved by the Principal and which is, where required, duly stamped; and
 - (ii) provide the replacement Parent Company Guarantee procured under clause 2.7(h)(i) to the Principal within 10 Business Days of the date of the Change in Control of the Contractor.

2.8 Long Service Leave Levy

Where the Contractor is specified in Schedule A1 as being responsible for payment of the long service leave levy, then, before commencing the Contractor's Activities under this Contract (including any Temporary Works), the Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service levy leave in respect of the Contractor's Activities under the

Building and Construction Industry Long Service Payments Act 1986 (NSW);
and

- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 2.8(a).

2.9 Co-operation with Interface Contractors

- (a) The Contractor:

- (i) acknowledges that:

- A. the Contractor's Activities interface with the Interface Work;
- B. Interface Contractors will be executing work on parts of the Site, or adjacent to the Site, at the same time as the Contractor is performing the Contractor's Activities;
- C. the timing of the Interface Contractors' activities:
 - 1) will be as discovered by the Contractor; or
 - 2) as specified by the Principal's Representative; or
 - 3) as specified in Schedule E6;
- D. it may require certain design and work methodology input from Interface Contractors to coordinate the Contractor's Activities with the Interface Work;
- E. Interface Contractors may require the Contractor to provide design and work methodology information to them to coordinate the design of the Interface Work with the Contractor's Activities and Temporary Works, and this must be provided in a timely manner by the Contractor; and
- F. any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or co-operating and co-ordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, losses and damages; and

- (ii) must at all times:

- A. permit Interface Contractors to execute the Interface Work on the applicable parts of the Site, Remote Sites or Extra Land, or on any adjacent property to the Site, Remote Sites or Extra Land:
 - 1) at the same time as the Contractor is performing the Contractor's Activities; and

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

and for this purpose ensure they have safe, clean and clear access to those parts of the Site, or property adjacent to the Site, Remote Sites or Extra Land, required by them for the purpose of carrying out their work;
- B. protect the Temporary Works and other improvements on the Site, Remote Sites or Extra Land from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors;
- C. co-operate with Interface Contractors, and do everything reasonably necessary to facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative;
- D. carefully coordinate and interface the Contractor's Activities with the Interface Work and for this purpose:
 - 1) make proper allowance in the Contractor's Program for the Interface Work;
 - 2) review all programs provided by Interface Contractors and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Interface Work with the Contractor's Activities;
 - 3) monitor the progress of the Interface Work;
 - 4) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Completion of the Contractor's Activities or any Portion;
 - 5) provide the Interface Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate their Interface Work with the Contractor's Activities; and
 - 6) it must cooperate, meet with, liaise, and share information so that the Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- E. perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;

- F. be responsible for coordinating the Contractor's Activities, including work sequencing, demolition methods, safety and industrial relations matters with those affecting, and influenced by, the Interface Works and Interface Contractors' personnel, including providing to the Principal's Representative copies of working method statements for those parts of the Contractor's Activities (including Temporary Works) which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- G. provide for the purposes of clause 2.9(a)(ii)F (unless otherwise directed by the Principal's Representative), the work method statements;
- H. work directly with Interface Contractors where required to complete the Contractor's Activities (including Temporary Works) and provide all necessary information to Interface Contractors in respect of the Contractor's Activities to permit the Interface Contractors to complete the Interface Works so that they are acceptable to the Principal and otherwise comply with this Contract, including the SWTC;
- I. work in accordance with:
- 1) the Management Plans that has been submitted for review under clause 9.8, and, in respect of which:
 - a) the Contractor has received the notice referred to in clause 9.8(c)(ii)C; or
 - b) the relevant period of time in clause 9.8(c)(ii) has expired and the Principal's Representative has not rejected the Contractor Management Plan or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.8(d)); and
 - 2) the SMRs and SWTC;
- J. attend any interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others at times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- K. when information is required from an Interface Contractor, provide reasonable written notice which must be at least 10 days

- (except in special circumstances) or any longer period of notice required under the SWTC to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;
- L. ensure that any written notice given under clause 2.9(a)(ii)K provides the Interface Contractor with the longest possible time for the provision of the information;
 - M. when any information is requested by Interface Contractors:
 - 1) provide the information to the Interface Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor provided that this time period is reasonable;
 - 2) ensure that such information is provided to Interface Contractors by the requested dates; and
 - 3) ensure and warrant that the information provided is accurate; and
 - N. use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors to achieve the best solution to such problems related to:
 - 1) the provision of information;
 - 2) the obtaining of information;
 - 3) the adequacy of information provided to, or received from, Interface Contractors;
 - 4) the compatibility of the Contractor's Activities with the Interface Work;
 - 5) coordination in accordance with this clause 2.9(a); and
 - 6) technical issues with the information provided to, or received from, Interface Contractors;
- (iii) must, in the event that despite using its best endeavours, and working closely and iteratively with the Interface Contractors, the Contractor and any Interface Contractor fail to resolve a problem between them:
- A. give written notice to the Principal's Representative with a copy to the Interface Contractor describing the problem; and
 - B. attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem;

- (iv) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Contract or otherwise have an adverse effect upon the Contractor's Activities; and
 - (v) acknowledges that conditions similar to those in this clause 2.9(a) applying to the Contractor will apply to all Interface Contractors engaged by the Principal, whether working on the Site or on any other site, other than Nominated Interface Contractors.
- (b) Where the Contractor has complied with all its obligations in clause 2.9(a), the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor.
- (c) Upon receipt of the Contractor's notice under clause 2.9(b), the Principal's Representative must:
- (i) within 5 Business Days convene a meeting between the Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by Principal's Representative); and
 - (ii) work in good faith with the Contractor and the Interface Contractor to resolve the issues or dispute.
- (d) Subject to clause 2.9(e), the Contractor:
- (i) acknowledges and agrees:
 - A. no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Change directed by the Principal's Representative); or
 - B. the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - 1) the Interface Contractors carrying out their work; or
 - 2) any act or omission of an Interface Contractor; and
 - (ii) warrants that the Original Contract Price and the Contractor's Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under clause 2.9(a) and this clause 2.9(d), including the cost of all the design iterations required to accommodate Interface Work.
- (e) Without limiting the Contractor's obligations under this clause 2.9, a change in a Nominated Interface Contractor's scope of works or program will entitle the Contractor to an extension of time under clause 10.9 to any relevant Date for Completion if the requirements of that clause are satisfied.

2.10 Incident Management Reporting

- (a) The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the Sydney Metro Environmental Incident Classification and Reporting Procedure (SM ES-PW-303) and the Sydney Metro Principal Contractor Health & Safety Standard.
- (b) Should an Incident occur which is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the Sydney Metro Environmental Incident Classification and Reporting Procedure (SM ES-PW-303) and the Sydney Metro Principal Contractor Health & Safety Standard.
- (c) In relation to any environmental or safety Incident involving Contamination, Pollution or other waste that arises during the performance of the Contractor's Activities, the Contractor must:
 - (i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination, Pollution or other waste arising from the Incident;
 - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
 - (iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Contract, immediately terminate the Contract by written notice to the Contractor.
- (e) Without prejudice to the Principal's other rights under this Contract, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation) to take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to the Principal.
- (f) Without prejudice to the Principal's other rights under this Contract, the Principal's Representative may issue a direction under clause 10.13 requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor's Activities in the event:

- (i) of any Incident involving:
 - A. a significant spill of Contamination;
 - B. any accident or release of Contamination which it believes may pose a danger to health, life or property; or
 - C. any actual damage or harm to the Environment or a significant risk of harm to the Environment; or
- (ii) any safety incident occurs which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to SafeWork NSW) or damage to property.

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

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

If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.10(f) the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to clause 10.13 permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend. In these circumstances the Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has complied with the requirements of the direction issued under this clause 2.10(g) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.

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

2.11 Third Party Agreements

- (a) The parties acknowledge and agree that:
- (i) the Principal will enter into the Third Party Agreements;
 - (ii) the Contractor will comply with its obligations in respect of any Third Party Agreement entered into by the Principal in accordance with Schedule E4;
 - (iii) as at the date of this Contract:
 - A. the terms of the Third Party Agreements identified in Schedule E4 have not been finalised between the Principal and the relevant Third Party; and
 - B. there may be additional Third Party Agreements which the Principal may, in its absolute discretion, enter into (each an **Additional Third Party Agreement**);
 - (iv) the Contractor has reviewed the Draft Adjoining Owner Deed and has included in the Original Contract Price all of its costs (including the cost of all physical works and allowance for any delay or disruption) in complying with its obligations under clause 2.11(a) and Schedule E4;
 - (v) following:
 - A. finalisation of any Third Party Agreement; or
 - B. the execution of any Additional Third Party Agreement,after the date of this Contract, the Principal must promptly give the Contractor a copy of the:
 - C. final (and, where applicable, executed) version of the Third Party Agreement or the Additional Third Party Agreement (as applicable); and
 - D. amendments (if any) to Schedule E4 arising out of the execution of the Third Party Agreement or any Additional Third Party Agreement (as applicable) (**Revised Allocation**).
- (b) The Contractor must carry out its obligations under this Contract:
- (i) on the basis of:
 - A. the final version of the Third Party Agreement or Additional Third Party Agreement (as applicable); and
 - B. the Revised Allocation; and
 - (ii) subject to clause 2.11(c), without any adjustment to the Contract Sum or any entitlement to make any other Claim.

- (c) If compliance with the terms of:
- (i) the final version of any Third Party Agreement; or
 - (ii) any Additional Third Party Agreement,
- causes the Contractor to incur additional Direct Costs than it otherwise would have in complying with the terms of this Contract, the Contractor must notify the Principal's Representative of such additional Direct Costs and the Principal's Representative will then determine the amount of the additional Direct Costs reasonably incurred by the Contractor, on the basis that the Contractor took all reasonable steps to mitigate those additional Direct Costs, and the Contract Sum will be increased by that amount.
- (d) The Contractor's entitlement under clause 2.11(c) will be its only right to payment arising out of or in any way in connection with complying with the terms of the final version of any Third Party Agreement or any Additional Third Party Agreement.
- (e) The Contractor will be entitled to make a claim for an extension of time under clause 10.6 in respect of any delay the Contractor suffers arising from compliance with the terms of:
- (i) the final version of any Third Party Agreement; or
 - (ii) the execution of any Additional Third Party Agreement after the date of this Contract,
- to the extent those terms impose greater or different obligations on the Contractor than it would otherwise have had in complying with the terms of this Contract.
- (f) The Contractor:
- (i) must indemnify the Principal from and against:
 - A. any claim by a Third Party against the Principal; or
 - B. any liability of the Principal to a Third Party,arising out of or in any way in connection with a Third Party Agreement (including an Additional Third Party Agreement executed after the date of this Contract) to the extent that the claim or liability arises out of or in any way in connection with the Contractor's Activities, provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or liability; and
 - (ii) agrees that it:
 - A. bears the full risk of:

- 1) complying with the obligations under this clause 2.11; and
 - 2) any acts or omissions of Third Parties or their respective employees, agents, contractors or officers; and
- B. will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
- 1) the risks referred to in clause 2.11(f)(ii)A; or
 - 2) any acts or omissions of Third Parties or their respective employees, agents, contractors or officers.

2.12 Adjoining Property Easements

- (a) The Contractor:
- (i) acknowledges that the Principal may, after the date of this Contract, acquire Adjoining Property Easements by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and
 - (ii) acknowledges that if the Principal acquires Adjoining Property Easements after the date of this Contract, the Principal will give the Contractor copies of the Adjoining Property Easements.
- (b) The Contractor must:
- (i) in carrying out the Contractor's Activities, not cause the Principal to breach any term of any Adjoining Property Easement;
 - (ii) provide all documents, assistance and co-operation reasonably requested by the Principal's Representative (and in the time requested by the Principal's Representative) in relation to any Adjoining Property Easement, including in relation to any dispute that may arise between the Principal and the owner of the "burdened land" under any Adjoining Property Easement; and
 - (iii) comply with any reasonable direction of the Principal's Representative in relation to any Adjoining Property Easements.
- (c) Without limiting any other provision of this deed, the 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 breach of the requirements of this clause 2.12.

2.13 Existing Operations

- (a) The Contractor acknowledges that:
- (i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the Contractor's Activities;

- (ii) the access ways to the Site are used by Existing Operators and other persons and will not be available exclusively to the Contractor; and
 - (iii) in using the access ways the Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) The Contractor bears the risk of:
- (i) coordinating its access to the Site with any other relevant party (including Existing Operators) that use the access ways to the Site;
 - (ii) subject to clause 2.13(f), any delay and disruption to the Contractor's Activities that arise from any Existing Operations on or in the vicinity of the Site.
- (c) Without limiting any other obligations of the Contractor, the Contractor must:
- (i) to the extent reasonably possible in performing the Contractor's Activities, not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Site or the Existing Operations or block or impair access to any premises, carparks, roadways, 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 Principal's reasonable directions in connection with:
 - A. the Existing Operations (including access to and use of the Site); and
 - B. workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any WHS Legislation;
 - (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 Site;
 - (v) cooperate with Existing Operators in performing the Contractor's Activities; 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 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 2.13(c) are complied with.
- (d) Except to the extent expressly permitted by this Contract, the Contractor must:
- (i) not disrupt, interrupt or interfere in any way with the Existing Operations;
 - (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the Contractor's Activities in accordance with this Contract;
 - (iii) program and coordinate the Contractor's Activities under this Contract so as to minimise the effect that the carrying out of the Contractor's Activities under this Contract has on the Existing Operations; and
 - (iv) protect all Adjoining Properties from damage which may arise from the Contractor's Activities.
- (e) The Contractor must ensure that its Subcontractors and any of the respective employees, agents, contractors or officers of the Contractor and its Subcontractors at all times comply with this clause 2.13.
- (f) Without limiting the Contractor's obligations under this clause 2.13, if the Existing Operations of Nominated Interface Contractors on the Site, extend beyond the date for completion specified in Schedule E6, the Contractor will be entitled to an extension of time under clause 10.9 to any relevant Date for Completion if the requirements of that clause are satisfied.

2.14 Novation to TSE Contractor

- (a) The Contractor acknowledges that it is the Principal's intention that this Contract will be novated to the TSE Contractor on or after the date of execution of the TSE Contract.
- (b) The Principal may direct the Contractor to enter into a deed of novation and amendment substantially in the form of Schedule A23 in respect of this Contract ("**Novation Deed**").
- (c) If the Contractor receives a direction under clause 2.14(b), the Contractor must within 5 Business Days of receipt of such direction and without being entitled to compensation, execute the Novation Deed in the number of counterparts required by the Principal and return the executed counterparts to the Principal.
- (d) Any direction given by the Principal and any novation occurring pursuant to this clause 2.14 will not in any way:
 - (i) relieve the Contractor from its obligations and liabilities under this deed;

- (ii) limit or otherwise affect any warranty provided by the Contractor under this deed;
 - (iii) limit or otherwise affect the Principal's rights against the Contractor (including those arising out of any warranties given under this deed); or
 - (iv) entitle the Contractor to make any Claim,
whether under this deed or otherwise according to any Law.
- (e) The Contractor must within 5 Business Days of receiving a request from the Principal's Representative provide any documents, information or other things reasonably required to enable the Principal to prepare the Novation Deed.
- (f) The Contractor acknowledges that any document or information provided in accordance with clause 2.14(e) may be given to the TSE Contractor for the purposes of preparing the Novation Deed.
- (g) The Contractor acknowledges and agrees that it is not entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with:
- (i) the execution of the Novation Deed;
 - (ii) the preparation of the Novation Deed; or
 - (iii) the disclosure of any information provided to the Principal pursuant to clause 2.14(f).

2.15 Co-operation with the Principal

The Contractor must co-operate and co-ordinate with the Principal in carrying out its obligations under this Contract, including in relation to:

- (a) stakeholder and community relations management;
- (b) media and special events;
- (c) environmental management; and
- (d) work health and safety management.

2.16 Community relations

The Contractor:

- (a) acknowledges that the areas where the Contractor's Activities are being carried out are of great importance to many people, including local residents and businesses; and
- (b) must manage and participate in all community relations and involvement programs and activities as:

- (i) required by the SWTC;
- (ii) contained in the Community Communication Strategy; or
- (iii) reasonably required by the Principal from time to time.

2.17 Management Plans

The Contractor must:

- (a) develop the Management Plans as required by the SMRs;
- (b) not used;
- (c) update the Management Plans as required by the SMRs or as directed by the Principal's Representative; and
- (d) comply with the Management Plans.

3. The Site and location of Contractor's Activities

3.1 Access

- (a) The Contractor acknowledges and agrees that access to the Site will be provided to the Contractor as set out in Schedule E1.
- (b) Subject to clause 3.1(c) and any other provision of this Contract affecting access, the Principal must:
 - (i) give, or ensure the Contractor has, access to the Site in accordance with clause 3.1A; and
 - (ii) once access to a part of the Site is provided to the Contractor, thereafter continue to allow, or ensure that the Contractor is continued to be allowed, access to that part of the Site.
- (c) The Contractor acknowledges and agrees that:
 - (i) access to the Site or any part thereof will only confer on the Contractor a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this Contract and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor;
 - (ii) the Principal is not obliged to give the Contractor access to any part of the Site until the Contractor has:
 - A. complied with clause 2.7(b) of this Contract;
 - B. submitted the Project Health and Safety Management Plan, the Construction Environmental Management Plan and the

- Demolition Management Plan and Demolition Methodology, as required by the SMRs, to the Principal's Representative under clause 9.8 and the Principal's Representative has not rejected the proposed Construction Environmental Management Plan, Demolition Management Plan and Demolition Methodology or Project Health and Safety Management Plan within 15 Business Days after such submission in accordance with clause 9.8(c);
- C. effected the insurance policies required under clauses 13.4, 13.5 and 13.6;
 - D. complied with clauses 13.4, 13.5 and 13.6 with respect to each insurance policy; and
 - E. complied with the matters set out in Schedule A1;
- (iii) unless otherwise expressed in this Contract, the Principal is not obliged to provide, and the Contractor may not be given, exclusive access to the Site;
 - (iv) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain access to the Site or carry out the Contractor's Activities; and
 - (v) the Principal and others will engage Other Contractors to work upon or in the vicinity of the Site, Remote Sites and Extra Land at the same time as the Contractor.
- (d) The Principal's obligations under clause 3.1(a) and 3.1(b) in respect of each part of the Site will cease upon the issue of a Notice of Completion in respect of the last Portion occupying that part of the Site, except to the extent required to allow the Contractor to comply with its obligations during the Defects Rectification Periods.
 - (e) Failure by the Principal to give access as required by clause 3.1(b) will not be a breach of this Contract but will entitle the Contractor to:
 - (i) an extension of time to any relevant Date for Completion under clause 10.9 if the requirements of that clause are satisfied; and
 - (ii) have the Contract Sum increased by the Direct Costs reasonably incurred by the Contractor as a direct result of the failure of the Principal to give access as required by clause 3.1(b) as determined by the Principal's Representative who must, where they are applicable, use the rates and prices in Schedule F2.
 - (f) The Contractor's entitlement under clause 3.1(e)(ii) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to give access as required by clauses 3.1(a), 3.1(b)(i) or 3.1(b)(ii).

3.1A Date for provision of access

- (a) Schedule E1 specifies the Access Period for each part of the Site.
- (b) The Principal will provide 4 weeks' notice to the Contractor of the date on which the Contractor may access part of the Site ("Access Date"). The Access Date must fall within the relevant Access Period.
- (c) If the latest Access Date referable to a Portion is earlier than the Latest Date for Access, the Date for Completion of the Portion will be brought forward by the number of days between the latest Access Date and the Latest Date for Access.

3.2 Temporary Works

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

3.3 Management and Control of the Site

- (a) At all times after being given access to the Site or a part of the Site under clause 3.1 and before the Date of Completion of the Contractor's Activities or the last Portion to reach Completion, the Contractor:
 - (i) without limiting any right of the Principal or the Principal's Representative under this Contract, and subject to clause 4.7, will be responsible for the management and control of the Site;
 - (ii) must control access to, and the security and maintenance of, the Site or that part, except where the Principal's Representative advises otherwise;
 - (iii) must ensure public safety on and adjacent to the Site or that part;
 - (iv) must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths access ways, cycleways and Rail Tracks affected by the Contractor's Activities in accordance with this Contract;
 - (v) must, subject to clauses 3.1 and 3.10 and the SMRs, and any relevant Law, limit access to the Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Site as part of the Contractor's Activities;
 - (vi) must not impede access or Utility Services to private property without the consent of the Principal's Representative and the relevant owner or occupier; and
 - (vii) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from

damage (including from theft and vandalism) until (where relevant) they are due for demolition by the Contractor if that forms part of the Contractor's Activities.

- (b) At all times after being given access to a Remote Site by the owner or occupier of or persons providing access to the relevant Remote Site for the purposes of carrying out the Contractor's Activities related to Remote Activities and before the relevant Date of Completion, the Contractor:
 - (i) will be responsible for the management of the Remote Site;
 - (ii) must (subject to the requirements imposed on the Contractor by the owner or occupier of or persons providing access to the relevant Remote Site):
 - A. control access to, and the security and maintenance of, the relevant Remote Site; and
 - B. provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths, accessways, cycleways and light rail tracks affected by the Contractor's Activities in accordance with this Contract;
 - (iii) must ensure public safety on and adjacent to the relevant Remote Site; and
 - (iv) must not impede access or Utility Services to the relevant Remote Site without the consent of the relevant owner, occupier or access provider.

3.4 Remote Sites and Extra Land

- (a) The Contractor acknowledges and agrees that:
 - (i) the Remote Activities form part of the Contractor's Activities;
 - (ii) the Contractor must procure for itself and at its own cost the access, occupation or use of or relevant rights over any land or buildings in addition to the Site which is necessary or which it may require for the purposes of carrying out the Contractor's Activities (**Extra Land**);
 - (iii) the Principal is not responsible for providing (or assisting the Contractor to obtain) access to any Remote Site or Extra Land;
 - (iv) the location of the Remote Sites may not be fixed and, in such cases, must be determined by the Contractor in consultation with the Principal and any relevant entity who is to take the benefit of the Remote Activities;
 - (v) it accepts all risk and responsibility in respect of identifying the location of and gaining access to the Remote Sites necessary in respect of Remote Activities and it must procure for itself and at its own cost the

- occupation or use of or relevant rights over the Remote Sites, including complying with all requirements and entering into all agreements;
- (vi) it has made and will make adequate allowances in the Contractor Program for Remote Activities;
 - (vii) it will comply with all directions of the owners, occupiers or persons providing access to the respective Remote Sites or Extra Land, including in respect of any Utility Service connection points; and
 - (viii) subject to clause 3.9(e), it will not be entitled to make, and the Principal will not be liable upon, any Claim in respect of any Remote Activities, Remote Sites or Extra Land.
- (b) The Contractor must:
- (i) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site and Remote Sites which is necessary or which it may require for the purposes of carrying out the Contractor's Activities;
 - (ii) at its own cost carry out all activities and procure all Utility Services necessary to make the Remote Sites and Extra Land suitable for use by the Contractor;
 - (iii) as a condition precedent to Completion of the Contractor's Activities or any Portion:
 - A. rehabilitate any Remote Sites and Extra Land of the kind referred to in clause 3.4(a) in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - B. unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate in the form of Schedule B6 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Remote Sites and Extra Land; and
 - (iv) subject to clause 3.9(e), indemnify the Principal against any damage, expense, loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with a claim by the owner or occupier of, or any other person having any interest in, any Remote Sites or Extra Land, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the damage, expense, loss, cost or liability.

3.5 Site Conditions

- (a) Without limiting clauses 3.6(c), the Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this Contract, the Contractor:
- (i) examined this Contract, the Site and its surroundings and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Contractor for the purpose of tendering;
 - (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 Contract;
 - (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 Contract and of all matters and things necessary for the due and proper performance and completion of the Contractor's Activities;
 - (iv) informed itself of:
 - A. all matters relevant to the employment of labour at the Site; and
 - B. all industrial matters relevant to the 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 Materials; 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 Contract, each Deed of Disclaimer, the Information Documents and Materials, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its tender, the performance of its obligations and its potential liabilities under this Contract; 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 Contract and assume the obligations and potential risks and liabilities which it imposes on the Contractor.

- (b) Without limiting or otherwise affecting clauses 3.5(c), 3.5(d) and 3.6, the Principal makes no representation and gives no warranty to the Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
 - A. the Site, Remote Sites, Extra Land or their surroundings; or
 - B. any structure or other thing on, under, above or adjacent to the Site, Remote Sites or Extra Land; or
 - (ii) the existence, location, condition or availability of any Utility Service on, under, above, adjacent to or related to the Site, Remote Sites or Extra Land.
- (c) Subject to clauses 3.8 and 3.9, the Contractor accepts:
- (i) the Site, Remote Sites and any Extra Land; and
 - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Site, Remote Sites 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 Contractor's Activities,
- arising out of, or in any way in connection with the Site Conditions encountered in performing the Contractor's Activities.
- (d) The Contractor must undertake the Contractor's Activities in accordance with this Contract and will not be relieved of its obligations under this Contract, irrespective of:
- (i) the Site Conditions encountered in performing the Contractor's Activities;
 - (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - A. the Site, Remote Sites or any Extra Land, the Environment or their surroundings; or
 - B. any structure or other thing on, above or adjacent to, or under the surface of, the Site, Remote Sites or any Extra Land, the Environment or their surroundings; and
 - (iii) any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Site Conditions or

the conditions or the characteristics of any of the matters referred to in clause 3.5(d)(ii).

3.6 Information Documents and Materials

- (a) Whether or not any Information Documents and Materials or any part thereof form a Schedule or Exhibit to this Contract, the Contractor acknowledges that:
- (i) the Information Documents and Materials or part thereof do not form part of this Contract and that clause 3.6(c) applies to the Information Documents and Materials or part thereof; and
 - (ii) where Information Documents and Materials or any part thereof form a Schedule or Exhibit to this Contract, they do so only for the purposes of identification of that document or part thereof.
- (b) Without limiting clause 3.6(c) or the warranties or acknowledgements in any Deed of Disclaimer:
- (i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents and Materials, and the Information Documents and Materials do not form part of this Contract;
 - (ii) subject to clause 3.6(e), the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - A. the provision of, or the purported reliance upon, or use of the Information Documents and Materials to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed; or
 - B. a failure by the Principal to provide any other information, data or documents to the Contractor.
- (c) The Contractor:
- (i) warrants that it did not in any way rely upon:
 - A. any information, data, representation, statement or document made, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
 - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

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

- (ii) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that the Principal has entered into this Contract relying upon the warranties, acknowledgements and agreements in clauses 3.6(c)(i) and 3.6(c)(ii).
- (d) Subject to clause 3.6(e), the Contractor releases and indemnifies the Principal from and against:
- (i) any claim against them by, or liability of them to, any person; or
 - (ii) (without being limited by clause 3.6(d)(i)) any costs, expenses, losses or damages suffered or incurred by them,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance upon, or use of the Information Documents and Materials, as referred to in clauses 3.6(b) and 3.6(c)(i), to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed or a failure by the Principal to provide any information, data or documents to the Contractor (other than any information, data or documents which the Principal is required to provide to the Contractor by the terms of this Contract);
 - (iv) any breach by the Contractor of this clause 3.6; or
 - (v) the Information Documents and Materials being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation.
- (e) The acknowledgements, warranties, releases and indemnities referred to in clauses 3.6(a) to 3.6(d) do not affect the Contractor's rights under clauses 3.8, and 3.9.

3.7 Not Used

3.8 Artefacts Found

- (a) All Artefacts found on the Site are, and will as between the Contractor and the Principal be and remain, the property of the Principal.
- (b) The Contractor must:

- (i) immediately notify the Principal's Representative if it discovers an Artefact;
 - (ii) ensure the Artefact is protected and not lost, removed, disturbed or damaged;
 - (iii) comply with the requirements of any Authorities and all Laws and Codes and Standards in relation to the Artefact; and
 - (iv) comply with any directions of the Principal's Representative in relation to the Artefact.
- (c) The Contractor acknowledges and agrees that compliance with clause 3.8(b)(iii) does not constitute a direction of the Principal or the Principal's Representative for the purposes of clause 3.8(d).
- (d) Despite the acknowledgements, warranties, releases and indemnities referred to in clauses 3.6(a) to 3.6(d):
- (i) the Contractor will be entitled to payment of additional Direct Costs reasonably incurred by the Contractor as determined by the Principal's Representative in complying with:
 - A. requirements of Authorities in relation to the Artefact; and
 - B. the Principal's Representative's directions under clause 3.8(b)(iv); and
 - (ii) the Contractor will be entitled to make a claim for an extension of time under clause 10.6 in respect of any delay the Contractor suffers in complying with a direction to suspend the Contractor's Activities given by an Authority or by the Principal's Representative under clause 3.8(b)(iv),

but only to the extent that:
 - (iii) the delay arising from the direction to suspend exceeds 10 working days in aggregate; and
 - (iv) the Artefact was not identified in the SWTC or could not have been reasonably anticipated by a competent and experienced contractor having:
 - A. examined all information made available in writing by the Principal to the Contractor for the purpose of tendering;
 - B. examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
 - C. inspected the Site and its surroundings,

as determined by the Principal's Representative.

3.9 Contamination

- (a) The Contractor acknowledges that it is aware that there may be Contamination on, in, under or migrating from the Site, Remote Sites or Extra Land including in surface soils generally and locations which have been filled.
- (b) The Contractor must provide for the management of any Contamination that may be present on, in, under or migrating from the Site in the Construction Environmental Management Plan and the Project Health and Safety Management Plan and take all measures required to protect workers and others in accordance with the Law, the WHS Guidelines and the SMRs.
- (c) Without limiting clauses 2.3(a)(i) and 3.9(a), the Contractor must, undertake any other investigations it considers reasonable or necessary, undertake any investigation to delineate the nature and extent of any Contamination on, in, under or migrating from the Site prior to commencing any part of the Contractor's Activities on the Site in order to identify the steps necessary to deal with any Contamination as part of the Contractors Activities.
- (d) Without limiting clauses 2.3(a)(i) and 3.9(a), the Contractor acknowledges and agrees that it has made all allowances in the Contract Sum for:
 - (i) pre-existing Contamination that is disturbed or interfered with by the Contractor;
 - (ii) Contamination arising out of or in connection with the Contractor's Activities; and
 - (iii) the isolation, disposal or treatment of Contamination and remediation of the Site, Remote Sites and any Extra Land in accordance with Schedule C1 - the SWTC and all relevant Laws.
- (e) If, during the execution of the Contractor's Activities, the Contractor discovers Contamination:
 - (i) on the Site; or
 - (ii) on a Remote Site,other than as described in clause 3.9(d)(i) and 3.9(d)(ii), the Contractor will be entitled to claim the additional costs that it reasonably incurs as a result of the removal of such Contamination at:
 - (iii) the pre-agreed disposal rates set out in Schedule F2 where relevant; or
 - (iv) where the rates in Schedule F2 do not apply, reasonable rates as established by the Contractor to the satisfaction of the Principal's Representative.

- (f) For the purposes of defining 'additional costs' in 3.9(e), the Contractor will not be entitled to costs incurred in the management, handling and disposal of general solid waste (non putrescible) as defined in the Department of Environment, Climate Change and Water NSW Waste Classification Guidelines dated December 2009).
- (g) Without limiting any obligation of the Contractor to comply with all Authority Approvals, the Contractor must in respect of Contamination the Contractor becomes aware of during the execution of the Contractor's Activities, other than Contamination as described in clause 3.9(d)(i) and 3.9(d)(ii):
- (i) notify the Principal's Representative in writing before the Contamination is disturbed or, in any event, within 5 Business Days of becoming aware of the existence of any Contamination on, in, under or migrating from the Site, and thereafter provide the Principal's Representative with such further written details as the Principal's Representative may request including a copy of any investigation report prepared in relation to the Contamination;
 - (ii) promptly after providing a notice under clause 3.9(g)(i), submit a notice for the review of the Principal's Representative under clause 9.8 containing:
 - A. details of the steps which the Contractor proposes to take to:
 - 1) investigate, remediate, dispose of, manage, monitor, contain or otherwise deal with the Contamination so that the Site is remediated to a standard suitable for the proposed use of the Site (**Remediation Steps**);
 - 2) not used;
 - 3) dispose of Contamination off-site to a licensed waste disposal facility in accordance with clause 3.10 if:
 - a) this more economically viable than remediating and or otherwise dealing with the Contamination in situ; or
 - b) the Principal's Representative has directed the Contractor to do so; and
 - 4) report to all relevant Authorities if required to do so,in each case in accordance with any relevant Law, Authority Approvals and any written direction from a relevant Authority;
 - B. the Contractor's estimate of any adjustment which would be made to comply with the Remediation Steps and where the estimate is not a fixed lump sum the proposed administration and

verification measures to evidence the cost of the Remediation Steps; and

- C. a plan documenting the Remediation Steps determined pursuant to the criteria in clause 3.9(g)(ii)A;
- (iii) only after the Principal's Representative has either:
- A. advised the Contractor within the period referred to in clause 9.8(c)(ii) that the Contractor's notice under clause 3.9(g)(ii) is not rejected; or
 - B. had the period referred to in clause 9.8(c)(ii) (or such shorter period as the Principal's Representative may advise to the Contractor in writing) and has not rejected the Contractor's notice under clause 3.9(g)(ii),

implement the Remediation Action Plan in accordance with relevant Laws, Authority Approvals and any direction of a relevant Authority where applicable; and

- (iv) in dealing with any Contamination:
- A. take all measures necessary to protect workers and others in accordance with Law and the WHS Guidelines;
 - B. take all reasonable steps to ensure that the Contamination is quarantined from other in-situ or excavated materials so as to prevent cross-contamination; and
 - C. provide waste classification reports and documents demonstrating that cross-contamination has not occurred.
- (h) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause 3.9, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractors or an agent of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty.

3.10 Waste Disposal

- (a) The Contractor must remove from the Site, Remote Sites and Extra Land and dispose of any Contamination or other waste pursuant to its obligations under this Contract to a licensed waste facility in accordance with all relevant Law and Authority Approvals.

- (b) The Contractor must:
- (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the Site holds all relevant Authority Approvals that are necessary; and
 - (ii) procure and provide evidence of such Authority Approvals to the Principal's Representative upon request.
- (c) The Contractor must ensure that its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws.
- (d) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractors or an agent of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty.

3.11 Principal's Right to Access and Inspect

Subject to clause 3.14, the Contractor must:

- (a) without limiting clauses 3.3 and 3.4, minimise disruption or inconvenience to:
- (i) the Principal, occupiers, tenants and potential tenants of the Site, Remote Sites, Extra Land or any other land or buildings on or adjacent to the Site, Remote Sites or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Site, Remote Sites and Extra Land, including any occupation or use of a Portion or a part thereof under clause 12.6; and
 - (ii) others having a right of access to the Site, Remote Sites, Extra Land or any other land or buildings on or adjacent to the Site, Remote Sites or any Extra Land; and
- (b) at all times:
- (i) give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to:
 - A. the Site; or
 - B. any other areas where the Contractor's Activities are being carried out,

including unobstructed vehicular access through the Site; and

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

3.12 Contractor's Activities to be carried out within Site

The Contractor must ensure that:

- (a) the Contractor's Activities (other than Remote Activities) are carried out within the relevant boundaries of the Site stipulated in the SWTC or any Extra Land, where applicable; and
- (b) the Remote Activities are carried out within the boundaries of the Remote Sites or Extra Land, where applicable.

3.13 Condition Surveys

- (a) Without limiting the requirements of the Planning Approval and the SMRs, the Contractor must:
 - (i) identify all property and adjacent infrastructure (including footpaths and roads) which could be affected or damaged by the Contractor's Activities;
 - (ii) prepare a pre-demolition condition survey of all property listed in Schedule A1 and all property and adjacent infrastructure (including footpaths and roads) identified under clause 3.13(a)(i); and
 - (iii) prepare pre-demolition condition surveys prior to commencing the Contractor's Activities:
 - A. on the Site;
 - B. on a Remote Site; or
 - C. on Extra Land.
- (b) The pre-demolition condition surveys must be conducted with the agreement of each property owner and any occupier listed in Schedule A1 or identified by the Contractor under clause 3.13(a)(i) and be completed at least 30 days prior to the Contractor commencing the relevant activity.
- (c) The Contractor must promptly submit the pre-demolition condition survey to the Principal's Representative for review in accordance with clause 9.8, and in any event within 5 Business Days of the Contractor receiving such a report.
- (d) The Contractor must provide property owners or occupiers listed in Schedule A1 and identified under clause 3.13(a)(i) with a notice proposing at least two alternative dates for the completion of a pre-demolition condition survey prior to commencing the Contractor's Activities. If a property owner or occupier does not provide the Contractor with sufficient access to carry out a

pre-demolition condition survey within 21 days of the latest date which the Contractor included in the notice, the Contractor must give the Principal's Representative a copy of the notice and a signed statement by the Contractor to the effect that the property owner or occupier has not provided sufficient access to carry out the pre-demolition condition survey prior to the Contractor commencing the Contractor's Activities.

- (e) The Contractor must, as a requirement for Completion, undertake post-demolition condition surveys to establish the condition of all property and adjacent infrastructure (including footpaths and roads) listed in Schedule A1 and identified under clause 3.13(a)(i) which may have been affected by the Contractor's Activities.
- (f) The Contractor must promptly submit the post-demolition condition survey to the Principal's Representative for review in accordance with clause 9.8, and in any event within 5 Business Days of the Contractor receiving such a report. The post-demolition condition surveys must be:
 - (i) carried out after the completion of all activities which may affect all property and adjacent infrastructure (including footpaths and roads) listed in Schedule A1 and identified under clause 3.13(a)(i); and
 - (ii) conducted with the agreement of the property owner and any occupier and must include a detailed record (including dated photographs) of the post-demolition conditions of the all property and adjacent infrastructure (including footpaths and roads) listed in Schedule A1 and identified under clause 3.13(a)(i).
- (g) The Contractor must provide property owners or occupiers with a notice proposing at least two alternative dates for the completion of post-demolition condition surveys. If a property owner or occupier does not provide the Contractor with sufficient access to carry out a post-demolition condition survey within 21 days of the latest date which the Contractor included in the notice, the Contractor must give the Principal's Representative a copy of the notice and a signed statement by the Contractor to the effect that the property owner or occupier has not provided sufficient access to carry out the post-demolition condition survey.
- (h) As a condition precedent to Completion, the Contractor must issue to the Principal's Representative a hard copy and an electronic copy in .pdf format of the pre-demolition and post-demolition condition survey report except where the property owner or occupier does not provide sufficient access to complete the pre-demolition condition survey or the post-demolition condition survey in which case the Contractor must issue to the Principal's Representative a hard copy and an electronic copy in .pdf format of the notice and statement referred to in subsections (d) and (g) above.
- (i) The pre-demolition and post-demolition condition surveys detailed in this clause 3.13 must be carried out by an use suitably skilled, qualified and experienced personnel or Subcontractors.

3.14 Principal not in Control

The Contractor and Principal acknowledge that nothing in this Contract including the right to inspect pursuant to clause 3.11 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

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

3.15 Rock Anchors

- (a) The Contractor acknowledges that the Principal will enter into one or more agreements with relevant Authorities in respect of work that forms part of Sydney Metro City & Southwest which may be carried out on, under or adjacent to roads that are owned, operated or controlled by an Authority.
- (b) The Principal will, under the agreements contemplated in clause 3.15(a), procure for the Contractor the right to install Rock Anchors under roads which are necessary for the Contractor to carry out the Contractor's Activities.
- (c) The Contractor must:
 - (i) comply with all Authority requirements for the installation of Rock Anchors under roads; and
 - (ii) not cause the Principal to be in breach of clause 3.15(a).
- (d) The Contractor acknowledges and agrees that:
 - (ii) 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 an Authority; and
 - (iii) no act or omission of an Authority will in any way lessen or otherwise affect:
 - A. the Contractor's obligations under this Contract or otherwise according to Law; or
 - B. the Principal's rights against the Contractor whether under this Contract or otherwise according to Law.

4. Compliance

4.1 Quality of Work

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

4.2 Sydney Metro Requirements

The Contractor must comply with the requirements of the SMRs.

4.3 Environmental Management

The Contractor must:

- (a) not used;
- (b) as part of the Management Plans, document, implement and maintain a contract specific Construction Environmental Management Plan for the management of environmental matters in accordance with the Sydney Metro Construction Environmental Management Framework;
- (c) carry out the Contractor's Activities in accordance with the Construction Environmental Management Plan;
- (d) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the Sydney Metro Construction Environmental Management Framework in relation to environmental management on the Site, Remote Sites and Extra Land;
- (e) use, and be able to demonstrate the use of, ecologically sustainable development principles (including any TfNSW sustainability initiatives under the Sustainability Management Plan) in the design and carrying out of the Temporary Works and the performance of all other Contractor's Activities on Site; and
- (f) comply with all environmental laws and requirements in order to lawfully carry out the Contractor's Activities (including obtaining any licences required under the POEO Act).

4.4 WHS Management

- (a) The Contactor must:
 - (i) for so long as any Contractor's Activities are carried out, have and maintain 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 Guidelines and the SMRs;

- (ii) as part of the Management Plans, develop, document and implement a contract specific Project Health and Safety Management Plan in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and the WHS Guidelines and SMRs;
 - (iii) correct, and continue to correct any defects or omissions from the Project Health and Safety Management Plan (whether identified by the Principal's Representative or the Contractor);
 - (iv) regularly review and, as necessary, revise the Project Health and Safety Management Plan in accordance with the WHS Legislation, Heavy Vehicle National Law or other Law concerning work health and safety, applicable Codes of Practice and Australian Standards and where clause 4.7(b) applies, the Sydney Metro Principal Contractor Health and Safety Standard SM PS-ST-221 (which forms part of the Sydney Metro Program Safety Management Plan), as amended from time to time;
 - (v) document and maintain detailed records of inspections or audits undertaken as part of the Project Health and Safety Management Plan;
 - (vi) carry out the Contractor's Activities in accordance with, and otherwise implement, the Project Health and Safety Management Plan;
 - (vii) create a safe working environment for ensuring the safety of all authorised personnel on the Site, Remote Sites and Extra Land and that no unauthorised individual gains access to the Site; and
 - (viii) supervise any Subcontractor's activities and ensure that they are complying with all relevant Laws, including but not limited to the WHS Legislation, Heavy Vehicle National Law or other Law concerning work health and safety, applicable Codes of Practice and Australian Standards, Authority Approvals and the SMRs in relation to the WHS management on the Site, Remote Sites and Extra Land, and where clause 4.7(b) applies, the Sydney Metro Principal Contractor Health and Safety Standard SM PS-ST-221 (which forms part of the Sydney Metro Program Safety Management Plan), as amended from time to time;
- (b) The Contractor will not be entitled to make, and the Principal will not be liable upon, any claim arising out of or in any way in connection with any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard SM PS-ST-221 (which forms part of the Sydney Metro Program Safety Management Plan), as amended from time to time.

4.5 Safety

- (a) The Contractor must carry out the Contractor's Activities:

- (i) safely and in a manner that does not put the health or safety of persons at risk; and
- (ii) in a manner that protects property.

If the Principal's Representative reasonably considers there is a risk to the health or safety of people or damage to property arising from the Contractor's Activities, the Principal's Representative may direct the Contractor to change its manner of working or to cease working at no cost to the Principal.

(b) The Contractor must:

- (i) ensure that in carrying out the Contractor's Activities:
 - A. it complies with all Laws (including the WHS Legislation and the Heavy Vehicle National Law), Codes of Practice, Australian Standards and other requirements of this Contract for work health, safety and rehabilitation management;
 - B. all Subcontractors comply with the requirements referred to in this clause 4.5 and their respective obligations under all Laws (including the WHS Legislation and Heavy Vehicle National Law), Codes of Practice and Australian Standards, and other requirements of this Contract for work, health safety and rehabilitation management; and
 - C. it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (ii) notify the Principal's Representative in accordance with the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221), as amended from time to time, 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 Contractor's Activities, unless otherwise directed by the Principal;
- (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation;
- (iv) provide the Principal's Representative with the written assurances obtained pursuant to clause 4.5(b)(iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
- (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 9.5, on all work health and safety and rehabilitation matters (including matters concerning or arising out

of, or in any way in connection with, this clause 4.5), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;

- (vi) consult, cooperate and coordinate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation, Heavy Vehicle National Law or other law concerning work health and safety; and
 - (viii) ensure its Subcontracts include provisions equivalent to the obligations of this clause 4.5.
- (c) The Contractor must provide strong safety leadership and continuously promote safety as a core value.
- (d) Where clause 4.7(b) applies, the Contractor must comply with the Sydney Metro Principal Contractor Health and Safety Standard SM PS-ST-221 (which forms part of the Sydney Metro Program Safety Management Plan), as amended from time to time;
- (e) Without limiting the Contractor's obligations under any other clause of this Contract, insofar as the Contractor, in carrying out the Contractor's Activities, is:
- (i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the *Work Health and Safety Act 2011* (NSW) applies; or
 - (v) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the *Work Health and Safety Act 2011* (NSW) applies,

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

- (f) Without limiting clause 17.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Site, the Environment, other property or the health or safety of people.

If the action taken by the Principal is action which the Contractor was required to take under this Contract but did not take, the amount of any penalty, fine, damage, expense, cost (including any reasonable legal fees), loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:

- (i) taking the action contemplated in this clause 4.5(f); or
- (ii) the Contractor's failure to take that action,

will, except to the extent prohibited by Law, be a debt due from the Contractor to the Principal.

4.6 Not used

4.7 Principal Contractor

- (a) In this clause 4.7 the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.

For the purpose of the WHS Legislation and the Contract, the Contractor's Activities and any Other Contractor Work is taken to be the same "construction project".

- (b) If the Contractor is specified in Schedule A1 as being the principal contractor:
- (i) the Principal engages the Contractor as the principal contractor in respect of the Contractor's Activities and all Other Contractor Work carried out on the Site;
 - (ii) the Principal authorises the Contractor to have management and control over the Site and of each workplace at which the Contractor's Activities and the Other Contractor Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (iii) the Contractor accepts the engagement as principal contractor and agrees to discharge all the duties imposed on a principal contractor by the WHS Legislation and this Contract;
 - (iv) the Contractor must exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
 - A. ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and

- B. enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Site; and
- (v) the Contractor's engagement and authorisation as principal contractor continues until:
 - C. the termination of the Contract unless sooner revoked by the Principal; or
 - D. the Contractor executes the Novation Deed in accordance with clause 2.14.
- (c) To the extent not prohibited by law, the Contractor must indemnify the Principal from and against all claims against the Principal, or loss (including reasonable legal fees) suffered or incurred by the Principal, arising out of or in any way in connection with any failure of:
 - (i) the Contractor to exercise or fulfil the functions and responsibilities of a principal contractor under the WHS Legislation that the Contractor is required to discharge in accordance with this clause 4.7; or
 - (ii) the Contractor to otherwise comply with the WHS Legislation, Heavy Vehicle National Law or other Law concerning work health and safety or clauses 4.4 and 4.5.
- (d) Where the Contractor is not specified in Schedule A1 to be the principal contractor, the Contractor:
 - (i) acknowledges that the person who is specified in Schedule A1 is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that Site during the period which that person is specified as being the principal contractor in Schedule A1; and
 - (ii) must comply with any exercise by the person referred to in clause 4.7(d)(i) of such authority as is necessary to enable that person to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (e) Without limiting anything else in this clause 4.7, the Contractor must, in respect of any construction work carried out on all or part of Remote Sites or Extra Land, discharge the duties of a principal contractor under the WHS Legislation in respect of such construction work.

4.8 No Relief from Obligations

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

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

4.9 Not Used

4.10 Not Used

4.11 Australian Government Requirements

- (a) This clause 4.11 only applies if the Contractor's Activities will be partially or fully funded by the Commonwealth as identified in Schedule A1.
- (b) The Contractor must comply with the requirements of the Building Code and be familiar with the Supporting Guidelines. Copies of the Building Code are available at www.employment.gov.au/building-code.
- (c) Compliance with the Building Code will not relieve the Contractor from its responsibility to perform this Contract, or from liability for any Defect in the Temporary Works arising from compliance with the Building Code.
- (d) Where a change in this Contract is proposed and that change would affect compliance with the Building Code, the Contractor must submit a report to the Commissioner of the ABCC specifying the extent to which the Contractor's compliance with the Building Code will be affected in accordance with the applicable provisions of the Building Code.
- (e) The Contractor must maintain adequate records of the compliance with the Building Code by:
 - (i) the Contractor;
 - (ii) its Subcontractors; and

- (iii) any related entity of the Contractor (as that term is used in the Building Code).
- (f) If the Contractor does not comply with the requirements of the Building Code in the performance of this Contract such that a sanction is applied under the Building Code, without prejudice to any rights that would otherwise accrue, the Principal will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of building work funded by the Commonwealth or its agencies.
- (g) Provided that the requirements of the Building Code and this Contract are complied with, when assessing tenders, the Contractor may give preference to Subcontractors that have a demonstrated commitment to:
 - (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- (h) The Contractor must not enter into a Subcontract in relation to the Contractor's Activities where:
 - (i) there are reasonable grounds to believe the building contractor or building industry participant is covered by an enterprise agreement that is inconsistent with the Building Code;
 - (ii) there are reasonable grounds to believe that the building contractor or building industry participant is a party to an agreement of a kind described in subsection 10(1) of the Building Code;
 - (iii) an exclusion sanction imposed applies to the building contractor or building industry participant; or
 - (iv) an adverse decision, direction or order of a Court or tribunal has been made in relation to the building contractor or building industry participant and a contravention of any of the following in respect of building work:
 - A. a designated building law; or
 - B. the WHS Legislation; or
 - C. the *Competition and Consumer Act 2010* (Cth),and there are reasonable grounds to believe that the building contractor or building industry participant has failed to comply with the decision, direction or order against them relating to employee entitlements, not including decisions under appeal, and has not paid employees their entitlements in accordance with that decision.

- (i) The Contractor will and will require its Subcontractors and related entities to provide the Commonwealth or a person occupying a position in the ABCC, with full access to the premises and records of the above-mentioned entity to:
- (i) inspect any work, material, machinery, appliance, article facility, process or object;
 - (ii) inspect and copy any record relevant to the Contractor's Activities; and
 - (iii) interview any person,
- as is necessary to demonstrate compliance with the Building Code.
- (j) The Contractor will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the ABCC, to produce a specified document within a specified period, in person, by fax, by electronic means or by post.
- (k) The Contractor will ensure that its related entities and its Subcontractors will agree to the requests in clause 4.11(j).
- (l) The Contractor consents to disclosure by the Commonwealth, the Commissioner of the ABCC and Minister for Employment information concerning its and its related entities' compliance with the Building Code and whether or not an exclusion sanction has been imposed on it and/or its related entities. Contractors must ensure that their subcontractors are also aware of, and agree to comply with, these rights of use and disclosure.
- (m) The Contractor:
- (i) acknowledges that the WHS Accreditation Scheme applies to the Project;
 - (ii) represents and warrants that it is accredited under the WHS Accreditation Scheme;
 - (iii) must comply with all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while "building work" (as defined in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)) is carried out; and
 - (iv) must ensure that all Subcontracts with Subcontractors carrying out work or providing services on the Site impose obligations on those Subcontractors that enable the Contractor to comply with the obligations under this clause 4.11.
- (n) The Contractor must:
- (i) 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 Contractor requires in order to perform the Contractor's Activities; and

- (ii) without limiting clause 2.3, cooperate with the Principal in relation to:
 - A. compliance with the requirements of the *Australian Jobs Act 2013* (Cth); and
 - B. the implementation of the Workforce Development and Industry Participation Plan.

4.12 NSW Procurement Code of Practice

(a) NSW Procurement Code and NSW Guidelines

In addition to terms defined in this document, terms used in this clause 4.12 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (**NSW Guidelines**) (as published by the NSW Treasury July 2013). The NSW Procurement Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

(b) Primary Obligation

- (i) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement (**NSW Procurement Code**) and NSW Guidelines.
- (ii) The Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Procurement Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (iii) Where the Contractor engages a Subcontractor, the Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 4.12, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Procurement Code and the NSW Guidelines.
- (iv) The Contractor must not appoint or engage another party in relation to the Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Procurement Code or NSW Guidelines.

(c) Access and information

- (i) The Contractor must maintain adequate records of compliance with the NSW Procurement Code and NSW Guidelines by it, its Subcontractors and related entities.
- (ii) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - A. enter and have access to sites and premises controlled by the Contractor, including but not limited to the Site;

- B. inspect any work, material, machinery, appliance, article or facility;
- C. access information and documents;
- D. inspect and copy any record relevant to the Contractor's Activities;
- E. have access to personnel; and
- F. interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Procurement Code and NSW Guidelines, by the Contractor, its Subcontractors and related entities.

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

(d) Sanctions

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

(e) Compliance

- (i) The Contractor bears the cost of ensuring its compliance with the NSW Procurement Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- (ii) Compliance with the NSW Procurement Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities and any other obligation under the Contract, or from liability for any Defect in the Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Procurement Code and NSW Guidelines.
- (iii) Where a change in the Contract or the Contractor's Activities is proposed, and that change may, or may be likely to, affect compliance with the NSW Procurement Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
 - A. the circumstances of the proposed change;
 - B. the extent to which compliance with the NSW Procurement Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - C. what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Health and Safety Management Plan),

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

4.13 Appointment of Structural Engineer

- (a) Subject to clause 4.13(b), the Contractor must appoint a suitably qualified independent structural engineer ("**Structural Engineer**") to:
 - (i) design the Temporary Works; and
 - (ii) certify:
 - A. the Contractor's Demolition Methodology; and
 - B. the design and construction of Temporary Works,
- as required by the SWTC.

- (b) The Contractor must not appoint any Structural Engineer unless it first obtains the written approval of the Principal's Representative (which must not be unreasonably withheld).
- (c) Any request by the Contractor for approval to appoint a Structural Engineer under clause 4.13(b) must be in writing and include such details as may be required by the Principal's Representative. These may include details of the appointment and the proposed Structural Engineer's capacity to undertake the relevant work, past performance in undertaking similar work and safety and environmental compliance and the performance management systems and proposed safe working procedures.

4.14 TfNSW's Statement of Business Ethics

- (a) The Contractor must at all times comply with TfNSW's Statement of Business Ethics, a copy of which is available at www.transport.nsw.gov.au.
- (b) Prior to the engagement of any Subcontractor by the Contractor, the Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with TfNSW's Statement of Business Ethics.

5. Design and Design Documentation

5.1 Design Obligations

The Contractor:

- (a) must prepare any Design Documentation that is required to enable the Contractor to carry out the Contractor's Activities in accordance with this Contract; and
- (b) warrants that:
 - (i) it has fully and carefully reviewed the SWTC;
 - (ii) to the extent they are designed by the Contractor, the completed design of the Temporary Works as represented in the Design Documentation will:
 - A. satisfy the requirements of the SWTC and the other requirements of this Contract; and
 - B. be fit for their intended purposes; and
 - (iii) the Contractor's Activities, including those carried out in accordance with the completed design of the Temporary Works, will satisfy the requirements of the SWTC and the other requirements of this Contract.

5.2 Not used

5.3 Design Documentation

- (a) The Contractor must submit all Design Documentation:
- (i) progressively to the Principal's Representative in accordance with the Management Plans, SWTC, SMRs and the requirements of clause 9.8; and
 - (ii) at the times set out in:
 - A. the SWTC the SMRs; and
 - B. the Contractor's Program.
- (b) The Contractor must upon each submission of the Design Documentation to the Principal's Representative for review (including at the completion of the design of each design package) ensure that the Design Documentation is accompanied by the following documents:
- (i) the Contractor's Certificate of Design Compliance in the form of Schedule B1;
 - (ii) a register of records of design verification and reviews applicable to the design package and other compliance records required by this Contract (all records being satisfactorily completed and signed);
 - (iii) a register of any outstanding design non-conformities and unresolved issues;
 - (iv) a register of deficiency notices and evidence of their close out; and
 - (v) a register of concessions (if any) granted for non-conforming Design Documentation.

5.4 Not Used

5.5 Copies of Design Documentation

- (a) The Contractor must, in accordance with clause 5.3, progressively submit to the Principal's Representative the number of copies specified in Schedule A1 of all Design Documentation, whether complete or work in progress, which it intends to use for the Contractor's Activities.
- (b) The Contractor must give the Principal's Representative the number of copies specified in Schedule A1 of:
- (i) all survey information used in the design of the Contractor's Activities (including the Temporary Works); and
 - (ii) all final Design Documentation.

5.6 Availability of Design Documentation

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

- (a) on the Site, at least one complete set of all Design Documentation that the Contractor is entitled to use for construction purposes pursuant to clause 9.8, and any construction related documents provided by the Principal; and
- (b) at any area on or off the Site where the Contractor's Activities are being carried out, one copy of each of those items specified in clause 5.6(a) insofar as they are relevant to the Contractor's Activities being carried out in that area.

5.7 Ownership of Contract Documentation and Methods of Working

- (a) Subject to clause 5.7(c)(vii):
 - (i) title to and Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor will vest upon its creation for the purposes of this Contract in the Principal;
 - (ii) to the fullest extent permitted by Law, the Contractor hereby assigns to the Principal all of its rights, titles, and interests in, and to, all Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor, whenever created; and
 - (iii) upon request by the Principal, the Contractor must do all things necessary to vest that title or that Intellectual Property in the Principal.
- (b) The Principal grants to the Contractor a licence to use and reproduce the Contract Documentation for the Contractor's Activities.
- (c) The Contractor:
 - (i) warrants and must ensure that the Contract Documentation and any methods of working do not and will not infringe any Intellectual Property;
 - (ii) must indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property in connection with the Contractor's Activities, the Temporary Works, the Contractor's Activities or the Contract Documentation, except to the extent that such actual or alleged infringement arises as a direct result of:
 - A. the Principal having provided the Contractor with material which this Contract permits the Contractor to use for the purpose of the Contractor's Activities, the Contractor's Activities or the Contract Documentation; and

- B. the provision of that material to the Contractor being an infringement of a third party's Intellectual Property rights;
- (iii) must ensure that all Subcontracts between the Contractor and all Subcontractors for design and documentation contain provisions to the same effect as clause 5.7(a);
- (iv) must obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such Subcontractors for design and documentation;
- (v) must, where requested by the Principal's Representative, obtain such an acknowledgement from other Subcontractors;
- (vi) must obtain an assignment to the Principal from any third party who owns any Intellectual Property right in the Contract Documentation;
- (vii) must if it is unable to obtain the assignment referred to in clause 5.7(c)(vi), grant or have granted to the Principal an irrevocable licence:
 - A. to use the Contract Documentation for the completion of the Contractor's Activities;
 - B. which arises immediately upon the creation of the Contract Documentation;
 - C. which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the Temporary Works; and
 - D. which will survive the termination of this Contract on any basis; and
- (viii) must ensure that the Intellectual Property created for the purposes of this Contract is not used, adapted or reproduced other than for the purposes of this Contract without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).

5.8 Delivery Up of Contract Documentation

If this Contract is frustrated or terminated the Contractor must:

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

5.9 Moral Rights

- (a) The Contractor:
- (i) warrants that the Principal's use of the Contract Documentation, or any other work provided by the Contractor under this Contract, will not infringe any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction; and
 - (ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with the Contractor's Activities, the Contractor's Activities or the Contract Documentation.
- (b) For the purposes of clause 5.9(a), the Principal's use of the Contract Documentation includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or part of the Contractor's Activities to which the Contract Documentation or any other work provided by the Contractor under this Contract relates:
- (i) with or without attribution of authorship;
 - (ii) in any medium; and
 - (iii) in any context and in any way it sees fit.

6. Changes

6.1 Proposed Changes

- (a) At any time prior to the Date of Completion of the Contractor's Activities or the last Portion to reach Completion (but without limiting clauses 8 and 13.3) the Principal's Representative may issue a document titled "Change Proposal Request" to the Contractor, which will set out details of a proposed Change that the Principal is considering ("**Change Proposal Request**").
- (b) Within 10 Business Days of the receipt of a Change Proposal Request, or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out such details as may be reasonably required by the Principal's Representative, including:
- (i) the effect which the Contractor anticipates the Change will have on:
 - A. the Contract Sum;
 - B. Payment Breakdown Schedule;

- C. the Program and the Contractor achieving Completion of the Contractor's Activities or each Portion by the relevant Date for Completion and if the proposed Change would entitle the Contractor to an extension of time, the amount of its entitlement under clause 10.6 arising from that extension of time;
 - D. the performance of the Contractor's Activities (including specific details of the work that will be affected and how and to what extent it will be affected); and
 - E. the functionality or integrity of the elements of the Contractor's Activities and the quality or performance standards required by this Contract, including specific details of:
 - 1) the elements of the Contractor's Activities, that will be affected;
 - 2) how and to what extent the functionality or integrity of those elements will be affected;
 - 3) the quality or performance standards affected and how and to what extent they will be affected; and
 - 4) any adverse effect which the Change will have on the Contractor's ability to satisfy its obligations under this Contract (including any warranties the Contractor is required to give under this Contract); and
- (ii) any other information concerning the proposed Change which the Principal's Representative requires including:
- A. sufficient details to allow the Principal to reconsider the need for the Change;
 - B. the Direct Costs that the Contractor anticipates would be incurred by it if a direction was given under clause 10.14 to compress the performance of the Contractor's Activities to overcome part or all of any delay in achieving Completion of the Contractor's Activities or a Portion by the relevant Date for Completion caused by the Change specified in the Change Proposal Request; and
 - C. whether any land in addition to the Site is required to implement the Change.
- (iii) if the Contractor believes that in responding to a Change Proposal Request in accordance with this clause 6.1 it will be required to incur costs to third parties, the estimated amount of the costs that it will incur and details of how this amount has been calculated ("**Estimated Third Party Costs**").

- (c) The Principal will not be obliged to proceed with any proposed Change that is the subject of a Change Proposal Request.
- (d) If the Principal does not proceed with a proposed Change the subject of a Change Proposal Request and the Contractor provided the Principal with details of the Estimated Third Party Costs in accordance with clause 6.1(b)(iii), the Principal will pay the Contractor the reasonable costs incurred by the Contractor to third parties in responding to a Change Proposal Request in accordance with this clause 6.1.

6.2 Change Orders

- (a) Whether or not the Principal's Representative has issued a Change Proposal Request under clause 6.1, the Principal's Representative may at any time prior to the Date of Completion of the Contractor's Activities or the last Portion to reach Completion (but without limiting clauses 8 and 13.3) direct the Contractor to carry out a Change by issuing a written document titled "Change Order", in which the Principal's Representative will state one of the following:
 - (i) the proposed adjustments to the Contract Sum and the Payment Breakdown Schedule set out in the Contractor's notice under clause 6.1 are agreed and the Contract Sum and Payment Breakdown Schedule will be adjusted accordingly;
 - (ii) any adjustment to the Contract Sum will be determined under clause 6.4(b); or
 - (iii) the Change is to be carried out as daywork and any adjustment to the Contract Sum will be determined under clause 6.7.
- (b) There is no limitation on the power of the Principal's Representative to direct a Change, and no Change or direction to carry out a Change will invalidate this Contract.
- (c) The Contractor must comply with a Change Order irrespective of:
 - (i) the nature, extent or value of the work the subject of the Change;
 - (ii) the location or timing (including the impact on any Date for Completion) of the work involved in the Change; or
 - (iii) any Dispute related to the Change.
- (d) The Contractor's entitlement (if any) to an extension of time and delay costs arising out of or in connection with a Change will be dealt with under clause 10 and not this clause 6. The valuation of Changes under clause 6.4 and clause 6.7 will exclude any amount for costs incurred by the Contractor as a result of any delay or disruption caused by the Change.
- (e) Except as directed in a Change Order, the Contractor will not be entitled to vary or change the Contractor's Activities or the Temporary Works.

6.3 Pre-agreed Changes

- (a) The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule A15, exercise any Pre-agreed Change. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Contract on the basis that the Contract Sum, the SWTC, the SMRs and the provisions of this Contract will be adjusted as set out in Schedule A15 for the relevant Pre-agreed Change.
- (b) For the avoidance of doubt:
 - (i) the Principal is not under any obligation whatsoever to exercise; and
 - (ii) the Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising,

any Pre-agreed Change.
- (c) Where the Principal does not exercise its discretion to exercise a Pre-agreed Change, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Pre-agreed Change.
- (d) The exercise of a Pre-agreed Change by the Principal's Representative under this clause 6.3 will not:
 - (i) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);
 - (ii) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Contract); or
 - (iii) entitle the Contractor to an extension of time,

whether under this Contract or otherwise according to any Law.

6.4 Valuation

Subject to clauses 15 and 17, the Contract Sum and the Payment Breakdown Schedule will be adjusted for all Changes that have been directed by the Principal's Representative by:

- (a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Change Order;
- (b) to the extent that clause 6.2(a)(ii) applies:
 - (i) an amount in respect of the Change to be determined by the Principal's Representative on the basis of (where applicable or where it is reasonable to use them for valuing the Change):

- A. the prices and rates set out in Schedule F2; and
 - B. any other applicable data in this Contract; or
- (ii) to the extent clause 6.4(b)(i) does not apply, an amount determined by the Principal's Representative on the basis of reasonable prices and rates (which are to be exclusive of any amount for preliminaries, Overhead Costs or profit) to be agreed between the parties, or failing agreement, determined by the Principal's Representative, which will be increased by the following percentage of that amount:
- A. where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in Schedule A1 which will be in total satisfaction of all the Contractor's preliminaries, Overhead Costs and profit; or
 - B. where the adjustment to the Contract Sum is to be a decrease, the relevant percentage set out in Schedule A1 of the total amount for off-site Overhead Costs described in section 2 of Part B of Schedule F2 and profit,

provided however that where the Principal's Representative has issued a Change Proposal Request, the Contractor's entitlement under this clause 6.4(b) will not be greater than any amount set out in the Contractor's notice under clause 6.1; or

- (c) to the extent that clause 6.2(a)(iii) applies, the amount determined by the Principal's Representative under clause 6.7.

6.5 Omissions

If a Change the subject of a direction by the Principal's Representative requires the omission or deletion of any part of the Contractor's Activities:

- (a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any work being omitted or deleted from the Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work; and
- (c) the adjustment to the Contract Sum arising from the work that has been omitted or deleted will be valued in accordance with clause 6.4.

6.6 Daywork

If the Contractor is given a direction under clause 6.2(a)(iii) to carry out work as daywork, the Contractor must:

- (a) carry out the daywork in an efficient manner; and
- (b) after the direction, each day provide the Principal's Representative with a written report in respect of that day signed by the Contractor that:
 - (i) records particulars of all resources used by the Contractor for the execution of the daywork; and
 - (ii) includes those particulars reasonably required by the Principal's Representative that evidence the cost of the daywork.

The Principal's Representative may direct the manner in which the matters referred to in clause 6.6(b) are to be recorded.

6.7 Valuation of Daywork

In valuing the adjustment to the Contract Sum arising from any work that the Principal's Representative directs to be carried out as daywork, the Principal's Representative will have regard to:

- (a) the amount of wages and allowances paid or payable by the Contractor for the hours reasonably worked in respect of the daywork at the rates:
 - (i) set out in Schedule F2 (which rates will apply to all labour whether employed by the Contractor, a Subcontractor or otherwise);
 - (ii) where the rates in Schedule F2 do not apply, as established by the Contractor to the satisfaction of the Principal's Representative; or
 - (iii) determined by the Principal's Representative;
- (b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the amount determined under clause 6.7(a);
- (c) the reasonable amount of hire charges and associated fuel and other operating costs in respect of Construction Plant approved by the Principal's Representative for use on the work in accordance with such hiring rates and conditions as may be:
 - (i) agreed between the Principal's Representative and the Contractor; or
 - (ii) failing agreement, determined by the Principal's Representative;
- (d) the reasonable amounts paid by the Contractor for Subcontract work, including professional fees; and
- (e) the reasonable actual cost to the Contractor at the Site of all materials supplied and required for the daywork,

to which will be added to the extent that the rates set out in Schedule F2 are not already expressed to be inclusive of the Contractor's non-time related preliminaries,

Overhead Costs and profit, the relevant percentage specified in Schedule A1 of the amounts determined under clause 6.7(a) to clause 6.7(e), which will be in total satisfaction of all the Contractor's non-time related preliminaries, Overhead Costs and profit.

6.8 Contractor's Entitlements

This clause 6 is an exhaustive code of the Contractor's rights in any way in connection with any Change. The Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 6 otherwise than in accordance with the terms of this Contract.

6.9 Contractor initiated Changes

- (a) The Principal and the Contractor acknowledge that:
- (i) the project delivery method chosen is intended, among other things, to allow the Contractor to identify:
 - A. Changes which may enhance the quality of the Contractor's Activities; and
 - B. Changes which may permit project cost savings while maintaining or enhancing the quality of the Contractor's Activities; and
 - (ii) it is their intention that any cost savings should benefit the Principal and the Contractor equally.
- (b) The 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 6.9(b), the Principal's Representative may give written notice to the 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 6.9(b);
 - B. the reason for the proposed Change;
 - C. the effect of the proposed Change on the Contractor's Activities;
 - D. the effect of the proposed Change on the Contractor's Program and the Date for Completion; and
 - E. the cost effect of assessing and carrying out the proposed Change, including:

- 1) where the proposed Change will involve additional costs, any increased costs;
 - 2) where the proposed Change will lead to cost savings, proposals for any cost savings arising from the Change; and
 - 3) the effect the proposed Change will have on any operating and maintenance costs;
- (ii) a written statement stating that the proposed Change:
- A. will not adversely affect the functional integrity of any of the elements of the Contractor's Activities and the performance standards required by this Contract; and
 - B. will not adversely affect the quality standards required under this Contract; and
- (iii) any other information and supporting documentation the Principal's Representative requires.
- (d) Subject to clause 6.9(e), the Principal's Representative:
- (i) (in its absolute discretion) may, by notice in writing, approve or reject any Change the Contractor proposes; and
 - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the Contractor.
- (e) Prior to giving any direction under clause 6.9(d), the Principal's Representative may seek to negotiate with the 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 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 Contractor.
- (f) If the Principal's Representative gives a direction under clause 6.9(d) approving a Change proposed by the Contractor, the Contractor must perform its obligations under this Contract in accordance with the approved Change.
- (g) With respect to any Change approved by the Principal's Representative pursuant to a direction under clause 6.9(d), the Contract Sum will be:
- (i) if the Change gives rise to a cost increase, increased by the cost increase notified by the Contractor under clause 6.9(c)(i)E; or
 - (ii) if the Change gives rise to cost savings, decreased by ■■■% of the cost savings notified by the Contractor under clause 6.9(c)(i)E,

or such other increased or decreased amount (as appropriate) as may be agreed between the Principal and the Contractor pursuant to clause 6.9(d) and prior to the Principal's Representative's direction under clause 6.9(d).

- (h) The Contractor will:
- (i) bear all costs:
 - A. associated with proposing a Change under clause 6.9(b);
 - B. associated with providing details under clause 6.9(c);
 - C. reasonably incurred by the Principal (or the Principal's Representative) in assessing the proposed Change (such costs to be a debt due from the Contractor to the Principal); and
 - (ii) unless otherwise agreed and except as provided for in clause 6.9(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; and
 - B. not be entitled to make any Claim against the Principal arising out of or in connection with the Change.

7. Contractor's Activities

7.1 Contractor's Activities

- (a) The Contractor must carry out the Contractor's Activities and handover the Site:
- (i) in accordance with:
 - A. subject to clause 7.1(b), the SWTC and any Design Documentation that has been prepared by the Contractor in accordance with the requirements of the Contract and not rejected by the Principal's Representative under clause 9.8;
 - B. any direction of the Principal's Representative given or purported to be given under a provision of this Contract; and
 - C. the other requirements of this Contract; and
 - (ii) so that they are fit for their intended purposes.
- (b) If there is any ambiguity, discrepancy or inconsistency between this Contract (including the SWTC) and any Design Documentation which has been prepared by the Contractor and not rejected by the Principal's Representative under clause 9.8, then, unless otherwise directed by the Principal's Representative, the requirements of this Contract will prevail.

- (c) At monthly intervals during the Contractor's Activities, up until Completion of the Contractor's Activities or each Portion, the Contractor must submit to the Principal's Representative a Certificate of Compliance in the form of Schedule B2.

7.2 All Work Included

The Contractor:

- (a) warrants it has allowed for the provision of;
- (b) must undertake and provide; and
- (c) will not be entitled to make, and the Principal will not be liable upon, any Claim except as otherwise provided for in this Contract, relating to the provision of,

all Construction Plant, Temporary Works, labour, materials and other work necessary to execute the Contractor's Activities, whether or not expressly mentioned in this Contract or anticipated by the Contractor, and agrees that all such Construction Plant, Temporary Works, labour, materials and work forms part of the Contractor's Activities.

7.3 Provisional Sum Work

- (a) For each item of Provisional Sum Work, the Principal's Representative will give the Contractor a direction either requiring the Contractor to proceed with the item of Provisional Sum Work or deleting the item of Provisional Sum Work.
- (b) Where the Principal's Representative gives the Contractor a notice requiring the Contractor to proceed with an item of Provisional Sum Work, the Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:
 - (i) the amount allowed for the item of Provisional Sum Work in Schedule F1; and
 - (ii) either:
 - A. an amount agreed between the Contractor and the Principal's Representative; or
 - B. if they fail to agree,
 - 1) an amount determined by the Principal's Representative on the basis set out in clause 6.4(b), as if the item of Provisional Sum Work were a Change, excluding:
 - a) the percentage referred to in clause 6.4(b)(ii)A or 6.4(b)(ii)B; or
 - b) any other amount for the Contractor's Overhead Costs or profit; or

- 2) if the amount determined under clause 7.3(b)(ii)B.1) (**Determined Provisional Sum Amount**) is less than the amount allowed for that item of Provisional Sum Work in Schedule F1, then:
 - a) the Determined Provisional Sum Amount; plus
 - b) a reasonable amount for the Contractor's Overhead Costs and profit applicable to the Determined Provisional Sum Amount (but only to the extent not included within the Determined Provisional Sum Amount), as determined by the Principal's Representative, which amount must not exceed an amount calculated using the percentage set out in Schedule A1.
- (c) Where the Principal's Representative gives the Contractor a direction deleting an item of Provisional Sum Work:
 - (i) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Schedule F1;
 - (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 Contractor arising out of the deletion of the item of Provisional Sum Work.
- (d) In respect of the Specified Provisional Sum Work for a Portion:
 - (i) the Principal will use best endeavours to provide the Contractor with:
 - A. hazardous material reports for each Portion identifying asbestos and polychlorinated biphenyls; and
 - B. reasonable access to the relevant part of the Site on dates agreed by the Principal and the Contractor to allow the Contractor to undertake investigations; and
 - (ii) the Contractor must, within 4 weeks of a date nominated by the Principal, provide the Principal with a fixed price for carrying out the Specified Provisional Sum Work,

and clauses 7.3(a), 7.3(b) and 7.3(c) will then apply in respect of the Specified Provisional Sum Work.

7.4 Co-operation with Other Contractors

Without limiting or being limited by clause 2.9, the Contractor must:

- (a) permit Other Contractors to carry out their work;

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

Other than in respect of Nominated Interface Contractors, the Principal shall procure that each of its Other Contractors that undertakes work on part of the Site during any period in which the Contractor has been engaged as principal contractor in respect of that part of the Site executes a deed poll in favour of the Contractor, as principal contractor, and the Principal in the form set out in Schedule A12 and provide the Contractor with an executed copy of each such deed poll.

7.5 Setting Out

The Contractor must:

- (a) set out the Contractor's Activities in accordance with the requirements of this Contract, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the Contractor that are suitable for their purposes;
- (b) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
- (c) for this purpose keep all survey marks in their true positions.

If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Contractor's Activities, the Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor must at its cost rectify the error.

7.6 Survey

The Contractor must, as a condition precedent to Completion of any Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:

- (a) for its review under clause 9.8 a Survey Plan for the relevant Portion that:
 - (i) has regard to the setback requirements in the Building Code of Australia;
 - (ii) has regard to any stratum lots whether above or below ground;
 - (iii) has regard to the survey control requirements of any relevant Rail Transport Agency;

- (iv) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
 - (v) shows all internal title boundaries;
 - (vi) shows all easements;
 - (vii) shows the location of all Utility Services, including termination points and disconnected Utility Services;
 - (viii) shows the location of all Temporary Works;
 - (ix) shows the topographical level of the Site; and
 - (x) includes the information required by the SWTC; and
- (b) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
- (i) not used;
 - (ii) the elements of the Temporary Works are in the positions and within the tolerances required by Law and this Contract;
 - (iii) the survey information provided pursuant to the SWTC complies with the requirements of this Contract; and
 - (iv) any other matter identified by the Principal's Representative, complies with the requirements of this Contract.

7.7 Cleaning Up

In carrying out the Contractor's Activities, the Contractor must:

- (a) keep the Site, Remote Sites and Extra Land clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Site, Remote Sites and Extra Land; and
- (c) as a condition precedent to Completion of the Contractor's Activities or a Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works (where required) from the Site, Remote Sites and Extra Land or the part of the Site, Remote Sites or Extra Land relevant to the Contractor's Activities or the Portion.

8. Defects

8.1 Defects Liability

Subject to clause 8.2, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.

Without limiting the previous paragraph, the Contractor must rectify any Defects in the Contractor's Activities or any Portion which existed at Completion of the Contractor's Activities or that Portion as soon as possible after Completion of the Contractor's Activities or that Portion.

When rectifying Defects which existed at Completion, the Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Site or Other Contractors as is reasonably possible.

8.2 Defect Notification

If at any time prior to the expiration of any Defects Rectification Period (including for the avoidance of doubt prior to Completion of the Contractor's Activities or any Portion), the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor a direction which identifies the Defect and does one or more of the following:

- (a) requires the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;
- (b) advises the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or
- (c) in respect of any Defect to which clause 8.3(b) applies, advises the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a Change to overcome the Defect, or any part of it.

8.3 Rectification of Defect

If a direction is given under clause 8.2(a):

- (a) the Contractor must rectify the Defect (or the part of it notified):
 - (i) within the times specified in the Principal's Representative's direction, which will generally be limited to the periods during which the rectification work will cause minimal or no inconvenience to the owners, operators and occupants of the Site or the Remote Sites or Extra Land where the relevant parts of the Contractor's Activities were carried out; and
 - (ii) if after Completion of the relevant Portion:
 - A. at other times otherwise agreed with the Principal's Representative;
 - B. in accordance with the requirements of the Principal's Representative;
 - C. in accordance with the requirements of the owners or operators of the Site, Remote Sites or Extra Land where the relevant parts

of the Contractor's Activities were carried out, and any other relevant Authority;

- D. so as to minimise the impact on the use of the Portion; and
 - E. in a manner which causes as little inconvenience as possible to users the Portion or the public, any Utility Service or any access to the Portion; and
- (b) if the Contractor does not comply with clause 8.3(a)(i), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Contract or otherwise at Law, give the Contractor a direction under clause 8.2(c) and have the rectification work carried out at the Contractor's expense, and the cost of the rectification work incurred by the Principal will be a debt due from the Contractor to the Principal.

The Contractor must pay the Principal all costs incurred by the Principal in providing access to the Site, or arranging the availability of any resources, as may be necessary for the Contractor to rectify any Defects during the Defects Rectification Period.

8.4 No Claim for Correction of Defect

Where a direction is given under clause 8.2(a), the Contractor will not be entitled to make a Claim against the Principal for rectifying the Defect (or the part notified) and must bear all costs, losses and expenses suffered or incurred in rectifying the Defect.

8.5 Acceptance of Work

If a direction is given under clause 8.2(b):

- (a) where the value to the Principal of the Contractor's Activities is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified), the Contract Sum will be reduced by the amount determined by the Principal's Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Contractor's Activities; or
- (b) where the value to the Principal of the Contractor's Activities increases because of the acceptance of the Defect (or the part notified):
 - (i) the Principal's Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Contractor's Activities; and
 - (ii) the Contract Sum will:

- A. be reduced by the amount determined by the Principal's Representative, where that amount is negative; and
- B. not be changed where the amount determined by the Principal's Representative is positive.

8.6 Extension of Defects Rectification Period

If:

- (a) the Principal's Representative gives the Contractor a notice under clause 8.2(a) during any Defects Rectification Period; and
- (b) the Contractor rectifies the Defect (or the part notified),

the relevant Defects Rectification Period for the work required by the notice will be extended by the period set out in Schedule A1, commencing upon completion of the rectification of the Defect (or the part notified).

8.7 Defects Rectification by Other Contractor

Where a direction is given under clause 8.2(c):

- (a) without limiting or otherwise affecting clauses 2.9 or 7.4, the Contractor must not impede the Other Contractor from having sufficient access to the Site, Remote Sites or Extra Land to rectify the Defect or carrying out the Change; and
- (b) any costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with, the Other Contractor rectifying the Defect or carrying out the Change, will be a debt due from the Contractor to the Principal.

8.8 Rights Not Affected

Neither the Principal's rights, nor the Contractor's liability, whether under this Contract or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Rectification Period, will be in any way affected or limited by:

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 8 or any other provision of this Contract;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any notice or direction of the Principal's Representative under clause 8.2.

9. Administration

9.1 Principal's Representative

- (a) The Principal must ensure that at all times until Final Completion there is a Principal's Representative. The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.
- (b) A discretion (including an absolute or sole discretion), power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Contract if exercised or made (or if it is not exercised or made) by the Principal's Representative:
 - (i) independently;
 - (ii) after consultation with the Principal and its advisers; or
 - (iii) as directed by the Principal.
- (c) Any control or influence exercised by the Principal over the Principal's Representative does not:
 - (i) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
 - (ii) entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.
- (d) The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Contract.
- (e) Without limiting clause 9.1(d), the Contractor must comply with all reasonable directions by the Principal's Representative in relation to the Contractor's Activities.
- (f) Except where this Contract otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.
- (g) The parties acknowledge that any direction by the Principal's Representative under one of the clauses referred to in Schedule A1 is an interim position only and that, without limiting the rights of the Principal's Representative under clause 11.3, either party may seek to have any such direction opened up, reviewed, decided and substituted pursuant to clause 15 by giving a notice of

dispute to the other party and the Principal's Representative in accordance with clause 15.1.

- (h) The Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any such direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to clause 15 or is unreasonable (other than in accordance with the corrected determination). The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a notice of dispute in accordance with clause 15.1.

9.2 Replacement of the Principal's Representative

The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the Contractor of that appointment.

Any substitute Principal's Representative appointed under this clause 9.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

9.3 Delegation of Functions

- (a) The Principal's Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this Contract;
 - (ii) not appoint more than one person to exercise the same function under this Contract; and
 - (iii) revoke any appointment under clause 9.3(a)(i) by notice in writing to the Contractor.
- (b) The Principal's Representative may continue to exercise a function under this Contract despite appointing another person to exercise the function under clause 9.3(a)(i).
- (c) All references in this Contract to the Principal's Representative include a reference to an appointee appointed under clause 9.3(a)(i).

9.4 Contractor's Personnel

- (a) The Contractor must notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Contract is the relevant person listed in Schedule A8) and of any subsequent changes.

- (b) The Contractor must:
- (i) employ the individuals nominated by the Contractor and listed in Schedule A8 in the positions specified in Schedule A8 or equivalent positions;
 - (ii) nominate individuals for the positions in Schedule A8 for which a person is not currently appointed, which individuals must meet the relevant requirements in Schedule A8;
 - (iii) subject to clause 9.4(b)(iv), not replace the individuals referred to in clause 9.4(b)(i) or clause 9.4(b)(ii) (once TfNSW has agreed to the appointment) without the Principal's Representative's prior written approval which will not be unreasonably withheld; and
 - (iv) if any of the individuals referred to in clause 9.4(b)(i) or clause 9.4(b)(ii) (once TfNSW has agreed to the appointment):
 - A. dies;
 - B. becomes unable to continue in their positions due to illness;
 - C. resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth))); or
 - D. becomes the subject of a direction under clause 9.4(c),replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative.
- (c) The Principal's Representative may, at its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.4(a) or clause 9.4(b)) from the Site and the Contractor's Activities. The Contractor must then cease to engage that person in the Contractor's Activities and must appoint a replacement.
- (d) The Contractor must ensure that any person the subject of a direction under clause 9.4(c) is not again employed in the Contractor's Activities or on the Site.
- (e) Any direction under clause 9.1(a) will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.

9.5 Site Meetings

The Contractor must convene meetings on the Site or such other place (or places) as the Principal's Representative may direct at:

- (a) prior to the Date of Completion of the Contractor's Activities or the last Portion to reach Completion, weekly or such longer intervals as may be directed in writing by the Principal's Representative; and
- (b) monthly intervals after the Date of Completion of the Contractor's Activities or the last Portion to reach Completion until all Defects Rectification Periods (including any extension under clause 8.6), have expired or at such other intervals as may otherwise be directed by the Principal's Representative..

9.6 Environmental Representative

The Contractor acknowledges and agrees that:

- (a) the Principal will appoint an Environmental Representative as required by an Authority Approval;
- (b) the Environmental Representative:
 - (i) will be independent of the parties;
 - (ii) will oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) will advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
 - (iv) will have the authority and independence to:
 - A. direct the Contractor as to; or
 - B. advise the Principal's Representative to direct the Contractor as to,

reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts; and
- (c) it must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(c) and none of the Principal, the Principal's Representative or the Environmental Representative will be liable upon any Claim arising out or in any way in connection with such directions.

9.7 Industrial Relations

The Contractor must in carrying out the Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
- (b) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
- (c) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Contractor's Activities, are always observed in full;
- (d) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities and Other Contractors' activities;
- (e) without limiting clauses 2.3 and 4.12, comply with all the requirements of the NSW Procurement Code and the NSW Guidelines;
- (f) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Contractor as part of the Management Plans, in accordance with the SMRs and clause 9.8;
- (g) prepare, document and implement a project Workplace Relations Management Plan which must be based on the draft outline Workplace Relations Management Plan (if any) submitted with the Contractor's tender and addressing the issues identified in the Workplace Relations Management Plan Assessment;
- (h) not commence any work on the Site, Remote Sites or Extra Land until the Workplace Relations Management Plan has been submitted to the Principal's Representative and the Principal's Representative has not rejected it under clause 9.8;
- (i) submit to the Principal's Representative, before beginning work on the Site, Remote Sites or Extra Land, a statement detailing:
 - (i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (ii) the names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and
 - (iii) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
- (j) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;
- (k) before beginning work on the Site, Remote Sites or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person,

attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:

- (i) payment of remuneration to employees;
 - (ii) annual leave provisions;
 - (iii) Long Service Leave Payment Scheme registration;
 - (iv) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
 - (v) workers' compensation insurance, including self-insurance arrangements;
 - (vi) superannuation fund membership and contributions; and
 - (vii) over-award payments such as redundancy fund contributions; and
- (l) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.

If the Contractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the Contractor under clause 9.7(i).

The industrial relations requirements contained in this Contract, the NSW Procurement Code and the NSW Guidelines:

- (a) are in addition to, but are not in substitution for, any requirements of Law; and
- (b) do not limit the powers of the Principal or the liabilities and responsibilities of the Contractor.

The Contractor warrants and acknowledges that it has allowed in the Original Contract Price for all the costs and expenses involved with complying with all the requirements of this Contract relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

9.8 Submission for Review by the Principal's Representative

- (a) The Contractor must submit each Document:
 - (i) in accordance with the times stated in this Contract or otherwise progressively and in timely manner to ensure that the Contractor's Activities are commenced, progressed and completed by the times required under this Contract, and by the times or within the periods:

- A. identified in the Contractor's Program which is not rejected by the Principal's Representative; or
 - B. in the absence of a time or period in the Contractor's Program, required by the Principal's Representative; and
 - (ii) under cover of a written notice entitled "Submit for Review", which identifies:
 - A. the Document; and
 - B. the provision of this Contract under which the Document is submitted.
- (b) A Document will be deemed not to have been submitted to the Principal's Representative unless and until:
 - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
 - (ii) the Contractor has otherwise complied with this clause 9.8, in addition to any other requirement of this Contract relating to the submission of that Document.
- (c) The Principal's Representative may, after the submission of a Document which satisfies the requirements of clause 9.8(b):
 - (i) review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and
 - (ii) where submitted or resubmitted in accordance with a program which has not been rejected by the Principal's Representative, within 15 Business Days of submission by the Contractor of such Document or resubmitted Document:
 - A. reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this Contract, stating the nature of the non-compliance; or
 - B. make comments on the Document; or
 - C. notify the Contractor that it has no (or has no further) comments to make.
- (d) If any Document:
 - (i) is rejected or deemed to be rejected, the Contractor must submit an amended Document to the Principal's Representative within 10 Business Days of the date of such rejection or deemed rejection and this clause 9.8 will re-apply; or

- (ii) is not rejected and the Principal's Representative responds to the submission with comments, the Contractor must respond to the comments within 10 Business Days or such other period as may be directed by the Principal's Representative.

If the Contractor fails to respond to the Principal's Representative's comments within this period in a manner satisfactory to the Principal's Representative the Document will be deemed to be rejected.

- (e) The Contractor must not commence any part of the Contractor's Activities on the Site or any Portion to which any Document (other than the Contractor's Program) submitted to the Principal's Representative applies, unless the Principal's Representative has had the period referred to in clause 9.8(c)(ii) to review the Document and has not rejected the Document or made any comments on the Document (except in the case where the Contractor has responded to the Principal's Representative's comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.8(d)).
- (f) The Contractor must not amend any Document that has:
 - (i) been submitted to the Principal's Representative; and
 - (ii) not been rejected or not had comments made about it under clause 9.8(c)(ii),unless the Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 9.8 will re-apply.
- (g) The Principal's Representative does not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, a Document submitted by the Contractor, including for errors, omissions or non-compliance with this Contract.
- (h) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this Contract in any Document submitted.
- (i) No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Document prepared by the Contractor, or any other direction by the Principal's Representative in connection with the Document, will:
 - (i) constitute a direction to carry out a Change pursuant to clause 6.2, unless it is in a written document titled "Change Order" and describes the nature of the Change in accordance with clause 6.2(a);
 - (ii) relieve the Contractor from or alter its liabilities or obligations, whether under this Contract or otherwise according to any Law; or

- (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Contract or otherwise according to any Law.
- (j) In considering any Document, the Principal's Representative may consult with and take into account any views or requirements of any relevant Authority.
- (k) Unless otherwise advised by the Principal's Representative, the Contractor must submit the number of copies of a Document stated in this Contract, or if no number is stated then:
 - (i) an electronic version on CD (in both pdf and native formats), which must be virus free;
 - (ii) 1 printed original; and
 - (iii) 3 printed copies (2 bound and 1 unbound).

9.9 Work Method

Whether or not this Contract prescribes a particular work method or a work method is otherwise a part of this Contract or reviewed or approved (expressly or impliedly) by the Principal's Representative, the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause the Contract to be frustrated.

9.10 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor (including any information provided under clause 9.11) available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Contract.

The Contractor acknowledges that any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work.

The Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Contractor's performance under this Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

9.11 Financial Assessment

Without limiting or otherwise restricting clause 9.10, the Contractor acknowledges and agrees that:

- (a) the Principal may, during the term of the Contract, either itself, or through the engagement of private sector service providers, undertake ongoing financial assessments (Financial Assessment) of the Contractor and any Subcontractors;
- (b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the date of commencement of the Contractor's Activities; and
- (c) it must, if requested by the Principal's Representative, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment.

9.12 Not Used

9.13 Waste Reduction and Purchasing Policy

The Contractor must:

- (a) use its best endeavours to reduce wastage and increase the use of recycled materials in accordance with the NSW Government Resource Efficiency Policy (GREP);
- (b) address as part of the Construction Environment Management Plan the measures to be taken to reduce wastage and increase the use of recycled materials in the areas of paper products, office consumables, vegetation and landscaping materials, and construction and demolition materials; and
- (c) provide reports to the Principal's Representative in such format and within such times as may be required by the Principal's Representative for the use by the Principal in complying with its GREP obligations to report performance.

9.14 Not Used

9.15 National Greenhouse and Energy Reporting

The Contractor acknowledges and agrees that:

- (a) if any of the Contractor's Activities, or the activities of any of the Contractor's personnel, in connection with the Contractor's Activities (the "**Relevant Matters**") constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, for the purpose of the NGER Legislation, the Contractor is not taken to have operational control of the facility or facilities referred to in clause 9.15(a):

- (i) the Contractor must comply with any obligations arising under the NGER Legislation in respect of the Contractor's Activities (including the Temporary Works) 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 Contractor agrees that upon written request by the Principal the parties will, for the purposes of the NGER Legislation, jointly nominate the Contractor as the person with operational control of such facility or facilities (with such nomination continuing until the completion of the 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 9.15(a) and 9.15(b), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides:
- (i) that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor; or
 - (ii) for a declaration or other mechanism by which the Contractor can become the person with such liability under the NGER Legislation,
- the 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);
- (d) if the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
- (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time;
- (e) the Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;
- (f) the Contractor must:

- (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 9.15, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
- (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (g) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 9.15 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (h) nothing in this clause 9.15 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

9.16 Early warning procedure and risk reporting

- (a) The Contractor will give early warning of a risk by notifying the Principal's Representative as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:
 - (i) a delay to Completion of the Contractors Activities or any Portion;
 - (ii) an adverse effect on the performance of the Contractor's Activities or the Works;
 - (iii) a Claim by the Contractor; or
 - (iv) a party being in breach of any term of the Contract.
- (b) At the same time as it gives an early warning notification in accordance with clause 9.16(a), the Contractor will enter the risk the subject of the early warning notification on the Risk Register (which will include a description of the risk and the actions which are to be taken to avoid or mitigate the risk).
- (c) The Contractor must provide to the Principal's Representative with real time access to the Risk Register or as otherwise directed by the Principal's Representative.
- (d) The Contractor will 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 Contractor must inform the Principal's Representative if it considers any such proposal or solution would give rise to a Change or otherwise give rise to a Claim by the 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.
- (e) A notification, record or action under this clause 9.16 will not relieve the Contractor from or alter its liabilities or obligations under this Contract, including any and all notification obligations under this Contract.

9.17 Contract Control Group

- (a) The Contract Control Group will comprise of:
- (i) the Principal's Representative;
 - (ii) the Contractor's Representative, a senior representative of the Contractor not involved in the day to day Contractor's Activities and any of the Contractor's personnel nominated by the Principal's Representative;
 - (iii) representatives of any of the Contractor's Subcontractors nominated by the Principal's Representative (acting reasonably); and
 - (iv) any other person nominated by the Principal's Representative (acting reasonably) from time to time.
- (b) The functions of the Contract Control Group will include the oversight and review of:
- (i) the progress of the Contractor's Activities relative to the Contractor's Program and Contractor's other programs, and the performance of the Contractor under this Contract;
 - (ii) issues arising out of the Community Communication Strategy;
 - (iii) the Contractor's compliance or non-compliance with the Management Plans and this Contract, and related and consequential issues;
 - (iv) matters arising from the completion by the Contractor of the design of the Temporary Works and the Design Documentation, including any proposed design changes;
 - (v) environmental management issues;

- (vi) safety and safety management issues (including issues in connection with the Chain of Responsibility Provisions);
 - (vii) disputes that have arisen, or are likely to arise, between the Principal and the Contractor or the Principal's Representative and the Contractor;
 - (viii) potential Claims in relation to which the parties have agreed to temporarily waive the requirements of clause 18.1(b) or 18.3(c)(i);
 - (ix) risks included on the Risk Register and the actions that are being taken to avoid or mitigate such risks; and
 - (x) other matters as determined by the Principal's Representative.
- (c) Contract Control Group Meetings
- (i) The persons nominated in clauses 9.17(a)(ii) to 9.17(a)(iv) must attend all Contract Control Group meetings.
 - (ii) Contract Control Group meetings will be held on:
 - A. a monthly basis during the period from the date of this Contract until the Date of Completion of the last Portion to reach Completion; and
 - B. a quarterly basis during the period after the Date of Completion of the last Portion to reach Completion until Final Completion, or at such other intervals as the Principal and the Contractor agree in writing.
 - (iii) The Principal's Representative (or his or her nominee) will attend and be the chairperson for meetings of the Contract Control Group.
- (d) No legal effect

The Contract Control Group is consultative and advisory only and nothing which occurs during a meeting of the Contract Control Group will:

- (i) affect the rights or obligations of either party under this Contract;
- (ii) entitle a party to make a Claim against the other;
- (iii) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this Contract or otherwise according to law; or
- (iv) prejudice a party's rights against the other whether under this Contract or otherwise according to law.

9.18 Quarterly whole of project reviews

- (a) In each quarter in a calendar year at any time prior to the expiry of the last Defects Rectification Period, the Principal may require that the Contractor

attend and participate in one or more meetings with the Principal and its other contractors for Sydney Metro City & Southwest. The purpose of these meetings is for the Principal, the 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 City & Southwest or any part of Sydney Metro City & Southwest;
 - (ii) solutions to such issues or potential issues which may mitigate, remedy or avoid any adverse impact upon the successful delivery of Sydney Metro City & Southwest or any part of Sydney Metro City & Southwest;
 - (iii) improvements that can be implemented to save time, reduce cost or improve the quality of Sydney Metro City & Southwest or any part of Sydney Metro City & Southwest;
 - (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 Contractor to attend and participate in any meeting contemplated by clause 9.18(a), the Principal's Representative must provide the Contractor with at least 10 Business Days prior written notice of any such meeting.
- (c) If the Principal's Representative provides the Contractor with a notice under clause 9.18(b), the Contractor must ensure that the following personnel attend and participate in the meeting:
- (i) the Contractor's project director;
 - (ii) representatives of any of the Contractor's Subcontractors which the Principal's Representative reasonably requires; and
 - (iii) any other person the Principal's Representative reasonably requires.

9.19 Independent Property Impact Assessment Panel

- (a) The Contractor acknowledges that the Principal has established an Independent Property Impact Assessment Panel for Sydney Metro City & Southwest in accordance with the requirements of the Planning Approval.
- (b) The 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 Site and inspect the Contractor's Activities provided that the Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the 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 Contractor is given reasonable prior written notice of any such meeting.

10. Time and Progress

10.1 Rate of Progress

- (a) The Contractor must:
 - (i) immediately commence, and thereafter regularly and diligently progress the Contractor's Activities;
 - (ii) proceed with the Contractor's Activities with due expedition and without delay; and
 - (iii) achieve Completion of the Contractor's Activities and each Portion by the relevant Date for Completion.
- (b) Without limiting the Contractor's rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of Contractor's Activities except where directed by the Principal's Representative under clause 10.13.
- (c) Without limiting clause 10.1(d) to 10.1(i) or clause 10.15, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor's Activities in accordance with this Contract.
- (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 Contract.
- (e) The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 10.1(e), direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed. The Contractor must co-operate with TfNSW, co-ordinate the Contractor's Activities and otherwise use its reasonable endeavours so as to comply with the direction without the requirement for an extension of time. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 10.1(e) unless the direction is in writing and expressly states that it is a direction under this clause 10.1(e).

- (f) If compliance with a written direction expressly stated to be pursuant to clause 10.1(e) causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued as if it were a Change except where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the Contractor to comply with its obligations under this Contract.
- (g) Such costs shall be the Contractor's sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 10.1(e).
- (h) If the Contractor cannot comply with direction under clause 10.1(e) without an extension of time, despite complying with its obligations to co-operate, coordinate and use reasonable endeavours under clause 10.1(e), the Contractor must within 10 Business Days of receipt of the direction so notify the Principal's Representative in writing, giving detailed reasons.
- (i) If the Contractor gives a notice under clause 10.1(h):
 - (i) the Principal may re-issue the direction under clause (e);
 - (ii) the Contractor must comply with the direction; and
 - (iii) the direction will be deemed to be a Change.

10.2 The Contractor's Programming Obligations

The Contractor must:

- (a) prepare and provide a Contractor's Program that complies with and includes the details required by this Contract and any requirements of the Principal's Representative;
- (b) submit the Contractor's Program to the Principal's Representative for its review in accordance with clause 9.8 within the earlier of:
 - (i) 20 Business Days of the date of this Contract; or
 - (ii) any time required by the SMRs;
- (c) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within 5 Business Days of receipt of such a direction;
- (d) update, revise and submit to the Principal's Representative an updated Contractor's Program:
 - (i) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Completion, the actual progress made by the Contractor, Changes and any other changes to the Contractor's Activities but excluding claims for extensions of time to

any Date for Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative; and

- (ii) on a monthly basis no later than the Payment Claim Date or whenever directed to do so by the Principal's Representative;
- (e) prepare and provide for the Principal's Representative's information only versions of all Contractor's Programs prepared in accordance with clause 10.2(d) that also allow for those claims for an extension of time to any Date for Completion that have been made by the Contractor in accordance with clause 10.7 but to which the Principal's Representative has not yet responded in accordance with clause 10.9;
- (f) comply with the requirements of the Principal's Representative and its other obligations under this Contract in preparing and using programs, including the requirements in clause 9.8; and
- (g) not depart from the current version of the Contractor's Program that has been submitted to the Principal's Representative for review under clause 9.8 and not been rejected by the Principal's Representative within 15 Business Days.

10.3 Contractor not Relieved

Without limiting clause 9.8, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Contractor's Program) prepared by the Contractor, by the Principal's Representative in connection with the program, will:

- (a) relieve the Contractor from or alter its liabilities or obligations under this Contract, including the obligation under clause 10.1;
- (b) evidence or constitute notification of a delay or the claiming of or the granting of an extension of time to any Date for Completion or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Contract.

10.4 Importance of Completion on Time

The Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 10.1; and
- (b) that a Date for Completion will only be extended in accordance with clause 10.9 or clause 10.11, or when so determined under clause 15.

10.5 Risk and Notice of Delay

- (a) Except as expressly provided for in clause 10.9, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities and performance of its obligations under this Contract both before and after any Date for Completion.
- (b) The Contractor must within 5 days of the commencement of an occurrence causing any delay or which is likely to cause delay, give the Principal's Representative written notice of:
 - (i) any delay or likely delay to the carrying out of the Contractor's Activities;
 - (ii) details of the cause; and
 - (iii) how any Date of Completion is likely to be affected (if at all).

10.6 Entitlement to Claim Extension of Time

- (a) If the Contractor is, or will be, delayed on or prior to the Date for Completion of the Contractor's Activities or a Portion, by reason of:
 - (i) an act or omission of the Principal or the Principal's Representative that is not permitted by the Contract or caused or contributed to by the Contractor (including any breach of Contract);
 - (ii) Changes directed by the Principal (but not including Contractor initiated Changes);
 - (iii) a legal challenge to an Authority Approval as a direct result of an Authority order, court order or direction by the Principal or the Principal's Representative in accordance with clause 2.4;
 - (iv) Force Majeure Events;
 - (v) a Change in Law;
 - (vi) the discovery of an Artefact to the extent that the discovery of that Artefact results in the Contractor being directed, ordered or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform the Contractor's Activities for more than 10 days in aggregate (for each discovery of an Artefact);
 - (vii) not used;
 - (viii) a strike that is industry-wide and not specific to the Contractor, the Site or the Contractor's Activities;
 - (ix) the Contractor is directed by the Principal to suspend its activities unless the direction to suspend is a result of the Contractor's failure to

perform its obligations in accordance with this Contract or required for safety reasons;

- (x) finalisation of a Third Party Agreement or execution of an Additional Third Party Agreement in accordance with clause 2.11(e);
- (xi) the Contractor failing to obtain access to an Adjoining Property (provided the Contractor is not in breach of its obligations in clauses 2.11 and 2.12); or
- (xii) the Existing Operations of the Nominated Interface Contractor on the Site extend beyond the date for completion specified in Schedule E6,

in a manner that will prevent it from achieving Completion of the Contractor's Activities or the Portion by the relevant Date for Completion, the Contractor may claim an extension of time to the relevant Date for Completion.

- (b) If the Contractor is, or will be, delayed after the Date for Completion of the Contractor's Activities or a Portion, by reason of an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Change directed by the Principal's Representative) in a manner which will delay it in achieving Completion of the Contractor's Activities or a Portion, the Contractor may claim an extension of time to the relevant Date for Completion.

10.7 Claim for Extension of Time

To claim an extension of time the Contractor must:

- (a) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Completion, which:
 - (i) gives detailed particulars of the:
 - A. delay and the occurrence causing the delay; and
 - B. activities that are critical to the maintenance of progress in the execution of the Contractor's Activities; and
 - (ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:
 - A. conditions precedent to an extension of time in clause 10.8 have been met; and
 - B. occurrence will delay it in achieving Completion in the manner described in clause 10.6; and
- (b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor

wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:

- (i) every 14 days after the first written claim, or such other period as may be approved by the Principal's Representative in writing, until after the end of the effects of the delay; and
- (ii) containing the information required by clause 10.7(a).

The Principal's Representative may, within 14 days of receiving the Contractor's claim or further claim for an extension of time for Completion, by written notice to the Contractor, request additional information in relation to the claim or further claim. The Contractor must, within 14 days of receiving such request, provide the Principal's Representative with the information requested.

10.8 Conditions Precedent to Extension of Time

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

- (a) the Contractor gives the notices and claims required by clauses 10.5(b) and 10.7 as required by those clauses;
- (b) the Contractor complies with any request for additional information under clause 10.7 within the time required;
- (c) the cause of the delay is beyond the reasonable control of the Contractor;
- (d) the Contractor has taken all steps possible to mitigate the delay and avoid or minimise the consequences of the delay; and
- (e) the Contractor is actually, or will be, delayed:
 - (i) on or prior to the Date for Completion of the Contractor's Activities or the Portion, by reason of one or more of the causes set out in clause 10.6(a) in the manner described in clause 10.6(a); or
 - (ii) after the Date for Completion of the Contractor's Activities or the Portion, by reason of an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Change directed by the Principal's Representative) in the manner described in clause 10.6(b).

If the Contractor fails to comply with the conditions precedent in this clause 10.8:

- (f) the Principal will not be liable upon any Claim by the Contractor; and
- (g) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

10.9 Extension of Time

Subject to clause 10.10, if the conditions precedent in clause 10.8 have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Principal's Representative, and notified to the Principal and the Contractor within 28 days after the latest of the:

- (a) Contractor's written claim under clause 10.7; and
- (b) provision by the Contractor of any additional information regarding the claim required under clause 10.7.

A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Completion or to grant an extension of time to any Date for Completion within the relevant 28 day period will not cause an affected Date for Completion to be set at large, but nothing in this clause will prejudice any right of the Contractor to damages.

10.10 Reduction in Extension of Time

- (a) The Principal's Representative will reduce any extension of time to the relevant Date for Completion it would otherwise have determined under clause 10.9 to the extent that the Contractor:
 - (i) contributed to the delay; or
 - (ii) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.
- (b) If the Principal's Representative gives the Contractor a direction to compress under clause 10.14(a) and the direction only applies to part of the delay, the Contractor's entitlement to any extension of time which it otherwise would have had if a direction to compress had not been given under clause 10.14(a) will be reduced to the extent that the direction to compress requires the Contractor to compress to overcome the delay.

10.11 Unilateral Extensions

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Completion, under clause 10.9, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor and the Principal, unilaterally extend any Date for Completion by any period specified in a notice to the Contractor and the Principal.

The Principal's Representative is not required to exercise its discretion under this clause 10.11 for the benefit of the Contractor.

The discretion to grant an extension of time under this clause 10.11 may only be exercised by the Principal's Representative and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 15 or in any other way opened up, reviewed or exercised by any other person in any forum.

10.12 Delay Damages

For each day by which the Date for Completion of the Contractor's Activities or a Portion is extended due to:

- (a) a breach of this Contract by the Principal; or
- (b) not used; or
- (c) a Change the subject of a direction by the Principal's Representative under clause 6.2, except where that Change is directed in the circumstances described in clause 8.2(c) or clause 6.9;
- (d) not used;
- (e) not used;
- (f) not used;
- (g) a Change in Law; or
- (h) the Contractor failing to obtain access to an Adjoining Property (provided the Contractor is not in breach of its obligations in Schedule E4),

the Contractor will be entitled to be paid the costs reasonably incurred by the Contractor as a direct result of the delay the subject of the extension of time, as determined by the Principal's Representative who must, where they are applicable, use the rates and prices in Schedule A1. The costs payable will be subject to the caps specified in Schedule A1. The valuation of entitlements to money under clauses 10.1(f) and 13.3 is not a Change for the purposes of clause 10.12(c).

The amounts payable pursuant to this clause 10.12 will be:

- (a) a limitation upon the Principal's liability to the Contractor for any delay or disruption that:
 - (i) the Contractor encounters in carrying out the Contractor's Activities; and
 - (ii) arises out of, or in any way in connection with, the breach of this Contract by the Principal,
- (b) the Contractor's sole remedy for any loss that it may suffer or incur due to any delay or disruption that arises out of or in connection with a breach by the Principal,

and the Contractor will not be entitled to make, nor will the Principal be liable upon, any Claim in these circumstances other than for the amount which is payable by the Principal under this clause 10.12.

In accordance with clause 6.2, the valuation of Changes under clause 6.4 and clause 6.7 will exclude any amount for costs incurred by the Contractor as a result of any delay or disruption caused by the Change.

10.13 Suspension

The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Contractor's Activities. Nothing in this clause limits the Principal's rights under clause 2.10.

If the suspension under this clause 10.13 arises in the circumstance set out in clause 2.10(f) then clauses 2.10(f) and 2.10(g) will apply, otherwise where it arises as a result of:

- (a) the Contractor's failure to carry out its obligations in accordance with this Contract (including where the Contractor fails to comply with any process, procedure, test method, calculation, analysis or report required by this Contract which has resulted in or will result in a non-conformance), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the Contractor's failure to perform its obligations in accordance with this Contract:
 - (i) a direction to suspend under this clause 10.13 will entitle the Contractor to:
 - A. be paid by the Principal the additional Direct Costs reasonably incurred by it as a direct result of the suspension as determined by the Principal's Representative; and
 - B. an extension of time to any relevant Date for Completion where it is otherwise so entitled under this clause 10;
 - (ii) the Contractor must take all steps possible to mitigate the additional Direct Costs incurred by it as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.13(b).

10.14 Compression

- (a) If the Contractor gives the Principal's Representative a claim under clause 10.7, the Principal's Representative may direct the Contractor to compress the performance of the Contractor's Activities by taking those

measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve Completion of the Contractor's Activities or a relevant Portion by its Date for Completion.

The Principal's Representative may direct the Contractor that prior to commencing any such compression the Contractor must give the Principal's Representative an estimate of the additional Direct Costs to be reasonably incurred in taking all such necessary measures.

- (b) The Principal's Representative may give a direction under clause (a) whether or not the cause of delay for which the Contractor has made its claim under clause 10.7 entitles the Contractor to an extension of time to the relevant Date for Completion.
- (c) The Principal's Representative may not give a direction under clause (a) which requires the Contractor to compress the Contractor's Activities so as to achieve Completion of the Contractor's Activities or a relevant Portion earlier than its Date for Completion.
- (d) The Principal's Representative may at any time by notice in writing withdraw any direction given by it under clause (a), after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled to in respect of the cause of delay in respect of which the Contractor made a claim under clause 10.7, such extension of time to be reduced to the extent that the compression of the Contractor's Activities taken by the Contractor prior to the withdrawal of the direction has mitigated the delay which is the subject of the claim for an extension of time made by the Contractor under clause 10.7, as stated by the Principal's Representative.
- (e) If the Principal's Representative gives a direction to the Contractor under clause 10.14(a):
 - (i) whether or not the Contractor provides a cost estimate under clause (a) the Contractor must, to the extent reasonably practicable, compress the performance of the Contractor's Activities to overcome the delay to the extent to which the direction requires the Contractor to overcome the delay;
 - (ii) to the extent that the Contractor would, but for the direction, have been entitled to an extension of time to the Date for Completion of the Contractor's Activities or a Portion for the cause of delay in respect of which the Contractor made a claim under clause 10.7, the Contractor will to the extent that it would have been entitled to an extension of time be entitled to be paid:
 - A. if the direction relates to:
 - 1) all of the delay caused by a Change; or

- 2) part of any delay caused by a Change as specified in the relevant Change Proposal Request under clause 6.1,

any amount notified by the Contractor under clause 6.1(b)(ii)B where that amount is approved by the Principal's Representative; or

B. the lesser of:

- 1) otherwise the additional Direct Costs to be reasonably incurred by the Contractor (which if the Principal's Representative gives a notice to withdraw the direction under clause 10.14(a), will be those additional Direct Costs reasonably incurred prior to the giving of such notice) and directly attributable to compressing the performance of the Contractor's Activities as required by the Principal's Representative's direction under clause 10.14(a), together with the relevant percentage set out in Schedule A1; and
- 2) the cost estimate (if any) provided by the Contractor pursuant to clause 10.14(a); and

(iii) subject to clause 10.10(b), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the cause of delay and any direction under clause (a), whether for an extension of time to the Date for Completion of the Contractor's Activities or a Portion which the Contractor might have had but for the direction or otherwise, other than the amount it is entitled to under clause 10.14(e)(ii).

- (f) The Principal's rights to liquidated damages under clause 12.7 for a failure by the Contractor to achieve Completion of the Contractor's Activities or a Portion by the Date for Completion of the Contractor's Activities or the Portion will not be affected by the Principal's Representative giving the Contractor a direction to compress under this clause 10.14.
- (g) If at any time the progress of the Contractor's Activities has fallen behind that shown in the Contractor's Program or otherwise is not in accordance with this Contract, the Contractor must at its own cost take the necessary corrective action so as to ensure that progress is maintained in accordance with this Contract. Such corrective action may include the working of overtime and additional shifts, the application of more resources to carry out the work and the adjustment and rescheduling of activities. The Principal's Representative from time to time may direct the Contractor to provide details of the corrective action it plans to take under this clause 10.14(g).
- (h) If the Contractor fails to take corrective action in accordance with clause 10.14(g), the Principal's Representative may direct the Contractor as to the corrective action it is to take and the 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.

- (i) No direction by the Principal's Representative will be taken to constitute a direction under clause 10.14(g) unless the direction is in writing, is signed by the Principal's Representative and expressly states that it is a direction under clause 10.14(g).

10.15 Compression by Contractor

If the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Completion before any Date for Completion;
- (b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) the Contractor does so at its own cost and risk.

11. Payment

11.1 Contractor's Payment Entitlements

- (a) Subject to clause 11.6, clause 17.12 and to any other right to set-off that the Principal may have, the Principal must pay the Contractor the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Contract, in accordance with the procedure in this clause 11.
- (b) The Contract Sum is not subject to rise and fall.

11.2 Payment Claims

The Contractor may give the Principal's Representative a claim for payment on account of the Contract Sum and any other amount expressly payable by the Principal to the Contractor under the Contract on each Payment Claim Date.

The Contractor agrees with the Principal that each Payment Claim Date is, for the purposes of section 8 of the *SOP Act*, a "reference date".

Each claim for payment must:

- (a) generally follow the form of the Payment Breakdown Schedule and otherwise be in such form as the Principal's Representative reasonably requires;
- (b) include all the evidence reasonably required by the Principal's Representative of the amount of work completed in accordance with this Contract and the amount payable;
- (c) for each monthly claim pursuant to clause 11.2 (a "Progress Claim"), set out the amount claimed for work completed in accordance with the Contract to the end of the previous month and details of how the amount has been calculated;

- (d) include such further information and evidence in respect of the payment claim as is reasonably required by the Principal's Representative.

The Contractor may not include in any payment claim under this clause 11 any amount in respect of a Claim which is barred by clause 18.7 or any other provision of this Contract.

11.3 Payment Statements

The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 11.2, a Completion Payment Claim under clause 11.9 or a Final Payment Claim under clause 11.11, issue to the Contractor and the Principal a payment statement which, identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and which sets out:

- (a) its determination of the value of the Contractor's Activities carried out in accordance with this Contract, using the methodology in clause 11.2(c) where the payment statement relates to a Progress Claim;
- (b) the amount already paid to the Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under this Contract, including any amounts which the Principal may retain deduct, withhold or set-off pursuant to clause 11.6;
- (d) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Sum and which the Principal proposes to pay to the Contractor or the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal; and
- (e) if the amount in clause 11.3(d) is less than the amount claimed in the Progress Claim, Completion Payment Claim or Final Payment Claim:
- (i) the reason why the amount in clause 11.3(d) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim; and
- (ii) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Contractor's Activities covered by the payment statement has been satisfactorily carried out in accordance with this Contract.

Failure by the Principal's Representative to set out in a payment statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the

Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.

The Contractor agrees that the amount referred to in the payment statement in respect of clause 11.3(d) above for the purposes of section 9 and 10 of the *SOP Act*, is the amount of the "progress payment" (as defined in the *SOP Act*) calculated in accordance with the terms of this Contract to which the Contractor is entitled in respect of this Contract.

Where the Principal has notified the Contractor in accordance with clause 11.19(f)(i)D that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Contractor to the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative give the Principal's Representative a tax invoice (which complies with the GST Law) for the amount of the payment statement.

11.4 Payment

- (a) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Principal to the Contractor, subject to clauses 11.1, 11.2, 11.6, 11.8, 14.3, 14.7(a) and 17.2, the Principal must, within 15 Business Days of receipt of the payment claim to which the payment statement relates pay the Contractor the amount set out in the payment statement referred to in clause 11.3.
- (b) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Contractor to the Principal, the Contractor must, within 5 Business Days of the Principal's Representative issuing the payment statement under clause 11.3, pay the Principal the amount set out in the payment statement referred to in clause 11.3.

11.5 Payment on Account

A payment of moneys under clause 11.4(a) is not:

- (a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Contract;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with this Contract,

but is only to be taken as payment on account.

11.6 Provision of documentation and other requirements

- (a) The Principal is not obliged to pay the Contractor any more than ■% of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the Contractor has:

- (i) not used;
 - (ii) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.7;
 - (iii) provided the Principal's Representative with:
 - A. a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule B5, made out not earlier than the date of the payment claim;
 - B. a Contractor's Certificate of Design Compliance and a Contractor's Certificate of Compliance, in the form of Schedule B1 and Schedule B2 required by clause 5.3(b) and clause 7.1(c) respectively;
 - C. where clause 11.16(g) applies, the statement and the evidence (if any) required to be provided by the Contractor pursuant to that clause; and;
 - (iv) not used;
 - (v) effected or procured to be effected the insurances required to be effected by the Contractor by clauses 13.4, 13.5 and 13.6 and (if requested) provided evidence of this to the Principal's Representative;
 - (vi) provided such evidence as the Principal's Representative may require that this Contract has been properly executed by or on behalf of the Contractor and that the Contractor is bound under this Contract; and
 - (vii) done everything else that it is required to do under this Contract before being entitled to make a payment claim or receive payment.
- (b) The Principal is not obliged to pay the Contractor any more than ■% of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the Contractor has provided the updated Contractor's Program required by clause 10.2(d)(ii).

11.7 Not used

11.8 Payment of Employees and Subcontractors

- (a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal's Representative a statutory declaration in accordance with clause 11.6(a)(iii)A.
- (b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.6(a)(iii)A, the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.

- (c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order (exclusive of GST) to the employee or Subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (d) If the Principal receives notice of any Insolvency Event in relation to the Contractor the Principal will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.
- (e) Nothing in this clause 11.8 limits or otherwise affects the Principal's right under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

11.9 Completion Payment Claim

No later than 28 days after the issue of the Notice of Completion for the Contractor's Activities or the last Portion to reach Completion, but subject to clause 11.6 the Contractor may lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating;

- (a) the Contract Sum;
- (b) all payments received on account of the Contract Sum; and
- (c) the balance, if any, due to the Contractor.

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Completion Payment Claim the Contractor must lodge with the Principal's Representative a First Statement of Outstanding Claims. The First Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or this Contract which occurred prior to the date of submission of the Completion Payment Claim.

The Completion Payment Claim and First Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the Contractor's Activities or this Contract up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and First Statement of Outstanding Claims.

11.10 Release after Completion Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or this Contract that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:

- (a) has been included in the Completion Payment Claim or First Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with clause 11.9; and
- (b) has not been barred under another provision of this Contract.

11.11 Final Payment Claim

No later than 28 days after the expiration of the last Defects Rectification Period, but subject to clause 11.6 the Contractor may lodge with the Principal's Representative a payment claim marked "Final Payment Claim" stating:

- (a) the Contract Sum;
- (b) all payments received on account of the Contract Sum; and
- (c) the balance, if any, due to the Contractor.

The Final Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Final Payment Claim the Contractor must lodge with the Principal's Representative a Second Statement of Outstanding Claims. The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Contractor's Activities or this Contract which occurred prior to the date of submission of the Final Payment Claim.

The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Contractor's Activities or this Contract up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.

11.12 Release after Final Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or this Contract that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:

- (a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.11; and

- (b) has not been barred under another provision of this Contract.

11.13 Interest

If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable thereon from but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.

The rate of interest will be the rate from time to time prescribed for judgement debts under the *Uniform Civil Procedure Rules 2005* (NSW). Interest will be compounded at six monthly intervals.

This will be the party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

11.14 Correction of Payment Statements

The Principal's Representative may, in any payment statement:

- (a) correct any error; and
- (b) modify any assumptions or allowances made,

in any previous payment statement issued by the Principal's Representative.

11.15 Costs Allowed by Contractor

Unless otherwise provided in this Contract, it is agreed that the Contractor has, and will be deemed to have, allowed in the Original Contract Price for and will be wholly responsible for the payment of:

- (a) without limiting clause 11.19, all customs duties, tariffs and similar taxes and charges paid or payable on all items that are to be used for the Contractor's Activities;
- (b) any long service leave levy which may be payable in respect of the Contractor's Activities;
- (c) all royalties, licence fees and similar payments for Intellectual Property in respect of all Contract Documentation;
- (d) all fluctuations in the value of the Australian dollar against other currencies.

The Contractor will have no entitlement to any increase in the Contract Sum or otherwise to make any Claim against the Principal in respect of any of those amounts, whatever they may actually be.

11.16 Security of Payment Act

- (a) When an adjudication occurs under the *SOP Act* and the Principal has paid an adjudicated amount to the Contractor:
- (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 11.3;
 - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (iv) the Principal's Representative:
 - A. is not bound by the adjudication determination;
 - B. may reassess the value of the work that was valued by the adjudicator; and
 - C. may, if it disagrees with the adjudication determination, express its own valuation in any payment statement; and
 - (v) the payment statement referred to in clause 11.16(a)(iv)C will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 15.
- (b) For the purposes of section 17(3) of the *SOP Act* the Contractor irrevocably chooses the Resolution Institute, as the "authorised nominating authority" (as that term is defined in the *SOP Act*) for any adjudication application it may make under the *SOP Act* in respect of the subject matter of this Contract.
- (c) Without limiting clauses 11.8 or 17.12, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the *SOP Act*.
- (d) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the *SOP Act*, then:

- (i) the Principal may plead and rely upon Division 2A of the *SOP Act* as a defence to any claim for the money by the Contractor from the Principal; and
- (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the *SOP Act* will not be taken into account for the purpose of determining:
 - A. A.any period for which money owed by the Principal to the Contractor has been unpaid; and
 - B. B.the date by which payment of money owed by the Principal to the Contractor must be made.
- (e) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the *SOP Act*.
- (f) Any amount paid by the Principal pursuant to section 26C of the *SOP Act* will be a debt due from the Contractor to the Principal.
- (g) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the *SOP Act* and the Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,then the Contractor must so notify the Principal within 5 days of the occurrence of the event in clause 11.16(g)(i) or (ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).
- (h) If the Contractor holds retention monies from any of its Subcontractors, the Contractor must:
 - (i) comply with the requirements of Division 2 of the *SOP Regulation*; and
 - (ii) provide the Principal's Representative with a copy of any notification that the Contractor gives to the Chief Executive (as defined in the *SOP Regulation*) pursuant to Division 2 within 24 hours of providing such notification.

11.17 Not used

11.18 Performance and compliance incentive payment

- (a) The Principal may at any time provide the Contractor with details of a proposed performance and compliance incentive payment scheme.
- (b) Upon receipt of the Principal's proposal, the Contractor may notify the Principal in writing that it accepts the Principal's proposed performance and compliance incentive payment scheme, in which case the Contractor will be entitled to receive payments in accordance with the scheme.
- (c) If the Contractor does not accept the Principal's proposed performance and compliance incentive payment scheme, the parties will negotiate to reach an agreed position but the Principal is under no obligation to agree to any changes to its proposed scheme.

11.19 GST

- (a) Interpretation
 - (i) 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 11.19.
 - (ii) Unless otherwise expressly stated, all consideration to be provided under this Contract 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 11.19.
- (b) GST payable
 - (i) If GST is or will be payable in relation to a supply made by a party (**the Supplier**) under or in connection with this Contract, 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.
 - (ii) Subject to clause 11.19(f), 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 11.19(b)(i).
- (c) Adjustments
 - (i) If the GST Amount payable in relation to a supply made under or in connection with this Contract varies from the GST Amount paid by the Recipient under clause 11.19(b)(i), 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).

- (ii) Subject to clause 11.19(f), if an adjustment event occurs in relation to a supply made under or in connection with this Contract 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.
- (d) Non-monetary consideration
- (i) To the extent that the consideration provided for a taxable supply to which clause 11.19(b)(i) 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 11.19(b)(i) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) Subject to clause 11.19(f), 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 11.19(b).
- (e) Reimbursements
- (i) 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 Contract must exclude the amount of GST referable 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.
- (f) Recipient created tax invoices
- (i) The parties agree that unless and until otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this Contract:
 - A. the Principal will issue to the Contractor an RCTI for each taxable supply made by the Contractor to the Principal under this Contract;
 - B. the Principal will issue to the Contractor a recipient created adjustment note for any adjustment event;
 - C. the Contractor will not issue a tax invoice or adjustment note in respect of any taxable supply it makes to the Principal; and

- D. the Principal may notify the Contractor that it will no longer issue a RCTI or recipient created adjustment note for each taxable supply made by the Contractor under this Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs or recipient created adjustment notes in respect of such supplies and the Contractor will be required to issue tax invoices and adjustment notes to the Principal (including under clause 11.3).
- (ii) Each party acknowledges and warrants that at the time of entering into this Contract it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (g) No merger

This clause will not merge on completion or termination of this Contract.

12. Completion

12.1 Progressive Inspection and Testing

- (a) At any time prior to Completion of the Contractor's Activities or a Portion, the Principal's Representative may direct that any materials or work forming part of the Contractor's Activities or that Portion be tested. The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Contractor's Activities as may be required. On completion of any test the Contractor must make good the Contractor's Activities so that they fully comply with this Contract.
- (b) The Principal's Representative may direct that any part of the Contractor's Activities must not be covered up or made inaccessible without the Principal's Representative's prior approval.
- (c) The tests prescribed in this Contract must be conducted by the Contractor as and when provided for in this Contract, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.
- (d) Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.
- (e) Unless otherwise stated in this Contract before conducting a test under this Contract the Principal's Representative or the Contractor must give not less than two Business Days' notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.

- (f) Without prejudice to any other rights or remedies under this Contract, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.
- (g) Each party must promptly make the results of tests available to the other and to the Principal's Representative.
- (h) Where the Principal's Representative directs that materials or work be tested, the costs of testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the Contractor unless:
 - (i) this Contract provides that the Contractor must bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under clause 12.1;
 - (ii) the test shows that the material or work is not in accordance with this Contract;
 - (iii) the test is in respect of a part of the Contractor's Activities covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
 - (iv) the test is consequent upon a failure of the Contractor to comply with a requirement of this Contract.
- (i) Where the extra costs in clause 12.1(h) are not to be borne by the Principal, they will be borne by the Contractor and will be a debt due from the Contractor to the Principal or paid by the Contractor to the Principal on demand.

12.2 Contractor to Notify

The Contractor must give the Principal's Representative written notice 21 days before it anticipates achieving Completion of the Contractor's Activities or a Portion.

12.3 Inspection before Completion

- (a) The Principal's Representative and the Contractor's Representative must, within 7 days of receipt by the Principal's Representative of the notice referred to in clause 12.2, jointly inspect the Contractor's Activities or the Portion at a mutually convenient time.
- (b) Following the joint inspection under clause 12.3(a), the Principal's Representative must issue a notice to the Principal and the Contractor either:
 - (i) containing a list of the items that are apparent and it believes must be completed before Completion of the Contractor's Activities or the Portion is achieved; or
 - (ii) stating that it believes the Contractor is so far from achieving Completion of the Contractor's Activities or the Portion that it is not practicable to issue a list as contemplated in clause 12.3(b)(i).

- (c) When the Principal's Representative issues a notice under either clause 12.3(b)(i) or clause 12.3(b)(ii), the Contractor must continue to proceed to bring the Contractor's Activities or the Portion to Completion and thereafter when the Contractor considers it has achieved Completion of the Contractor's Activities or the Portion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Completion in the form of Schedule B3.

Thereafter the Principal's Representative and the Contractor's Representative must jointly inspect the Contractor's Activities at a mutually convenient time.

- (d) Following the joint inspection under clause 12.3(c), the Principal's Representative must within 21 days of receipt of a notice under clause 12.3(c), or of receipt of a notice under clause 12.3(e), issue a notice to the Principal and the Contractor:

- (i) if satisfied that Completion of the Contractor's Activities or the Portion has been achieved:

- A. stating the date on which the Principal's Representative determines Completion of the Contractor's Activities or the Portion was achieved; and
- B. containing a list of any minor Defects, of the type described in paragraph (a) of the definition of "Completion" in clause 1.1, that are apparent; or

- (ii) if not satisfied that Completion of the Contractor's Activities or the Portion has been achieved:

- A. containing a list of the items that are apparent and it believes must be completed before Completion of the Contractor's Activities or the Portion is achieved; or
- B. stating that it believes the Contractor is so far from achieving Completion of the Contractor's Activities or the Portion that it is not practicable to issue a list as contemplated by clause 12.3(d)(ii)A.

- (e) If the Principal's Representative issues a notice under either clause 12.3(d)(ii)A or clause 12.3(d)(ii)B, the Contractor must continue to proceed to bring the Contractor's Activities or the Portion to Completion and thereafter when it considers it has achieved Completion of the Contractor's Activities or the Portion, the Contractor must notify the Principal's Representative by notice in writing, after which the second paragraph of clause 12.3(c), clause 12.3(d) and this clause 12.3(e) will reapply.

- (f) Where there are Portions, for the purposes of this Contract and without affecting the Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion:

- (i) no separate Date for Completion of the Contractor's Activities is specified in this Contract;
- (ii) Completion of the Contractor's Activities is achieved by achieving Completion of all Portions;
- (iii) Completion of the Contractor's Activities will be taken to have occurred once Completion of all Portions has occurred; and
- (iv) the Date of Completion of the Contractor's Activities will be taken to be the Date of Completion of the last Portion to reach Completion.

12.4 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Contractor to the Principal's Representative under either of clauses 12.3(c) or 12.3(e) is not given by the Contractor yet the Principal's Representative is of the opinion that Completion of the Contractor's Activities or a Portion has been achieved, the Principal's Representative may at any time and for any reason in its absolute discretion issue a Notice of Completion under clause 12.3(d)(i) for the Contractor's Activities or the Portion.

12.5 Hand Over upon Completion

The Contractor acknowledges that the Principal will require a progressive handover of the Contractor's Activities and that this handover will take place by the Contractor handing over each Portion once that Portion has reached Completion. The Principal's obligations under clause 3.1(b) in respect of the Site will then cease in respect of so much of the Site, access to which was provided for that Portion which is handed over to the Principal.

12.6 Part of the Contractor's Activities or a Portion

- (a) Without limiting clause 12.6(b), further Portions, may be created by the Principal's Representative by issuing a written direction to the Contractor which clearly identifies for each, the:
 - (i) Portion of the Contractor's Activities;
 - (ii) Date for Completion; and
 - (iii) respective amounts for security, delay damages and liquidated damages (which will, unless otherwise stated in the Principal's Representative's direction, all be calculated pro-rata according to the ratio of the Principal's Representative's valuation of the Portion to the Contract Sum).
- (b) Without limiting clause 12.6(a), the Principal may, after the Contractor is given written notice by the Principal's Representative, occupy or use any part of the Site or a Portion although the whole of the Contractor's Activities or the Portion has not reached Completion.

- (c) If the Principal's Representative gives a notice under clause 12.6(b):
 - (i) the Principal must allow the Contractor reasonable access to the part of the Contractor's Activities or the Portion referred to in the notice and being occupied or used by the Principal, to enable the Contractor to bring the Contractor's Activities or the relevant Portion of which the area being occupied or used forms part to Completion; and
 - (ii) this will not otherwise limit or affect the obligations of the parties under this Contract, including the obligation of the Contractor to achieve Completion of the Contractor's Activities or the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Completion.

12.7 Liquidated Damages for Delay in Reaching Completion

- (a) Subject to clause 12.7(e), if Completion of the Contractor's Activities or a Portion has not occurred by the Date for Completion for the Contractor's Activities or the Portion, the Contractor must pay the Principal liquidated damages at the rates stated in Schedule A1 for every day after the Date for Completion of the Contractor's Activities or the Portion up to and including:
 - (i) the Date of Completion of the Contractor's Activities or the Portion; or
 - (ii) the date that this Contract is terminated under clause 14,
 whichever is first.
- (b) The parties:
 - (i) agree that the amount of liquidated damages provided for in Schedule A1 constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Principal as a result of Completion of the Contractor's Activities or a Portion not occurring on or before the relevant Date for Completion (except for amounts referred to in clause 12.7(d));
 - (ii) desire to avoid the difficulties of proving damages in connection with such failure and agree that the liquidated damages payable by the Contractor in accordance with clause 12.7(a) are reasonable and do not constitute nor are they intended to be a penalty; and
 - (iii) agree that the amount of liquidated damages payable by the Contractor under clause 12.7(a) will be recoverable from the Contractor as a debt immediately due and payable to the Principal.
- (c) The Contractor:
 - (i) acknowledges that the liquidated damages referred to in clause 12.7(a) do not include any allowances for any liability of the Principal to Other Contractors; and

- (ii) must indemnify the Principal against any Claim that the Principal must pay to any Other Contractor as a result of a breach of clause 10.1 by the Contractor.
- (d) If clause 12.7(a) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages as a result of the Contractor failing to achieve Completion of the Contractor's Activities or a Portion by the relevant Date for Completion, but the Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the Contractor would have had if clause 12.7(a) had not been void, invalid or otherwise inoperative.
- (e) The Contractor's aggregate liability under clauses 12.7(a) and 12.7(d) is limited to the amount set out in Schedule A1.

12.8 Final Completion

- (a) The Contractor must give the Principal's Representative written notice two months before it anticipates completing all the work to be completed prior to achieving Final Completion.
- (b) The Principal's Representative and the Contractor's Representative must, within 28 days before the date the Principal's Representative expects Final Completion to occur, but no earlier than 28 days before the end of the latest Defects Rectification Period, jointly inspect the Contractor's Activities at a mutually convenient time.
- (c) Following the joint inspection under clause 12.8(b), the Principal's Representative must issue a notice to the Principal and the Contractor containing a list of the items that are apparent and it believes must be completed before Final Completion is achieved.
- (d) If the Principal's Representative issues a notice under clause 12.8(c), the Contractor must continue to bring the Contractor's Activities to Final Completion and thereafter when the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Final Completion in accordance with Schedule B4. Thereafter, the Principal's Representative and the Contractor's Representative must jointly inspect the Contractor's Activities at a mutually convenient time.
- (e) Following the joint inspection under clause 12.8(d), the Principal's Representative must within 21 days of receipt of a notice under clause 12.8(d), or of receipt of a notice under clause 12.8(f), issue a notice to the Principal and the Contractor:
 - (i) if satisfied that Final Completion has been achieved, stating the date on which the Principal's Representative determines Final Completion was achieved; or

- (ii) if not satisfied that Final Completion has been achieved:
 - A. containing a list of the items which it believes must be completed before Final Completion is achieved; or
 - B. stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 12.8(e)(ii)A.
- (f) If the Principal's Representative issues a notice under clause 12.8(e)(ii)A or clause 12.8(e)(ii)B, the Contractor must continue to proceed to bring the Contractor's Activities to Final Completion and thereafter when it considers it has achieved Final Completion of the Contractor's Activities the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 12.8(d), clause 12.8(e) and this clause 12.8(f) will reapply.

12.9 Effect of Notice of Completion or Final Completion

A notice issued under clause 12.3(d)(i) or 12.8(e)(i) will not:

- (a) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this Contract;
- (b) be taken as an admission or evidence that the Contractor's Activities or the Portion complies with the requirements of this Contract; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

13. Care of the Site, Risks and Insurance

13.1 Care of the Site

Except where it arises from an Excepted Risk, and without limiting the generality of the Contractor's obligations, the Contractor:

- (a) from and including the earlier of the date of commencement of the Contractor's Activities and the date on which the Contractor is given access to the Site, or a part of the Site, until 4:00pm on the Date of Completion of the Contractor's Activities or the last Portion to reach Completion will:
 - (i) be responsible for the care of and will bear the risk of, and indemnify the Principal against any loss of, or damage to:
 - A. the Site;
 - B. a Remote Site;
 - C. Extra Land;
 - D. Temporary Works;

- E. Construction Plant;
 - F. unfixd plant and materials (whether on or off the Site) the value of which has been included in a payment statement under clause 11.3; and
 - G. things entrusted to the Contractor by the Principal or brought onto the Site by a Subcontractor for the purpose of carrying out the Contractor's Activities; and
- (ii) provide the storage and protection necessary to preserve these things; and
- (b) after the time after which the Contractor ceases to be responsible under clause 13.1(a) for the care of a part of the Site or any other thing referred to in clause 13.1(a)(i), will bear the risk of, and indemnify the Principal against, any loss of or damage to that part of the Site or other thing, arising from:
- (i) any act or omission of the Contractor during the Defects Rectification Period (including any extension under clause 8.6) or any other Contractor's Activities; or
 - (ii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Site or other thing under clause 13.1(a) in connection with the Contractor's Activities.

13.2 Indemnity

- (a) The Contractor must indemnify the Principal against:
- (i) any loss of or damage to or loss of use of or access to real or personal property (total or partial) of the Principal;
 - (ii) any liability to or claims by a third party in respect of loss of or damage to or the loss of use of or access to real or personal property (total or partial), or illness, injury to or death of persons; and
 - (iii) without limiting or otherwise affecting clause 13.2(a), any loss or damage to existing property in or upon which the Contractor's Activities are being carried out,
- caused by, or arising out of, or in any way in connection with, the Contractor's Activities, but the Contractor's responsibility to indemnify the Principal will be reduced proportionally to the extent than an act or omission by the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor contributed to the loss, damage, injury or death provided that the Contractor has complied with its obligations under clause 2.9(a)(ii)B.
- (b) The indemnity in this clause 13.2(a) will not:
- (i) exclude any other right of the Principal to be indemnified by the Contractor; or

- (ii) apply to the extent to which the Contractor must indemnify the Principal under clause 13.1.
 - (c) The Contractor must indemnify the Principal against:
 - (i) any liability to or claim by any other person; and
 - (ii) all costs, expenses, losses, damages, fines and penalties suffered or incurred by the Principal,

arising out of, or in any way in connection with:
 - (iii) the Contractor's breach of a term of this Contract or failure of the Contractor to otherwise comply with any of its obligations under this Contract; and
 - (iv) any Defect or the consequence of any Defect,
- provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal may have contributed to the liability claim, costs, losses, damages, fines or penalties.

13.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage, and while the Contractor is responsible for its care, if loss or damage occurs to anything for which the Contractor is responsible under clause 13.1, the Contractor must:

- (a) subject to clause 13.2(b), promptly replace or otherwise make good the loss or repair the damage; and
- (b) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the Contractor, only comply with clause 13.2(a) to the extent directed by the Principal's Representative.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk (but subject to clause 13.3(b)), be treated as if it were a Change the subject of a direction by the Principal's Representative and clause 6.4 applied.

13.4 Works Insurance - Alternative 1

This alternative applies if so stated in Schedule A1.

The Principal will effect and maintain insurances on the terms of the summary which is included in Schedule F5. This insurance will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted in Schedule F5, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that prior to the date of this Contract it reviewed and examined Schedule F5 and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance summarised in Schedule F5 do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance summarised in Schedule F5; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies summarised in Schedule F5 or any insurance taken out under this clause 13.4.

13.4 Works Insurance - Alternative 2

This alternative applies if so stated in Schedule A1.

Before commencing the Contractor's Activities, the Contractor must insure all the things referred to in clause 13.1 against loss or damage from insurable risks until the Contractor ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance must cover the Contractor's liability under clause 13.3 and things in storage off site and in transit to the Site but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to the Temporary Works or any thing the Contractor has control of on the Site;
- (d) damages for delay in completing or for the failure to complete the Contractor's Activities;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause; and
- (f) loss or damage resulting from an Excepted Risk.

The insurance cover must be for an amount not less than the aggregate of the:

- (g) value of the Temporary Works, on a reinstatement and replacement basis;

- (h) provision in Schedule A1 to provide for costs of demolition and removal of debris; and
- (i) provision in Schedule A1 for consultants' fees and Principal's consultants' fees.
- (j) not used.
- (k) not used.

Insurance shall be in the joint names of the parties, must cover the parties, consultants and subcontractors whenever engaged in the Contractor's Activities for their respective rights, interests and liabilities and, except where the Contract otherwise provides, must be with an insurer of the Required Rating and in terms approved in writing by the Principal (which approvals must not be unreasonably withheld).

13.5 Public and Products Liability Insurance – Alternative 1

This alternative applies if so stated in Schedule A1.

The Principal will effect and maintain insurance on the terms of the summary which is included in Schedule F5. The insurance will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted on the policies, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees prior to the date of this Contract it reviewed and examined Schedule F5 and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance summarised in Schedule F5 do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance summarised in Schedule F5; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies summarised Schedule F5, or any insurance taken out under this clause 13.5.

13.5 Public and Products Liability Insurance – Alternative 2

This alternative applies if so stated in Schedule A1.

Before commencing the Contractor's Activities, the Contractor must effect and maintain for the duration of the Contract, a public and products liability policy.

The policy must:

- (a) be in the joint names of the parties;
- (b) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties,of the parties, the Principal's Representative, consultants and subcontractors from time to time, whenever engaged in the Contractor's Activities;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 13.4 Alternative 2) and the death of or injury (including illness) to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any Construction Plant not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in Schedule A1; and
- (f) be with an insurer of the Required Rating and otherwise in terms approved in writing by the Principal (which approvals must not be unreasonably withheld).

13.6 Contractor's Other Insurance Obligations

The effecting of insurance will not limit the liabilities or obligations of the Contractor under any other provision of this Contract.

The Contractor must, or in the case of asbestos liability insurance, either the Contractor or its specialist asbestos removal Subcontractor must (if required by clause 13.6(a)(iii) below), before the Contractor commences the Contractor's Activities or as otherwise required by this Contract:

- (a) effect and have in place the following insurance with insurers of the Required Rating and on terms satisfactory to the Principal's Representative:
 - (i) workers compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Contractor's Activities are being performed;
 - (ii) plant and equipment insurance, covering loss or damage to items of Construction Plant used in connection with the Contractor's Activities;
 - (iii) if the Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, asbestos liability insurance;

- (iv) not used;
- (v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Contractor's Activities, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of hazardous items and substances, and including:
 - A. insurance against personal injury or death, as required under all applicable Laws; and
 - B. in addition to the public and products liability insurance required under this Contract, insurance for third party property damage and personal injury or death;
- (vi) not used;
- (vii) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law; and
- (viii) not used; and
- (ix) any other insurance that the Principal may reasonably require the Contractor to obtain,

for amounts not less than the amounts (if any) referred to in Schedule A1;
- (b) ensure the motor vehicle insurance (third party property damage), asbestos liability insurance and any insurance required by clause 13.6(a)(vii):
 - (i) are policies in the joint names of the Principal and the Contractor, and cover the Principal, the Principal's Representative (including any appointee under clauses 9.2 or 9.3), the Contractor and all its Subcontractors, for their respective rights and interests and their liabilities to third parties and liability to each other;
 - (ii) cover loss or damage to property (other than property described in clause 13.1) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Contractor's Activities;
 - (iii) includes a cross-liability clause in accordance with clause 13.10; and
 - (iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule A1;
- (c) ensure the asbestos liability insurance is in place before any work involving asbestos or asbestos decontamination work commences;
- (d) ensure that any insurance policy required by clause 13.6(a)(vii) is in place before the Contractor's Activities covered by such policies commence;

- (e) not used;
- (f) in relation to the workers compensation insurance or similar insurance:
 - (i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the Contractor's employees;
 - (ii) ensure that each of its Subcontractors has such workers compensation insurance or similar insurance covering the Subcontractor's employees; and
 - (iii) ensure it insures against liability for death of or injury to persons employed by the Contractor or its Subcontractors as required by any Law for an amount not less than the amount stated in Schedule A1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law; and
- (g) not used.

13.7 General Insurance Requirements

The Contractor must:

- (a) in respect of any insurance policy (including an insurance policy which this Contract requires the Contractor to procure to be effected by a Subcontractor) which it is required to effect or procure to be effected, pursuant to this Contract and where required by the Principal's Representative, provide the Principal's Representative (or other person nominated for this purpose by the Principal's Representative) within 5 days of a request with:
 - (i) a certificate of currency and any other evidence satisfactory to the Principal's Representative demonstrating that the policy is current and in compliance with the Contractor's obligation to insure (or procure insurance), or (where relevant) a licence as a self-insurer or other proof of being a self-insurer under the *Workers Compensation Act 1987* (Cth); and
 - (ii) other than workers' compensation insurance, a copy of the insurance policy and any other evidence which may be reasonably necessary to satisfy the Principal's Representative that the policy is current and complies with the requirements of this Contract;
- (b) ensure that (except for workers compensation or similar insurance):
 - (i) the Principal receives at least 30 days' notice of any cancellation or material change of any insurance policy effected under clause 13.4, 13.5 or 13.6;

- (ii) a notice of claim given to the insurer by the Principal, the Contractor or a Subcontractor will be accepted by the insurer as a notice of claim by all insured parties, and
 - (iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice in writing to the Principal about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and
- (c) ensure that it:
- (i) does not do anything which prejudices any insurance;
 - (ii) where required, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;
 - (iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
 - (v) immediately notifies the Principal's Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

If the Contractor fails to:

- (d) provide copies of any insurance policy (including an insurance policy which this Contract requires the Contractor to procure a Subcontractor to effect) which the Contractor is required to effect together with evidence satisfactory to the Principal's Representative that the policy is current; or
- (e) effect or procure to be effected insurance which is with insurers of the Required Rating and on terms satisfactory to the Principal's Representative,

as required by clauses 13.4, 13.5, 13.6 or this clause 13.7, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Contractor to the Principal.

The Principal may refuse payment until the Contractor produces evidence of compliance with its insurance obligations under clauses 13.4, 13.5 and 13.6 to the satisfaction of the Principal. The rights given by this clause 13.7 are in addition to any other right.

13.8 Period of Insurance

The insurance the parties are required to have in place under this clause 13 must be maintained:

- (a) in the case of the insurances required by clauses 13.4, and 13.5 so as to provide cover until the latest to occur of:
 - (i) the Contractor ceases to be responsible under clause 13.1 for the care of anything; and
 - (ii) the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;
- (b) in the case of the Construction Plant, worker's compensation and motor vehicle insurance, until the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;
- (c) not used;
- (d) not used;
- (e) in the case of asbestos liability insurance, for so long as there is a risk that an event covered by the insurance may occur in relation to the Contractor's Activities or the Contractor's Activities; and
- (f) in the case of insurance required under clause 13.6(a)(vii), during the period required by any Law.

13.9 Notice of Potential Claim

The Contractor must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by this Contract (except for workers' compensation insurance policies);
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences that may give rise to a claim.

13.10 Cross Liability

Where this Contract requires insurance to be effected in joint names the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;

- (c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

13.11 Risk of Deductibles

The Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 13.

14. Default or Insolvency

14.1 Contractor's Default

If the Contractor commits a breach of this Contract referred to below, the Principal may give the Contractor a written notice.

The breaches by the Contractor to which this clause applies are:

- (a) not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this Contract, in breach of clause 10.1;
- (b) suspension of work, or failing to proceed with the Contractor's Activities with due expedition and without delay, in breach of clause 10.1;
- (c) failing to provide the security, in breach of clause 2.7;
- (d) failing to provide evidence of insurance, in breach of clause 13;
- (e) failing to use the materials or standards of workmanship required by this Contract, in breach of clause 4.1;
- (f) not complying with any direction of the Principal's Representative made in accordance with this Contract, in breach of clause 9.1(a);
- (g) not complying with the requirements of this Contract regarding the Management Plans in a material respect;
- (h) not complying with its obligations under:
 - (i) the SMRs with regard to the Management Plans; or
 - (ii) the SMRs with regard to technical management;
- (i) not complying with its environmental obligations under this Contract;

- (j) not complying with its obligations under this Contract regarding work health and safety;
- (k) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 2.3; or
- (l) any other failure to comply with a material obligation under the Contract.

14.2 Contents of Notice

A written notice under clause 14.1 must:

- (a) state that it is a notice under clause 14.1 or clause 14.3 (as the case may be);
- (b) specify the alleged breach;
- (c) require the Contractor to remedy the breach or, in the case of a notice by the Principal where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and
- (d) specify the time and date by which the Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 21 clear days after the notice is given).

14.3 Rights of the Principal Following Notice

Upon giving a notice under clause 14.1, the Principal may (to the extent permitted by Law) suspend payments to the Contractor until the date upon which the Contractor remedies the breach or makes arrangements satisfactory to the Principal.

If, by the time specified in a notice under clause 14.1, the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor:

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate this Contract.

14.4 Immediate Termination or Take-Out

If:

- (a) whether or not the Contractor is then in breach of this Contract:
 - (i) an Insolvency Event occurs:
 - A. to the Contractor;
 - B. where the Contractor comprises more than one person, any one of those persons; or

- C. to a person specified in Schedule A1; or
- (ii) the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 2.10(d); or
- (b) not used,

then, whether or not the Contractor is then in breach of this Contract, the Principal may, without giving a notice under clause 14.1, exercise the right under clause 14.3(a) or 14.3(b).

14.5 Principal's Common Rights After Take-Out or Termination

If:

- (a) the Principal:
 - (i) exercises its rights under clause 14.3(a); or
 - (ii) terminates this Contract under clauses 14.3(b), 14.4 or 14.9;
- (b) the Contractor repudiates this Contract and the Principal otherwise terminates this Contract; or
- (c) this Contract is frustrated under the Law,

then:

- (d) the Contractor:
 - (i) must novate to the Principal or the Principal's nominee those Subcontracts between the Contractor and its Subcontractors that the Principal directs;
 - (ii) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to:
 - A. execute, sign, seal and deliver all notices, deeds and documents; and
 - B. undertake actions in the name of the Contractor,

for the purposes referred to in clause 14.5(d)(i); and
 - (iii) must immediately hand over to the Principal's Representative all copies of:
 - A. any documents provided by the Principal to the Contractor;

- B. all Contract Documentation prepared by the Contractor to the date on which the Principal exercises its rights under clauses 14.3(a) or 14.3(b) (whether complete or not); and
 - C. any other documents or information in existence that is to be provided to the Principal under the terms of this Contract; and
- (e) the Principal:
- (i) will be entitled to require the Contractor to remove from the Site or any area affected by the Contractor's Activities, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Contractor's Activities;
 - (ii) may complete that work itself or by engaging others (including but not limited to the Contractor's Subcontractors);
 - (iii) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site, Remote Sites or Extra Land as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work;
 - (iv) must, if it takes possession of the items referred to in clause 14.5(e)(iii):
 - A. for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 15; and
 - B. maintain the Construction Plant, Temporary Works or other things and, subject to clause 14.6, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 14.5(e)(iii) which are surplus;
 - (v) may direct the Contractor to store or transport any component of the Temporary Works which has not yet been delivered to Site at or to a location directed by the Principal; and
 - (vi) must, if it issues a direction under clause 14.5(e)(v), reimburse the Contractor its reasonable costs incurred in storing or transporting the relevant component of the Contractor's Activities.

This clause 14.5 will survive the termination or frustration of this Contract.

14.6 Principal's Entitlements after Take-Out

- (a) If the Principal exercises the right under clause 14.3(a), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands

of the Contractor unless a payment becomes due to the Contractor under this clause 14.6.

- (b) When work taken out of the hands of the Contractor under clause 14.3(a) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate certifying the amount.
- (c) If the cost incurred by the Principal is greater than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due to the Contractor from the Principal.
- (d) Without limiting clause 14.6(c), if the Principal exercises the right under clause 14.3(a), the Principal will be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (e) If the Contractor is indebted to the Principal, the Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 14.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the Contractor.

14.7 Principal's Rights after Termination

Subject to clause 14.11, if the Principal terminates this Contract under clauses 14.3 or 14.4, or if the Contractor repudiates this Contract and the Principal otherwise terminates this Contract the Principal will:

- (a) to the extent permitted by Law, not be obliged to make any further payments to the Contractor, including any money that is the subject of a payment claim under clause 11.2 or a payment statement under clause 11.3;
- (b) be absolutely entitled to call upon, convert and have recourse to and retain the proceeds of any unconditional undertaking held under clause 2.7; and
- (c) be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination.

This clause 14.7 survives the termination of this Contract.

14.8 Contractor's Rights after Repudiation or Wrongful Termination

- (a) If the Principal:

- (i) repudiates this Contract and the Contractor terminates this Contract; or
- (ii) wrongfully:
 - A. exercises or attempts to exercise any right or power conferred on it by clauses 14.3, 14.4 or 14.9; or
 - B. determines or purports to determine this Contract at common law,

then the:

- (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 14.9 and the Contractor's sole rights in such circumstances will be those set out in clause 14.10; and
- (iv) Contractor:
 - A. will not be entitled to the payment of damages;
 - B. will not be entitled to any payment on a quantum meruit basis; and
 - C. waives all other rights it has to make a Claim in such circumstances.

- (b) This clause 14.8 will survive the termination of this Contract.

14.9 Termination for Convenience

Without prejudice to any of the Principal's other rights or entitlements or powers under this Contract, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Contract effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the Contractor's Activities or the Contractor's Activities either itself or by engaging Other Contractors.

14.10 Payment for Termination for Convenience

If the Principal terminates this Contract under clause 14.9, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
 - (i) for work carried out prior to the date of termination, the amount which would have been payable if this Contract had not been terminated and

- the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination;
- (ii) the cost of plant and materials reasonably ordered by the Contractor for the Contractor's Activities and for which it is legally bound to pay provided that:
 - A. the value of the plant or materials have not been previously paid or included in the amount payable under sub-clause 14.10(a)(i); and
 - B. title in the plant and materials vests in the Principal upon payment;
 - (iii) the reasonable costs incurred as a result of terminating Subcontractors;
 - (iv) the reasonable cost of safely removing from the Site all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the Contractor's Activities that are not part of, or to be part of, the Contractor's Activities; and
 - (v) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the Contractor's Activities and not included in any other payment by the Principal; and
- (b) must take all steps possible to mitigate the costs referred to in clauses 14.10 (a)(ii) and 14.10 (a)(iii).

To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 2.7 when the Contractor has complied with all its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.10 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Contract and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Contract other than for the amount payable under this clause 14.10.

This clause 14.10 will survive the termination of this Contract by the Principal under clause 14.9.

14.11 Preservation of Rights

Subject to clause 14.8, nothing in this clause 14 or that the Principal does or fails to do pursuant to this clause 14 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 17.12) which it may have where the Contractor breaches (including repudiates) this Contract.

14.12 Termination by Frustration

If under the law this Contract is frustrated the Principal will:

- (a) pay the Contractor the following amounts as determined by the Principal's Representative:
 - (i) an amount calculated in accordance with clause 14.10(a)(i) for work carried out prior to the date of frustration;
 - (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 14.10(a)(ii); and
 - (iii) the costs calculated in accordance with the terms of clauses 14.10(a)(iii) and 14.10(a)(v); and
- (b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 2.7 when the Contractor has complied with its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.12 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the frustration of this Contract and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Contract other than for the amount payable under this clause 14.12.

Without limiting any other provision of this Contract, this clause 14.12 will survive the frustration of this Contract.

14.13 Codification of Contractor's Entitlements

This clause 14 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

- (a) cannot otherwise terminate, rescind or treat this Contract as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this Contract as repudiated,

otherwise than in accordance with this clause 14.

15. Disputes

15.1 Notice of Dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the subject matter of this Contract, ("**Dispute**") the Dispute must be determined in accordance with the procedure in this clause 15.

Where such a Dispute arises, either party may give a notice in writing to the Principal's Representative and the other party ("**Notice of Dispute**"). The Notice of Dispute must:

- (a) specify the Dispute;
- (b) provide particulars of the party's reasons for being dissatisfied;
- (c) set out the position which the party believes is correct; and
- (d) in the case of a Dispute in respect of a direction of the Principal's Representative under one of the clauses referred to in Schedule A1 (a "**Direction Dispute**"), be given in accordance with clause 15.2.

Where the notice is given by the Contractor, if the Contractor fails to provide sufficient particulars of the Dispute to enable the Principal's Representative to properly consider the matter, then the Principal's Representative may request the Contractor to provide further particulars of the Dispute in which event the Contractor must provide the further particulars within 14 days of receipt of the request to provide the further particulars.

15.2 Time for Submitting Notice Concerning Direction Dispute

If the Contractor wishes to have a direction by the Principal's Representative under one of the clauses referred to in Schedule A1 opened up, reviewed, decided and substituted the Contractor must give a Notice of Dispute in respect of the Direction Dispute to the Principal and the Principal's Representative within 14 days of the date of the direction, after which the Principal's Representative may review the Direction Dispute and make a determination in accordance with clause 15.3.

If the Contractor fails to give such a Notice of Dispute to the Principal and the Principal's Representative within the time period required by this clause 15.2:

- (a) the direction will be final and binding and will not be capable of being challenged, opened up or reviewed in any forum; and
- (b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 18.5, the Claim will be barred in accordance with clause 18.7.

15.3 Determination of Direction Disputes by the Principal's Representative

Upon receipt of a Notice of Dispute in respect of a Direction Dispute which is given in accordance with clause 15.2, the Principal's Representative may review and make a determination in respect of the Direction Dispute.

The determination of the Principal's Representative in respect of any such Notice of Dispute:

- (a) must be in writing;

- (b) must be given within 21 days after the Notice of Dispute is given or where further particulars have been requested under clause 15.1, within 21 days after the further particulars have been provided to the Principal's Representative;
- (c) will be substituted for the relevant direction the subject of the Notice of Dispute; and
- (d) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

If the Principal's Representative fails to make a determination as required by this clause 15.3 the direction the subject of the Notice of Dispute will be deemed to be confirmed by the Principal's Representative.

15.4 Response to Notice of Dispute

Where a Notice of Dispute has been given in accordance with clause 15.1 and 15.2 (where applicable) then the party to whom the Notice of Dispute is addressed must:

- (a) if the Notice of Dispute does not relate to a Direction Dispute, within 21 days of the date of:
 - (i) receipt of the Notice of Dispute; or
 - (ii) if any further particulars have been requested under clause 15.1, receipt of those particulars; or
- (b) if the Notice of Dispute does relate to a Direction Dispute and if the direction is confirmed, or deemed to have been confirmed, by the Principal's Representative under clause 15.3, within 42 days of the receipt of the Notice of Dispute,

provide a response in writing indicating whether or not it agrees with the position set out in the Notice of Dispute.

15.5 Executive Negotiation

- (a) If the Dispute is not resolved within 14 days of:
 - (i) the date of receipt of the response to the Notice of Dispute pursuant to clause 15.4; or
 - (ii) if no response is received, the date specified for the provision of a response pursuant to clause 15.4,

(the **Referral Date**) either party may by notice in writing refer the Dispute to the Executive Negotiators who must:

- (iii) meet and undertake genuine and good faith negotiations with a view to:
 - A. clarifying and narrowing the issues in dispute in the event that arbitration is commenced in respect of the Dispute; and

- B. resolving the Dispute; and
- (iv) if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.
- (b) If appropriate in the circumstances, at or prior to the meeting referred to in clause 15.5(a) the parties will exchange documents critical to the resolution of the Dispute.

15.6 Expert Determination

If a Dispute is referred for resolution under clause 15.5 and it is not resolved within 21 days after the Referral Date, the dispute must be submitted to an expert determination.

The Dispute will be referred to an expert determination whether or not the Executive Negotiators have complied with clauses 15.5(a)(iii), 15.5(a)(iv) and 15.5(b).

15.7 The Expert

The expert determination under clause 15.6 is to be conducted by:

- (a) an independent industry expert agreed by the Principal and the Contractor; or
- (b) where the parties are unable to agree upon an independent industry expert within 42 days after the Referral Date, or where an independent industry expert appointed under this clause 15.7:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
 - (iv) does not make a determination within the time required by clause 15.8(e),

an independent industry expert will be appointed by the Chair of Resolution Institute.

15.8 Rules of Expert Determination

- (a) An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (b) The expert determination must be made in accordance with the rules for the expert determination process included in the agreement which appears in Schedule B8 or such other rules as the parties and the expert may agree.
- (c) The expert must:

- (i) disclose to the parties any interest he or she has in the outcome of the determination; and
 - (ii) not communicate with one party to the determination without the knowledge of the other.
- (d) Each party will:
- (i) bear its own costs in respect of any expert determination; and
 - (ii) pay one-half of the expert's costs.
- (e) Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within the period set out in the agreement between the parties and the expert.

15.9 Agreement with Expert

The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

The parties must enter into an agreement with the appointed expert on the terms set out in Schedule B8 or such other terms as the parties and the expert may agree.

15.10 Determination of Expert

- (a) The determination of the expert:
- (i) must be given to the parties in writing;
 - (ii) will be final and binding on the parties:
 - A. if the amount of the determination is \$ [REDACTED] or less; or
 - B. if the amount of the determination is greater than \$ [REDACTED] and no notice of dissatisfaction is issued by a party within 28 days of the date of the determination.
- (b) Where a party issues a notice of dissatisfaction under clause 15.10(a)(ii)B, either party may commence arbitration in respect of the Dispute.

15.11 Arbitration

If a Dispute does not relate to a Direction Dispute and is referred for resolution under clause 15.1, then whether or not the Executive Negotiations have complied with clauses 15.5(a)(iii), 15.5(a)(iv) and 15.5(b), if the Dispute is not resolved, or no agreement on a procedure to resolve the Dispute has been reached, within 14 days after the Referral Date, or within such longer period of time as these persons may agree in writing, either party may commence arbitration in respect of the Dispute.

15.12 Survive Termination

This clause 15 will survive the termination of this Contract.

15.13 Payments

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

15.14 Continuation of Work

Despite the existence of a Dispute between the parties this Contract, the Contractor must:

- (a) continue to carry out the Contractor's Activities; and
- (b) otherwise comply with its obligations under this Contract.

15.15 Urgent Relief

Nothing in this clause 15 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

16. Liability

16.1 Provisions Limiting or Excluding Liability

Any provision of this Contract which seeks to limit or exclude a liability of the Principal or the Contractor is to be construed as doing so only to the extent permitted by Law.

16.2 Limit of Contractor's Liability

Subject to clause 16.4, the liability of the Contractor to the Principal, whether arising under or in connection with this Contract or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise) or on any basis in Law or equity, is limited to the Contract Sum.

16.3 Economic or Consequential Loss

Subject to clause 16.4, the Contractor will have no liability whatsoever to the Principal for loss of use, production, profit, revenue, business, data, contract, opportunity or anticipated saving or for any financing costs or increase in operating costs.

16.4 Qualification on Limitation of Liability

- (a) Clauses 16.2 and 16.3 do not apply to limit or restrict in any way:

- (i) any liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;
 - (ii) any liability for which, but for a failure by the Contractor to comply with its obligations under this Contract or under an insurance policy, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with this Contract;
 - (iii) any liability of the Principal to a third party;
 - (iv) the Contractor's liability to indemnify the Principal under clauses 2.11(f), 3.4(b)(iv), 3.6(d), 3.9(h), 3.10(d), 4.7(c), 5.7(c)(ii), 5.9(a)(ii) or 13.2(a);
 - (v) the Contractor's liability for costs, losses and damage caused by the criminal conduct, wilful misconduct or recklessness, or malicious or fraudulent acts of employees of the Contractor or its Subcontractors or its agents;
 - (vi) liability which is otherwise limited by another provision of this Contract;
 - (vii) liability which can be recovered by the Contractor from a third party;
 - (viii) not used;
 - (ix) the Contractor's liability where it abandons the performance of its obligations under this Contract; or
 - (x) liability which the Contractor cannot contract out of by Law.
- (b) Clause 16.3 does not apply to limit or restrict in any way the Contractor's liability to pay liquidated damages under clause 12.7(a) or general damages under clause 12.7(d).

17. General

17.1 Notices

- (a) At any time and from time to time the Principal's Representative may notify the Contractor of an Electronic Portal to be used for the purposes of this Contract. The Principal's Representative's notice will set out:
 - (i) the relevant Electronic Portal;
 - (ii) the commencement date for the use of the Electronic Portal;
 - (iii) any password, login details or similar information required for the Contractor to use the Electronic Portal;
 - (iv) address details for the Principal, the Principal's Representative and the Contractor; and

- (v) any other information reasonably necessary for the use and service of notices via the Electronic Portal.
- (b) Any notices contemplated by this Contract must be in writing and must:
 - (i) Before the date referred to in clause 17.1(a)(ii), be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule A1 (or to any new address or facsimile number notified by the intended recipient); and
 - (ii) On and from the date referred to in clause 17.1(a)(ii):
 - A. In the case of notices by the Contractor:
 - 1) without limiting clause 17.1(b)(ii)A2), be sent to the Electronic Portal address of the Principal or the Principal's Representative (as applicable); and
 - 2) under clauses 10, 11, 12, 14, 15 or 18 or concerning a claim for payment, in addition to the copy of the notice sent pursuant to clause 17.1(b)(ii)A1), also be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule A1 (or to any new address or facsimile number notified by the intended recipient); and
 - B. in the case of notices by the Principal or the Principal's Representative:
 - 1) be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule A1 (or to any new address or facsimile number notified by the intended recipient); or
 - 2) except in relation to notices by the Principal under clauses 14.3, 14.4, 14.9, or 15.1, be sent to the Electronic Portal address of the intended recipient.
- (c) For the avoidance of doubt, no notice referred to in clause 17.1(b)(ii)A.2) shall be effective unless delivered in accordance with both clauses 17.1(b)(ii)A.1) and 17.1(b)(ii)A.2).
- (d) Subject to clause 17.1(g), a notice sent by the Electronic Portal will be taken to have been received on the date recorded on the notice on which it was registered on the Electronic Portal.
- (e) Subject to clause 17.1(g), a notice sent by post will be taken to have been received:
 - (i) in the case of international post, 7 Business Days after the date of posting; and

- (ii) in the case of posting within Australia, 2 Business Days after the date of posting.
- (f) Subject to clause 17.1(g), a notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with clauses 17.1(b)(i), 17.1(b)(ii)A.2) or 17.1(b)(ii)B.1) (as applicable), which is a Business Day.
- (g) Where clause 17.1(b)(ii)A.2) applies, the relevant notice will be taken to have been received on the later of:
 - (i) the date determined in accordance with clause 17.1(d); and
 - (ii) the date determined in accordance with clause 17.1(e) or clause 17.1(f) (as the case may be).

17.2 Governing Law

This Contract is governed by and will be construed according to the Laws of New South Wales.

17.3 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Contract by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Contract.
- (b) Any waiver or consent given by the Principal under this Contract will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Contract; or
 - (ii) any other failure by the Contractor to comply with a requirement of this Contract, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Contract or failure to comply with any other requirement of this Contract.

17.4 Assignment

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

17.5 Entire Agreement

This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; and
- (b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the date of this Contract and that are not expressly included in this Contract.

17.6 Joint and Several Liability

The rights and obligations of the Principal and the Contractor, if more than one person, under this Contract, are joint and several. Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Contract) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

17.7 Severability

If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Contract.

17.8 Indemnities to Survive

Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Contract.

Nothing in this clause 17.8 prevents any other provision of this Contract, as a matter of interpretation also surviving the termination of this Contract.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract.

17.9 Stamp Duty and Other Fees

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Contract and the performance of its obligations in respect of this Contract.

17.10 Taxes

Without limiting clause 2.3 but subject to clause 11.19, the Contractor must pay all Taxes that may be payable in respect of the Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the Contractor's Activities.

17.11 Confidentiality

- (a) Subject to clause 17.11(b), the Contractor must:
 - (i) keep confidential this Contract and any information relating to the Contractor's Activities and any discussions concerning this Contract;
 - (ii) not use the information referred to in clause 17.11(a)(i) except as necessary for the performance of the Contractor's Activities; and
 - (iii) ensure that each of its officers, employees and Subcontractors complies with the terms of clauses 17.11 (a)(i) and 17.11 (a)(ii).
- (b) The Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the Contractor; or
 - (ii) the disclosure of which is:
 - A. required by Law;
 - B. consented to in writing by the Principal; or
 - C. given to a court in the course of proceedings to which the Contractor is a party.
- (c) The Contractor must:
 - (i) execute and submit to the Principal within 14 days of this Contract a Confidentiality Undertaking in the form in Schedule B7;
 - (ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
 - (iii) ensure that each Subcontractor, including suppliers and consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.

- (d) The Contractor acknowledges that the Principal may disclose this Contract (and information concerning the terms of this Contract) under or in accordance with any one or more of the following:
- (i) the Government Information (Public Access) Act 2009 (NSW);
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
 - (iii) any other Law.
- (e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 17.11(d).

17.12 Right of Set-Off

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

- (a) any amounts which the Principal may retain, deduct, withhold or set-off pursuant to clause 11.6;
- (b) that part of any amount which is the subject of a Dispute;
- (c) any debt or other moneys due from the Contractor to the Principal (including any debt due from the Contractor to the Principal pursuant to section 26C of the *SOP Act*);
- (d) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the *SOP Act*; or
- (e) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under this Contract or otherwise at Law.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 2.7.

17.13 Entire Contract

Despite any progress payments that may be made to the Contractor under clause 11.4, this Contract is an entire contract.

17.14 Principal May Act

- (a) The Principal may, either itself or by a third party, perform an obligation under this Contract that the Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by

the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.

- (b) Where the Principal or the Principal's Representative is entitled under this Contract to exercise any right or power to:
 - (i) direct or instruct the Contractor to; or
 - (ii) itself step in to,

take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.

Where the Principal or the Principal's Representative does exercise any such right or power, the Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Contractor's Activities.

17.15 Process Agent

If the Contractor is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the Contractor must:

- (a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this Contract. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
- (b) obtain the process agent's consent to the appointment.

17.16 Variation of Contract

This Contract may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

17.17 Proportionate Liability

- (a) To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Principal and the Contractor under this Contract with respect to proportionate liability are as specified in this Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

- (b) To the extent permitted by Law:

- (i) the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).
- (c) The Contractor must:
- (i) in each subcontract into which it enters for the carrying out of the work under this Contract or for the supply of materials or services, include a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
 - (ii) require each Subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the carrying out of the work under this Contract, a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (d) The Contractor must ensure that all policies of insurance covering third party liability it is required by this Contract to effect or maintain:
- (i) cover the Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
 - (ii) do not exclude any potential liability the Contractor may have to the Principal under or by reason of this Contract.
- (e) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an expert appointed in accordance with the provisions of this Contract.

An expert has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the expert.

17.18 Prior Work

The Contractor agrees that the work in connection with the Contractor's Activities carried out by the Contractor prior to the date of this Contract will be deemed to be governed by the provisions of this Contract and will be deemed to be part of the Contractor's Activities and any payments made to the Contractor by the Principal prior to the date of this Contract in respect of the Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this Contract.

17.19 Not used

17.20 Counterparts

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

17.21 Personal Property Securities Act

- (a) By signing this Contract, the Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (**Security Interest**), the Contractor shall do anything (including amending this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
 - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this Contract.
- (b) If Chapter 4 of the *PPS Act* applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *PPS Act* will not apply to the enforcement of the Security Interest.
- (c) The Contractor:
- (i) acknowledges that the Security Interests created under or pursuant to this Contract relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);

- (ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
- (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the *PPS Act* and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the *PPS Act* to authorise the disclosure of the above information.

17.22 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

17.23 No Merger

Terms contained in this Contract which are capable of taking effect, or capable of continuing after Completion, will remain in full force and effect and will not merge on Completion.

18. Notification of Claims

18.1 Notice of Change

If a direction by the Principal's Representative, other than a "Change Order" under clause 6.2, constitutes or involves a Change, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

- (a) within the time specified in Schedule A1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Change;
- (b) subject to clause 18.4, within the time specified in Schedule A1 of giving the notice under clause 18.1(a), submit a written Claim to the Principal's Representative, which includes the details required by clause 18.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with this Contract and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 18.1.

18.2 Notice of Other Claims

If the Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this Contract by the Principal) under, arising out of, or in any way in connection with, this Contract, or the Contractor's Activities, including anything in respect of which:

- (a) it is otherwise given an express entitlement under this Contract; or
- (b) this Contract expressly provides that:
 - (i) specified costs are to be added to the Contract Sum; or
 - (ii) the Contract Sum will be otherwise increased or adjusted,
as determined by the Principal's Representative,

the Contractor must give the Principal's Representative the notice required by clause 18.3(a) and a Claim in accordance with clause 18.3(c).

18.3 Prescribed Notices

- (a) Any written notice referred to in clauses 18.1(a) and 18.2 must:
 - (i) be provided not later than the time specified in Schedule A1 after the first occurrence of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
 - (ii) expressly specify:
 - A. that the Contractor proposes to make a Claim; and
 - B. the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 18.1(b) must include:
 - (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (ii) the provisions of this Contract or other legal basis upon which the Claim is based; and
 - (iii) details of the amount claimed and how it has been calculated.
- (c) Subject to clause 18.4, any written Claim referred to in clause 18.1(b) or 18.2 must:
 - (i) be provided not later than the time specified in Schedule A1 of giving the written notice under clause 18.3(a); and

- (ii) include:
 - A. detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - B. the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
 - C. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - D. details of the amount claimed and how it has been calculated.

18.4 Temporary waiver of notification requirements

- (a) Within 5 Business Days after receipt of a written notice referred to in clause 18.3(a), the Principal's Representative may notify the Contractor in writing that the Principal wishes to temporarily waive the requirements of clause 18.1(b) or 18.3(c) in relation to the proposed Claim that is the subject of the Contractor's notice.
- (b) If the Principal's Representative issues a notice under clause 18.4(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 18.3(c) 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 18.4(b), the parties agree a period for which the requirements of clause 18.3(c) will not apply, the Principal's Representative will promptly confirm such period by notice in writing to the Contractor.
- (d) A meeting under clause 18.4(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 18.4(a), if the parties:
 - (i) agree a period for which the requirements of clause 18.4(b) will not apply, the Contractor must provide a written Claim including the details required by clause 18.1(b) or 18.3(c)(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 18.4(c) (or such longer period as the parties may subsequently agree in writing); or

- (ii) fail to agree such period, the Contractor must provide a written Claim including the details required by clause 18.3(c)(ii) no later than 20 Business Days after the date of the meeting held under clause 18.4(b).
- (f) The 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 18.4(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 Contract Control 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 18.4(a), the date of the meeting under clause 18.4(b), the expiry date of the period notified under clause 18.4(c), any agreed next steps and the status of such next steps.
- (g) A notice under clause 18.4(a) does not constitute acceptance that the relevant notice given under clause 18.3(a) is valid and does not prejudice in any way the Principal's rights under clause 18.7 in respect of any notice under clause 18.3(a).

18.5 Submission of Claims

- (a) Claims submitted by the Contractor under clauses 18.1(b) and 18.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full or request further information from the Contractor in order to assess the Claim.
- (b) Subject to clause 18.5(c), if within 28 days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 28th day.
- (c) The Principal's Representative may, upon written notice to the Contractor, reasonably extend the time within which it will make a decision on the Claim.

18.6 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 18.3(b) or 18.3(c) every 28 days after the written Claim under clause 18.1(b) or 18.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

18.7 Bar

If the Contractor fails to comply with clauses 2.3(d), 15.2, 18.1, 18.2, 18.3, 18.4 or 18.6:

- (a) the Principal will not be liable upon any Claim by the Contractor; and

- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

18.8 Other Provisions Unaffected

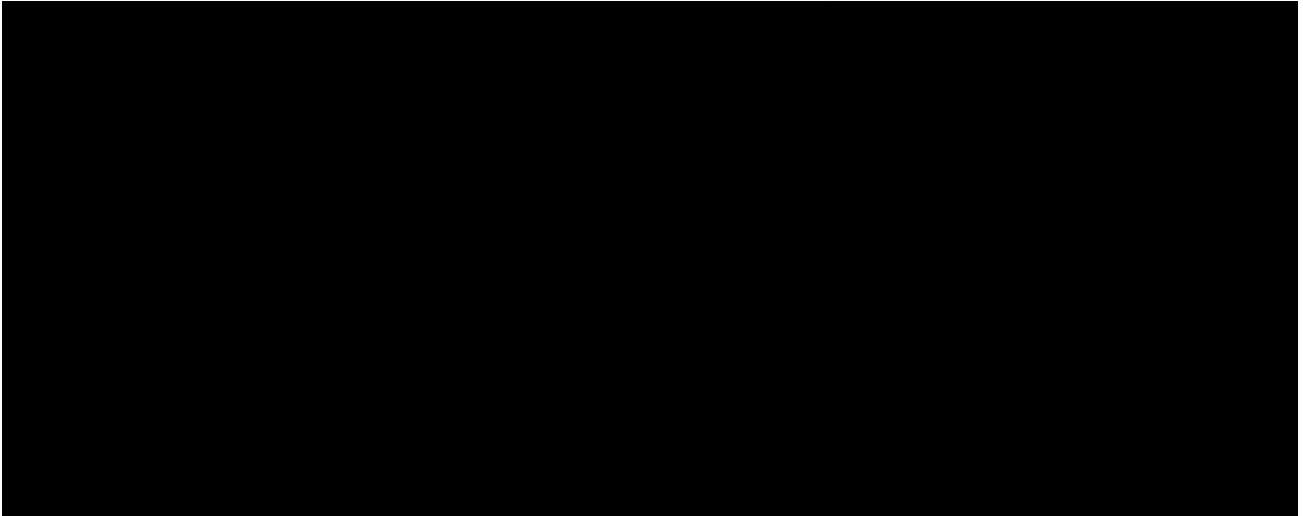
Nothing in clauses 18.1 to 18.7 will limit the operation or effect of any other provision of this Contract that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

Contract Execution Page

DATED 16th day of January 2017

Executed and delivered as a Deed in Sydney

Signed, sealed and delivered for and
on behalf of **Transport for NSW** (ABN
18 804 239 602) in the presence of:



Signed by **Delta Pty Ltd** ABN 67 007 069
794 in accordance with section 127 of the
Corporations Act 2001 (Cth):

