



Execution Version

SYDNEY METRO CITY & SOUTHWEST

Crows Nest Station Development

Construct Only Delivery Deed

Contract Number: 505

Between

Sydney Metro

ABN 12 354 063 515

(PRINCIPAL)

and

A.W. Edwards Pty Ltd

ABN 76 000 045 849

(CN CONTRACTOR)

The Original Contract Price under this Contract is [REDACTED]

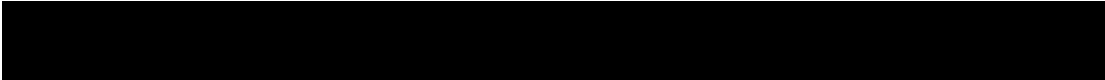

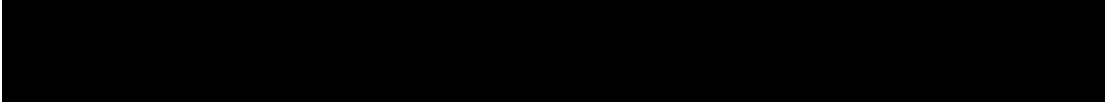

Warnings required under the *Home Building Act 1989* (NSW):

The total amount payable under this Contract may be varied in accordance with the provisions listed in clause 1 of Schedule 46.

There is a cooling off period in respect of this Contract. The Principal may rescind this Contract at any time within 5 clear Business Days of receiving a signed copy of this Contract by providing written notice to the CN Contractor that complies with the requirements of section 7BA of the *Home Building Act 1989* (NSW).

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Parties

1. **Sydney Metro** (ABN 12 354 063 515), a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**).
2. **A.W. Edwards Pty Ltd** (ABN 76 000 045 849) of Level 2, 131 Sailors Bay Road, Northbridge, NSW 2063 (the **CN Contractor**).

Recitals

- A The Principal is procuring Sydney Metro City & Southwest on behalf of the NSW government and the people of New South Wales.
- B Following completion of a request for tenders process, the Principal selected the CN Contractor as the successful tenderer for the delivery of the Works.
- C The Principal and the CN Contractor now wish to enter into this Contract to set out the terms on which the CN Contractor will:
- (a) supply, construct, deliver, install, integrate, test, commission and complete the Works and otherwise carry out the CN Contractor's Activities;
 - (b) interface and co-ordinate the CN Contractor's Activities with the activities of the Interface Contractors; and
 - (c) hand over the Works to the Principal.

It is agreed as follows

1. Definitions and Interpretation

1.1 Definitions

In this Contract, unless the context otherwise indicates:

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

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

"Accepted Defect" means a Defect accepted by the Principal under clause 8.2(b).

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

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

"Additional Third Party Agreement" has the meaning given in clause 2.12(a)(iv).

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

"Adjoining Property" means:

- (a) a property specified in Schedule 41;
- (b) a property the subject of an Adjoining Property Easement contained in Schedule 43; and
- (c) a property the subject of an Adjoining Property Owner Agreement contained in Schedule 4A.

"Adjoining Property Easement" means an Easement for Crane Access, Easement for Rock Anchors or Easement for Scaffolding and includes the Adjoining Property Easements contained in Schedule 43.

"Adjoining Property Owner Agreement" means an agreement with an Adjoining Owner substantially in the form of the Pro-forma Adjoining Property Owner Agreement (or such other form as the Principal may agree with any Adjoining Owner) and includes the Adjoining Property Owner Agreements contained in Schedule 4A.

"AFC Design Documentation" means the 'approved for construction' design documentation set out in the Station Specification.

"Agreed Defect" means a Defect which the Principal and the CN Contractor agree in writing or the Principal's Representative otherwise directs does not need to be rectified in order to achieve Substantial Completion or Completion of a Portion or Milestone Achievement of a Milestone (as applicable).

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

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

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

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

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

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

"Asset Standards Authority" or "ASA" means the independent unit of that name established within Transport for NSW whose functions include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets for the Asset Lifecycle. Information about the ASA and the network and asset standards can be found on www.asa.transport.nsw.gov.au.

"Associates" means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative, including any contractor engaged by or on behalf of the Principal to carry out works to Utility Services (other than the Utility Service Works), but excludes:
 - (i) the Independent Certifier;
 - (ii) the Environmental Representative;
 - (iii) the CN Contractor, each entity that comprises the CN Contractor and its Subcontractors;
 - (iv) any Interface Contractors and their respective subcontractors;
 - (v) the Operator and its subcontractors; and
 - (vi) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (v) above; and
- (b) in respect of the CN Contractor, its Subcontractors, each entity that comprises the CN Contractor, the Parent Company Guarantors and any of the respective employees, agents, contractors or officers of the CN Contractor, its Subcontractors or the Parent Company Guarantors (excluding the Independent Certifier and its employees, agents, consultants and officers).

"Authorised Engineering Organisation" or "AEO" means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status for Sydney Metro City & Southwest by the ASA.

"Authorised User" has the meaning given in clause 5.5(e).

"Authority" includes:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes ASA);

- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the CN Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of, any Utility Services, the Utility Service Works, any Local Areas or the Local Area Works undertaken on Local Areas, excluding the Operator.

"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 CN 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 and use for its intended purpose the completed Works or a completed Portion,

and for the avoidance of doubt includes:

- (c) the Planning Approval; and
- (d) the EPL.

"Baseline Contract Price (Site C OSD)" means the amount set out in item 9A of Schedule 1, which is exclusive of GST.

"Baseline SSD Consent Conditions" means the indicative conditions of the Stage 2 SSD Consent (Site C OSD) set out in Attachment 1 to Schedule 4C.

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

"BMCS Contractor" means the contractor identified in item 1 of Schedule 1 that:

- (a) has been engaged by the Principal under a framework agreement; and
- (b) is to be engaged by the CN Contractor under the BMCS Supply and Installation Contract in accordance with clause 2.2B for the provision of the BMCS Works.

"BMCS Supply and Installation Contract" means the Nominated Subcontract to be entered into between the CN Contractor and the BMCS Contractor in respect of the BMCS Works, the form of which is included in electronic form in Schedule 50.

"BMCS Works" means the works to be performed by the BMCS Contractor in relation to the Works.

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

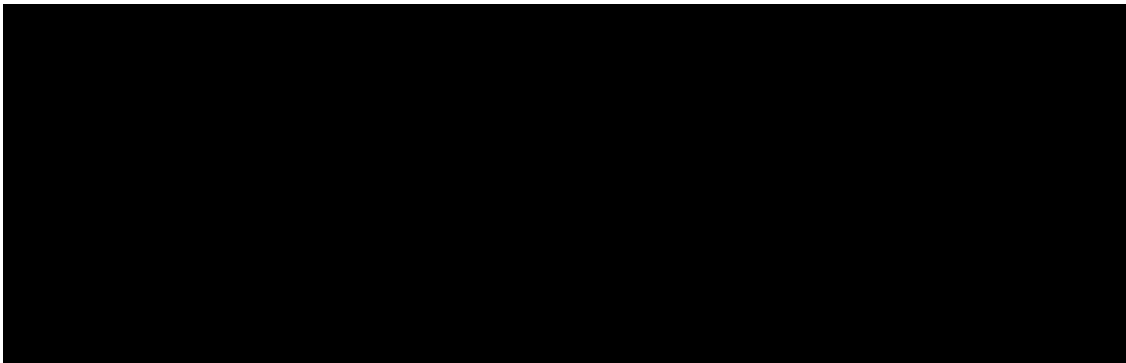
"Building Work" has the meaning given in subsection 3(3) of the Building Code.

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

"Call-Off Services" means:

- (a) the Post Completion Activities; and
- (b) the videography, filming and editing services described in section 6.18 of the General Specification and section 6.18 of the Particular Specification.

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

"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 Works or the CN 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, a decision of a court or a COVID-19 Change in Law);
- (b) a new Law (other than a new Authority Approval, a decision of a court or a COVID-19 Change in Law); or
- (c) a COVID-19 Change in Law,

but excludes:

- (d) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes; and
- (e) a change in an existing Law or a new Law which:
 - (i) was caused or contributed to by any act or omission of the CN Contractor; or
 - (ii) as at the date of this Contract:
 - A. 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; or
 - B. in the case of paragraph (a) or (b) above, a person experienced and competent in the delivery of works and services similar to the CN Contractor's Activities would have reasonably foreseen or anticipated.

"Claim" includes any claim, demand, action, proceeding or suit of any kind whatsoever for an increase in the Contract Sum, for payment of money (including damages), for an extension of time to a Date for Substantial Completion, a Date for Completion or a Date for Milestone Achievement 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 CN Contractor's Activities or the Works or either party's conduct prior to the date of this Contract; or
- (c) otherwise at Law or in equity including:
 - (i) under or for breach of statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

"CN Contractor" means the person named as the CN Contractor in item 2 of Schedule 1.

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

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

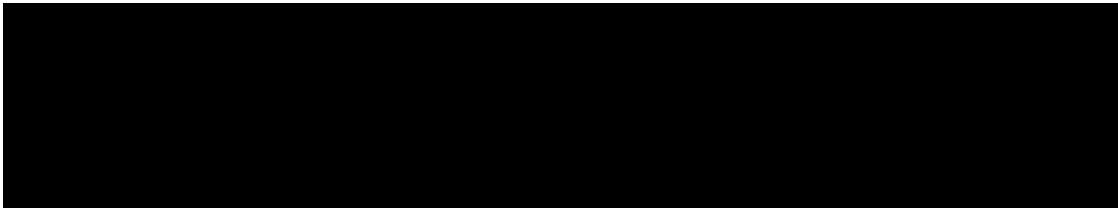
"CN Contractor's Program" means the program prepared and provided by the CN Contractor in accordance with clause 10.2, as developed and updated in accordance with clause 10.2 from time to time.

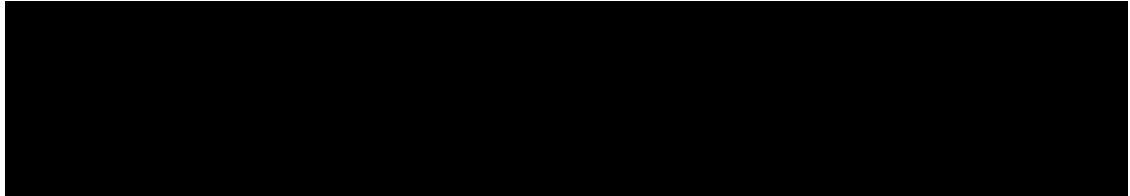
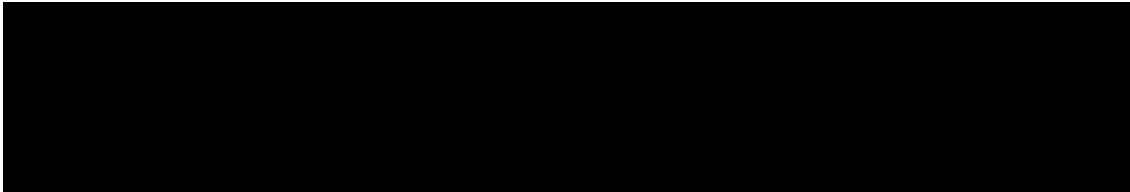
"CN Contractor's Representative" means the person notified to the Principal's Representative in accordance with clause 9.4(a) as being the CN Contractor's Representative.

"CN Station Contract Documents" means the documents listed in item 3 of Schedule 1.

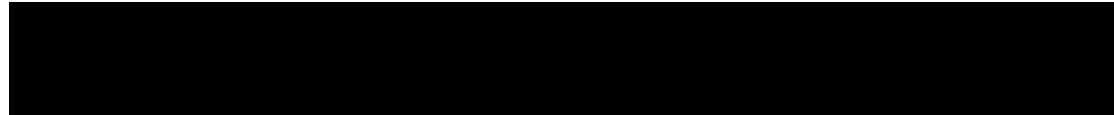
"Codes and Standards" means:

- (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 Aboriginal Participation in Construction Policy (June 2018), NSW Guidelines, Environmental Management Systems Guidelines (3rd edition) (May 2014), 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.





"Collateral Warranty Deeds Poll" means 



"Commissioning" has the meaning given to that term in section 8 of the General Specification.

"Commonwealth" means the Commonwealth of Australia.

"Compensable Contamination" means Contamination:

- (a) other than General Solid Waste; and
- (b) the presence of which could not have been identified or could not have been reasonably anticipated by a competent and experienced contractor which has done those things the CN Contractor is deemed to have done under clause 3.4A(a) as at the date of this Contract,

other than Contamination which:

- (c) is caused by the CN Contractor's Activities; or
- (d) arises out of or in connection with a failure by the CN Contractor to:
 - (i) implement environmental and safety management practices and procedures in accordance with Good Industry Practice; or
 - (ii) comply with any other requirement of this Contract.

"Completion" has the meaning given in Schedule 1B.

"Completion Payment Claim" means a payment claim lodged by the CN Contractor in accordance with clause 11.9.

"Concept SSD Application" means the application SSD-9579 for approval in respect of the Crows Nest Over Station Development submitted by the Principal to the NSW Minister for Planning and Public Spaces on 16 November 2018, as amended on 2 September 2020, in accordance with Part 4 of the EP&A Act.

"Concept SSD Consent" means any concept SSD consent in respect the Crows Nest Over Station Development granted by the NSW Minister for Planning and Public Spaces, in accordance with Part 4 of the EP&A Act, as modified from time to time.

"Consequential Loss" means any:

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

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

"Constructability Issue" means a feature or requirement of the Works as specified in the AFC Design Documentation that will result in:

- (a) the work methodologies that are necessary or required for construction of the Works in accordance with the AFC Design Documentation not being feasible;
- (b) construction of the Works in accordance with the AFC Design Documentation not being feasible within the timeframes required by this Contract; or
- (c) the Works as specified in the AFC Design Documentation not being constructible in a safe manner.

"Construction and Site Management Plan" means the Project Plan of that name.

"Construction Certificate" means a certificate as defined in section 6.4 of the EP&A Act to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation.

"Construction Environmental Management Plan" means the Project Plan of that name.

"Construction Licence" means, with respect to each part of the Site, the licence granted by the Principal to the CN Contractor pursuant to clause 3.1B(a)(i) or clause 3.1(b) as applicable.

"Construction Licence Commencement Date" has the meaning given in clause 3.1(bc).

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

"Construction Specification" means the section of the Station Specification of that name.

"Construction Traffic Management Plan" means the plan of that name to be prepared by the CN Contractor in accordance with section 2.10 of the General Specification.

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

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

"Contract" means this contract between the Principal and the CN Contractor in respect of the Works.

"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 CN Contractor's Activities (whether before or after the date of this Contract) including:

- (a) Shop Drawings;
- (b) Project Plans;
- (c) Asset Management Information; and
- (d) all plans, manuals, programs and other documents.

"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.

"Control" has the meaning given in the Corporations Act.

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

"COVID-19" means the infectious disease so named by the World Health Organisation.

"COVID-19 Change in Law" means (if it takes effect after the date of this Contract):

- (a) a change in (including any extension, repeal, revocation or expiry of) an existing Law in response to COVID-19 (other than a change in an Authority Approval or a decision of a court);

- (b) a new Law in response to COVID-19 (other than a new Authority Approval or a decision of a court); or
- (c) a new public health order or a change to (including any extension, repeal, revocation or expiry of) an existing public health order issued by the relevant Authority in New South Wales under the *Public Health Act 2010* (NSW) or by the relevant Authority in another Australian jurisdiction under the equivalent public health legislation in response to COVID-19.

"COVID-19 Laws" has the meaning given to that term in clause 2.16(b)(i)A.

"COVID-19 Management Plan" means the Project Plan of that name.

"Crane Hire Option Agreement" means an agreement titled "Sydney Metro City & Southwest – Crows Nest Station Development – Crane Hire Option Agreement" dated [REDACTED] between the Principal and [REDACTED] a copy of which is included in electronic form in Schedule 50.

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

"Crows Nest Station" means the new underground metro station for Sydney Metro City & Southwest known as "Crows Nest Station".

"Date for Completion" means in respect of a Portion:

- (a) at the date of this Contract, the applicable date specified as the Date for Completion for that Portion, specified in Schedule 1A; or
- (b) where, in respect of that Portion, an extension of time for Completion is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting from that extension of time.

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

- (a) at the date of this Contract, the applicable date specified as the date for Milestone Achievement for that Milestone in Schedule 1A; or
- (b) where, in respect of that Milestone, an extension of time for Milestone Achievement is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting from that extension of time.

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

- (a) at the date of this Contract, the applicable date specified as the Date for Substantial Completion for that Portion, specified in Schedule 1A; or
- (b) where, in respect of that Portion, an extension of time for Substantial Completion is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting from that extension of time.

"Date of Completion" means, in respect of a Portion, the date notified in the Notice of Completion for that Portion as the date Completion was achieved.

"Date of Milestone Achievement" means, in respect of a Milestone, the date notified in the Notice of Milestone Achievement as the date Milestone Achievement was achieved.

"Date of Substantial Completion" means, in respect of a Portion, the date notified in the Notice of Substantial Completion for that Portion as the date Substantial Completion was achieved.

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

"Defect" means any:

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

but does not include:

- (c) any damage to the Works after, in respect of a Portion, the Date of Completion to the extent that damage was not caused or contributed to by the CN Contractor or its Associates; or
- (d) any of the matters in paragraph (a) or (b) arising in respect of the Works after, in respect of a Portion, the Date of Completion, due to a failure to operate and maintain the Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information.

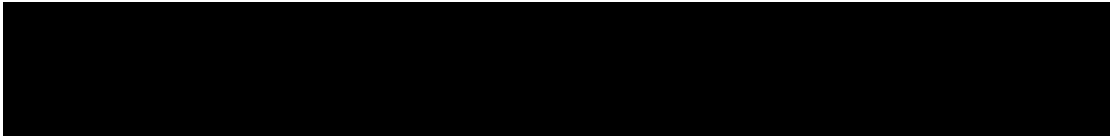
"Defects Rectification Period" means each of the periods stated in item 4 of Schedule 1, as extended by clause 8.6.

"Design Contractor" means the contractor identified in item 5 of Schedule 1.

"Design Error" has the meaning given to that term in clause 5.2(a).

"Detailed Interface Specifications" means the detailed interface specifications set out in the Station Specification.

"Detailed Interface Test Plans" means the detailed interface test plans set out in the Station Specification.



"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.

"Draft Third Party Agreement" has the meaning given to that term in clause 2.12(a)(ii) and includes the Pro-forma Adjoining Property Owner Agreement.

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

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

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

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

"Encumbrance" means any interest, right, licence, lease, affectation, encumbrance, easement, covenant or restriction on use registered on title or otherwise created and validly existing from time to time.

"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 Law" means any Law concerning the Environment and includes Laws concerning:

- (a) the carrying out of uses, works or development, the erection of a building or the subdivision of land (including the EP&A Act);
- (b) emissions of substances into the atmosphere and land;
- (c) Pollution and Contamination of the atmosphere and land; and
- (d) production, use, handling, storage, transportation and disposal of:
 - (i) waste;

- (ii) hazardous substances; and
- (iii) dangerous goods;
- (e) threatened, endangered and other flora and fauna species;
- (f) conservation, heritage and natural resources; and
- (g) the health and safety of people,

whether made or in force before or after the date of this Contract.

"Environmental Liabilities" means any of the following liabilities arising before the expiration or termination of this Contract:

- (a) all costs, expenses, losses, damages, fines or penalties associated with undertaking the remediation of any Contamination ordered or required by any Authority or court of any land or building;
- (b) any compensation or other monies that an Authority or court requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all costs, charges and expenses incurred in complying with an Environmental Law; and
- (e) all other Claims, costs, expenses, losses, damages, fines or penalties payable under in respect of an Environmental Law.

"Environmental Representative" means the person identified in item 6 of Schedule 1 as appointed by the Principal and defined by the Planning Approval, or any replacement notified to the CN Contractor by the Principal's Representative.

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

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

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

"ETS" means the ticketing system for Crows Nest Station, including the software, smartcards, portable readers and all other aspects of the system, as modified or replaced from time to time.

"ETS Contractor" means:

- (a) Cubic Transportation Systems (Australia) Pty Limited ABN 82 003 617 561 and any other contractors engaged by the Principal in relation to the ETS as notified by the Principal's Representative from time to time; and
- (b) any subcontractors and suppliers at any level of the entities referred to in paragraph (a).

"Excepted Risk" means:

- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage;
- (b) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) (other than a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth)); and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

in each case occurring within Australia and only to the extent not caused by the CN Contractor or its Associates.

"Excluded Claim" means any claim:

- (a) with respect to a Change in Law under clause 2.3(d);
- (b) for a Variation directed in accordance with clause 6.2 or a direction by the Principal's Representative to which clause 17.1 applies;
- (c) for an extension of time under clause 10.8; or
- (d) for payment under clause 11, including claims under clauses 11.9 and 11.11.

"Exclusion Sanction" has the meaning given in subsection 3(2) of the Building Code.

"Expert" means the person appointed to determine a Dispute pursuant to clause 15.5.

"Extra Land" has the meaning given in clause 3.4(a).

"Final Certificate" means the certificate issued by the Principal's Representative pursuant to clause 12.10(b).

"Final Completion" means the stage in the execution of the CN Contractor's Activities when the obligations of the CN Contractor pursuant to this Contract have been discharged and all Defects Rectification Periods (including any extension under clause 8.6) have expired and the CN Contractor has rectified all Defects in accordance with the Contract.

"Final Design Documentation" means the AFC Design Documentation, as updated from time to time and issued by the Principal to the CN Contractor in accordance with clause 5.1A(b)(iv).

"Final Payment Claim" means a payment claim lodged by the CN Contractor in accordance with clause 11.11.

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

"Force Majeure Event" means:

- (a) an Excepted Risk;
- (b) a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia;
- (c) an earthquake occurring within Australia;
- (d) 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) occurring within Australia; or
- (e) a fire or explosion resulting from any event referred to in paragraphs (a), (c) or (d) above,

which:

- (f) is beyond the reasonable control of the CN Contractor and its Associates; and
- (g) prevents or delays the CN Contractor from performing the CN Contractor's Activities, where that event or the consequence of that event does not arise from any act or omission of the CN Contractor or its Associates (including from any breach by the CN Contractor or its Associates of a CN Station Contract Document).

"General Conditions" means clauses 1 to 20 of this Contract.

"General Solid Waste" means Contamination which is general solid waste (non putrescible) as defined in the Waste Classification Guidelines published by the EPA dated November 2014.

"General Specification" means the section of the Station Specification of that name.

"Good Industry Practice" means that degree of skill, care, prudence, foresight and practice which would reasonably be expected of a skilled and experienced person, engaged in the same or a similar type of undertaking as that of the CN Contractor, as the case may be, under the same or similar circumstances as the performance of the CN Contractor's Activities or the delivery of the Works and the Temporary Works.

"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 CN Contractor's Activities or the activities of any of the CN Contractor's personnel in connection with the CN Contractor's Activities.

"GREP" means the NSW Government Resource Efficiency Policy.

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

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

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

"Handover Works" those works set out in the list of "Handover Works" contained in Schedule 45.

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

"Hold Point" means a point beyond which a work process or activity must not proceed without the authorisation or release of the Principal's Representative (or its nominee).

"Home Building Act" means the *Home Building Act 1989* (NSW) and all associated regulations.

"Home Building Regulation" means the *Home Building Regulation 2004* (NSW).

"Home Building Regulation Checklist" means a checklist in the form of Schedule 2 of the Home Building Regulation, a copy of which is set out in Schedule 47.

"Home Building Work" means residential building works or specialist works for the purposes of the Home Building Act.

"IC Letter of Intent" means a deed between the Principal, the CN Contractor and the Independent Certifier in the form attached to the Principal's Representative's notice pursuant to clause 9.5A(c)(i).

"IDAR Panel" means the Independent Dispute Avoidance and Resolution Panel constituted under the IDAR Panel Agreement, referred to in clause 15.

"IDAR Panel Agreement" means the agreement which appears in Schedule 39.

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

"Incident" means:

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

- (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW, ONRSR or any other work health and safety regulator;
 - (ii) loss of containment, escape of or migration of Contamination off-Site and into the Environment;
 - (iii) 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;
 - (iv) any fire or dangerous event on the Site or Extra Land;
 - (v) a security breach;
 - (vi) any unauthorised removal of trees;
 - (vii) a non-compliance with an Authority Approval;
 - (viii) any public complaint; or
 - (ix) any incident defined in the Sydney Metro Principal Contractor Health and Safety Standard; or
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

- (c) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and
- (d) a "notifiable incident" under the WHS Legislation and a "notifiable occurrence" under the Rail Safety National Law.

"Independent Certifier" means the person or persons appointed to be the Independent Certifier:

- (a) (if applicable) by the Principal and the CN Contractor under the IC Letter of Intent; and
- (b) by the Principal, the CN Contractor and the Operator under the Independent Certifier Deed.

"Independent Certifier Deed" means the deed titled "Sydney Metro City & Southwest Independent Certification of the Crows Nest Station Works - Independent Certifier Deed" to be entered into between the Principal, the CN Contractor, the Independent Certifier and the Operator in the form set out in Attachment 1 to the form of IC Letter of Intent set out in Schedule 38 [REDACTED].

"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.

"Information Documents and Materials" means:

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

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

"Initial CN Contractor's Program" means the program in Schedule 33.

"Initial COVID-19 Management Plan" means the initial COVID-19 Management Plan set out in Exhibit D.

"Initial Project Plans" means the initial Project Plans set out in Exhibit D.

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

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

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

"Institution" means any:

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

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

"Interface Agreement" means any contract entered into between the Principal and an Interface Contractor.

"Interface Contractor" means a contractor, consultant, artist, tradesperson or other person engaged by the Principal or others that is carrying out, or that will carry out, Interface Work, including those contractors:

- (a) listed in item 7 of Schedule 1; or
- (b) otherwise notified by the Principal's Representative to the CN Contractor as an Interface Contractor [REDACTED]

"Interface Contractor Cooperation and Integration Deed" means:

- (a) in relation to the LW Contractor, a deed to be entered into between the Principal, the CN Contractor and the LW Contractor substantially in the form of Schedule 34; and
- (b) in relation to any other Interface Contractor, a deed to be entered into between the Principal, the CN Contractor and the relevant Interface Contractor substantially in the form of either Schedule 34 or Schedule 35 as directed by the Principal.

"Interface Work" means any activities undertaken by an Interface Contractor which interface with or affect or are affected by the CN Contractor's Activities, the Works or the Temporary Works, including that described in the Station Specification.

"Interface Works Change" means any change, modification or variation to the Interface Works after the date of this Contract, including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them, but not including a change, modification or variation that the relevant Interface Contractor is entitled to make to the design of the relevant Interface Works under the relevant Interface Works Contract without the Principal's consent where following any such change, modification or variation, the Interface Works will continue to comply with the requirements of the relevant Interface Works Contract.

"Interface Works Portion" means a portion of the TSE Works or the Interim LW Works.

"Interface Works Site" means (as applicable):

- (a) the "Construction Site" (as defined in the TSE Contract); or
- (b) the "Construction Site" (as defined in the LW Contract),

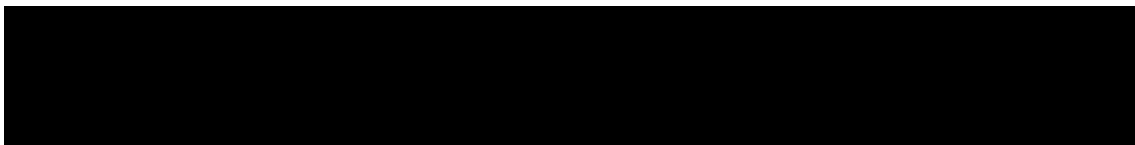
to the extent that the relevant "Construction Site" forms part of the Site.

"Interface Works Site Access Date" has the meaning in clause 3.1B(d).

"Interim Access Licence" means, with respect to each part of the Interface Works Site identified in a notice given by the Principal to the CN Contractor pursuant to clause 3.1B(d), the licence granted by the Principal to the CN Contractor pursuant to clause 3.1B(a)(ii).

"Interim Access Period" means, in respect of any part of the Interface Works Site, the period commencing on the date access to the Interface Works Site is given or deemed to be given under clause 3.1B(f) and ending on the date the Construction Licence with respect to the relevant part of the Interface Works Site commences.

"Interim LW Works" means the LW Works to be carried out by the LW Contractor on the Interface Works Site prior to the relevant Site Access Date.



"L&E Contractor" means the contractor identified in item 8 of Schedule 1 that:

- (a) has been engaged by the Principal under a framework agreement; and
- (b) is to be engaged by the CN Contractor under the L&E Supply and Installation Contract in accordance with clause 2.2A to perform the Lifts and Escalators Works.

"L&E Supply and Installation Contract" means the Nominated Subcontract to be entered into between the CN Contractor and the L&E Contractor in respect of the Lifts and Escalators Works, the form of which is included in electronic form in Schedule 50.

"Landlord" means [REDACTED]

"Landowner" means a person with a right or interest in land, including an owner, occupier or grantee of a registered interest.

"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).

"LD Cap" means the amount set out in item 36 of Schedule 1.

"Lifts and Escalators Works" means the works to be performed by the L&E Contractor in relation to the Works.

"Local Area Works" means the modification, reinstatement and improvement of Local Areas which the CN Contractor must construct and hand over to the Principal or the relevant Authority in accordance with this Contract as further described in section 3.10 of the General Specification and section 1.2.6 of the Particular Specification.

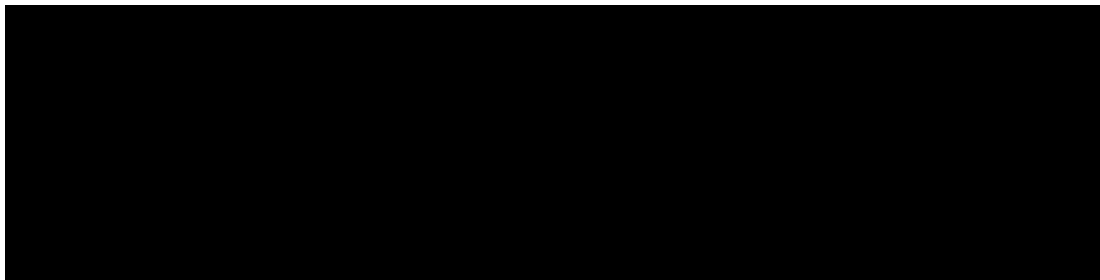
"Local Areas" means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which are adjacent to, connect to, intersect, cross or are in any way affected by the Works or Temporary Works, including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

"LW Contract" means the contract titled "Sydney Metro City & Southwest Line-wide Works Incentivised Target Cost Contract" between the Principal and the LW Contractor dated 20 November 2018 in relation to the LW Works.

"LW Contractor" means the unincorporated joint venture between CPB Contractors Pty Limited (ABN 98 000 893 667) and UGL Engineering Pty Limited (ABN 96 096 365 972).

"LW Works" means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the LW Contractor must, in accordance with the LW Contract, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro City & Southwest, including tunnel ventilation, track, tunnel services (including drainage, lighting, fire systems and low voltage power supplies), combined services cable brackets, high voltage power supply, overhead line and traction supply and stabling facilities.

"Major TSE Defect" means a TSE Defect in the following features of the TSE Works:



"Master Interface Protocols Deed Poll" means a deed poll in substantially the same form as Schedule 37.

"Material Adverse Planning Effect" means:

- (a) a delay arising from the requirements or conditions of the Stage 2 SSD Consent (Site C OSD) which is critical to the maintenance of progress in the execution of the CN Contractor's Activities and which will delay the CN Contractor in achieving Substantial Completion or Completion of any Portion or Milestone Achievement of any Milestone (as applicable) in the manner described in clause 10.9(d); or
- (b) a material adverse effect arising from the requirements or conditions of the Stage 2 SSD Consent (Site C OSD) on:
 - (i) the ability of the CN Contractor to comply with its obligations under this Contract;
 - (ii) the Principal's rights and/or obligations under this Contract; or
 - (iii) the objectives for the Sydney Metro City & Southwest as contemplated in this Contract.

"Milestone" means a milestone specified in Table 3 of Schedule 1A.

"Milestone Achievement" means, in respect of a Milestone, the stage in the execution of the CN Contractor's Activities when the specified parts of the Works as

set out in Schedule 1A have achieved the level of completion required for that Milestone in section Table 3 of Schedule 1A except for any:

- (a) Minor Defects referred to in paragraph (a) of the definition of "Minor Defect";
- (b) Accepted Defects; and
- (c) Agreed Defects.

"Milestone Performance Payment" means a payment identified as a "Milestone Performance Payment" in Part C of the Payment Breakdown Schedule.

"Minor Defect" means a Defect:

- (a) in each Milestone which, at Milestone Achievement, and in each Station Portion which, at Substantial Completion:
 - (i) is capable of being corrected without causing unreasonable delay or disruption to the activities that are to be performed by any Interface Contractor within the Site; and
 - (ii) the Independent Certifier determines (acting reasonably) that the CN Contractor has reasonable grounds for not promptly correcting prior to Milestone Achievement for the relevant Milestone; or
- (b) in the Trackway Portion which, at Substantial Completion, and in each Station Portion which, at Completion:
 - (i) is capable of being corrected:
 - A. after the relevant part of the Site has been handed over to the Principal; and
 - B. without causing unreasonable delay or disruption to the activities that are to be performed by any Interface Contractor within the Site; and
 - (ii) the Independent Certifier determines (acting reasonably) that the CN Contractor has reasonable grounds for not promptly correcting prior to handover of the Works to the Principal,

but does not include an Agreed Defect or an Accepted Defect.

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

"Moral Rights" means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship conferred by the *Copyright Act 1968* (Cth) or any Law outside Australia and rights of a similar nature anywhere in the world, that exists now or in the future.

"Native Title Claim" means any application made pursuant to the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW).

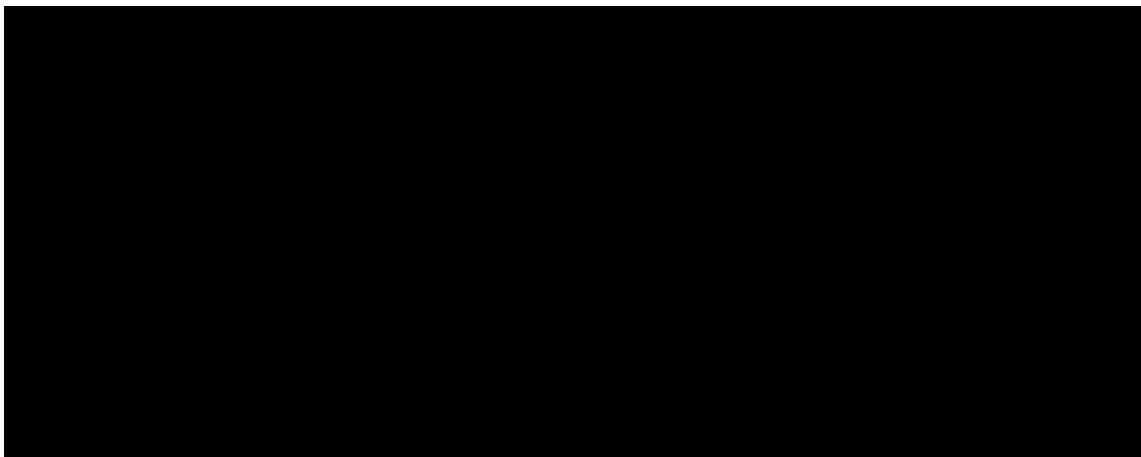
"NGER Legislation" means *National Greenhouse and Energy Reporting Act 2007* (Cth), related regulations and legislative instruments.

"Nominated Member" has the meaning given in clause 15.3(b).

"Nominated Subcontract" means each of the forms of subcontract referred to in Schedule 30.

"Nominated Subcontract Work" means the CN Contractor's Activities to be performed by a Nominated Subcontractor.

"Nominated Subcontractor" means the nominated subcontractors and suppliers specified in Schedule 30 or, as applicable, referred to in the Station Specification.



"Notice of Completion" means a notice in the form of Schedule 22A issued by the Independent Certifier pursuant to clause 12.3(e)(i).

"Notice of Milestone Achievement" means a notice in the form of Schedule 20B issued by the Independent Certifier pursuant to clause 12.1A(e)(i).

"Notice of Substantial Completion" means a notice in the form of Schedule 21A issued by the Independent Certifier pursuant to clause 12.2(e)(i).

"NSW Guidelines" has the meaning given in clause 20.1.

"NSW Rail Assets" has the meaning assigned to it in the ASA Charter.

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

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

"Operator" means:

- (a) the TSOM Contractor; or
- (b) any other entity that the Principal engages to operate and, if required by the Principal, maintain Sydney Metro City & Southwest or any part of it.

"Operator Cooperation and Integration Deed" means a deed to be entered into between the Principal, the CN Contractor and the Operator substantially in the form of Schedule 35.

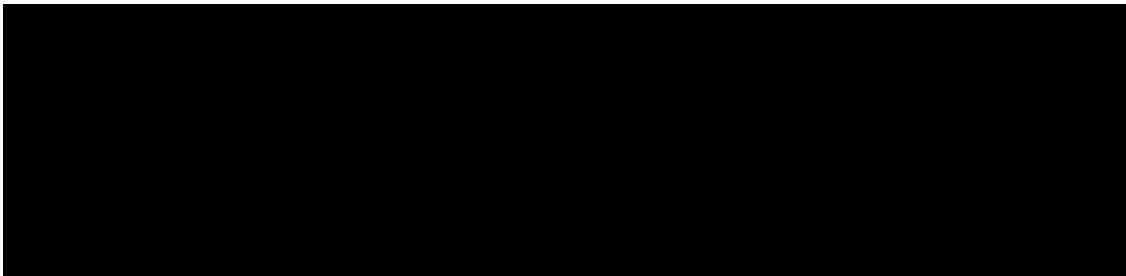
"Option" means an option referred to in Schedule 15.

"Option 1" means the Option described as "Option 1" in Schedule 15.

"Original Contract Price" means the amount set out in item 9 of Schedule 1, which is, and all components of which are, exclusive of GST.

"OSD Developer" means a developer of an Over Station Development.

"OSD Works" means the Site A OSD Works, the Site B OSD Works and the Site C OSD Works, or any one of them, as the context requires.



"Over Station Development" means a development over the Crows Nest Station.

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

"Parent Company Guarantee" means the form of deed which appears in Schedule 17.

"Parent Company Guarantor" means the entity referred to in item 25 of Schedule 1.

"Particular Specification" means the section of the Station Specification of that name.

"Payment Breakdown Schedule" means Schedule 2.

"Payment Claim Date" means each of 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.

"PDCS" means the Principal's web based TeamBinder project data and collaboration system including any of its functionalities as required by the Principal,

or such other electronic project data and collaboration system notified by the Principal's Representative under clause 16.1(b).

"Performance Incentive Payment" has the meaning given in the Performance Incentive Payment Schedule.

"Performance Incentive Payment Schedule" means Schedule 2A.

"Planning Approval" means:

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

"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 CN Contractor's Activities or Works, as described in Schedule 1A or as determined or directed under clause 12.6.

"Portion Handover Date" means:

- (a) in respect of the Trackway Portion, the Date of Substantial Completion of the Trackway Portion; and
- (b) in respect of any other Portion, the later of:
 - (i) the day after the Date of Completion of that Portion; or
 - (ii) where the Principal's Representative gives a written notice under clause 12.11(a) in respect of the Portion, the date notified in the notice given under clause 12.11(c) in respect of the Portion.

"Post Completion Activities" means the activities referred to in section 1.2.8 of the Particular Specification.

"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).

"Principal" means Sydney Metro ABN 12 354 063 515.

"Principal's Representative" means:

- (a) the person nominated in item 10 of Schedule 1; or
- (b) any other person appointed as a replacement from time to time by the Principal under clause 9.2,

and includes any appointee under clause 9.3.

"Principal's Vision Statement" has the meaning given in section 1.2 of the General Specification.

"Pro-forma Adjoining Property Owner Agreement" means the pro-forma adjoining property owner agreement set out in Part A of Schedule 40.

"Pro-forma Easement" means the pro-forma easement for crane access, rock anchors or scaffolding (as appropriate) set out in Part B of Schedule 40.

"Progress Claim" has the meaning given in clause 11.2(c).

"Progress Report" means each progress report to be submitted by the CN Contractor under section 5.2.2 of the General Specification.

"Prohibited Subcontractor" means:

- (a) any Subcontractor:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in;
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in; or
 - (iii) that is the subject of a current investigation by the Independent Commission Against Corruption as to whether 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), (a)(ii) or (a)(iii) apply.

"Project Cooperation and Integration Deed" means each of:

- (a) the TSE Cooperation and Integration Deed;
- (b) each Interface Contractor Cooperation and Integration Deed; and
- (c) the Operator Cooperation and Integration Deed.

"Project Health and Safety Management Plan" means the Project Plan of that name.

"Project Planning Approval (Chatswood to Sydenham)" means the approval granted by the Minister for Planning and Infrastructure under section 5.19 of the EP&A Act dated 9 January 2017, including all conditions to such approval and all documents incorporated by reference, as modified from time to time.

"Project Plans" means the plans required to be provided and implemented by the CN Contractor pursuant to the Station Specification as developed, amended or updated from time to time in accordance with the Contract.

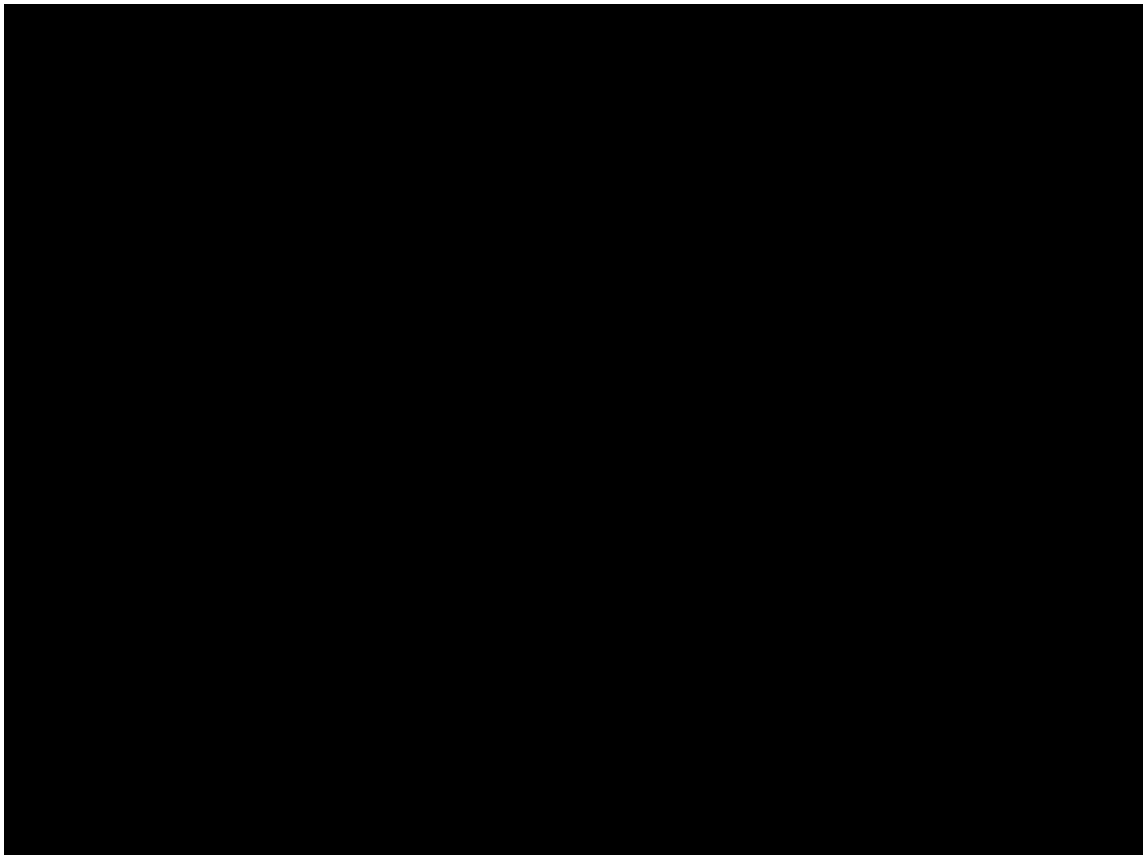
"Project Values" means the values that will guide the delivery of Sydney Metro City & Southwest, being safety and wellbeing, collaboration, integrity, innovation, excellence and achievement.

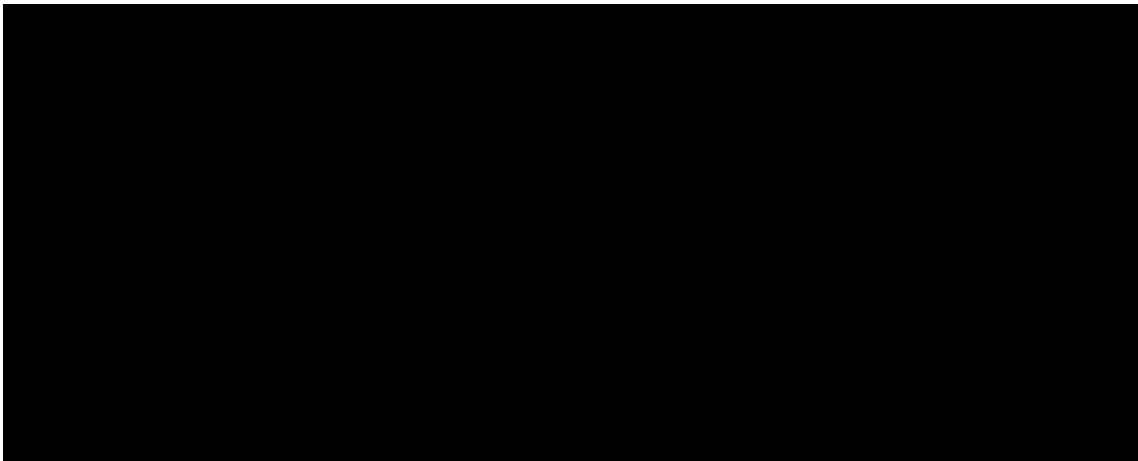
"Property Works" means all works required to existing buildings and infrastructure or to and within properties arising out of the CN Contractor's Activities as described or specified in section 3.10 of the General Specification and section 1.2.6 of the Particular Specification.

"Provisional Sum Work" means the work detailed in item 30 of Schedule 1.

"Public Art Supplier" means any entity that is engaged by the Principal to carry out Public Art Supply Works.

"Public Art Supply Works" means all things, works and materials that a Public Art Supplier must, in accordance with the relevant contract between the Principal and the Public Art Supplier, design, manufacture and install for the purposes of Crows Nest Station.





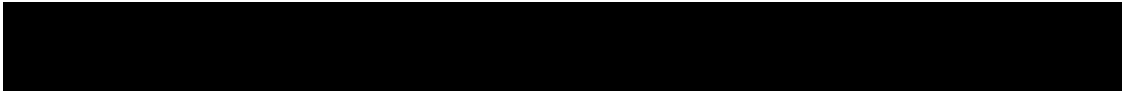
"Rail Infrastructure Manager" has the meaning given to that term in the Rail Safety National Law.

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

"Rail Safety Regulations" means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012* (NSW).

"Rail Transport Agency" means the Principal, TfNSW (and each of its divisions), TAHE, Sydney Trains and NSW Trains.

"Related Body Corporate" has the meaning given in section 9 of the Corporations Act.



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

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

"Report" means each report referred to in item 11 of Schedule 1.

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

"Residential CODD Works" means any part of the Works which are Home Building Works.

"Resolution Institute" means the Resolution Institute Australia.

"Revised Allocation" has the meaning given to that term in clause 2.12(c)(ii).

"Risk Register" has the meaning given to that term in clause 9.17(a).

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

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

"Security Interest" has the meaning given to that term in clause 16.26(a).

"Shop Drawings" means any drawings or other documentation required to enable the Final Design Documentation to be used for the purposes of construction in accordance with this Contract.

"Site" means:

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

"Site A" means the area of the Site described as "Area 'L1'" in the Site Access Schedule.

"Site A OSD Developer" means the OSD Developer in respect of Site A.

"Site A OSD Works" means the physical works constructed, or to be constructed, by or on behalf of the Site A OSD Developer for the Over Station Development in respect of Site A.

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

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

"Site Access Schedule" means Schedule 29.

"Site B" means the areas of the Site described as "Area 'L4'" and "Area 'L5'" in the Site Access Schedule.

"Site B OSD Developer" means the OSD Developer in respect of Site B.

"Site B OSD Works" means the physical works constructed, or to be constructed, by or on behalf of the Site B OSD Developer for the Over Station Development in respect of Site B.

"Site C" means the area of the Site described as "Area 'L2'" in the Site Access Schedule.

"Site C Conversion Works" means:

- (a) additional scope not shown in the AFC Design Documentation that is required to finish the Works located on Site C to an acceptable standard of visual appearance, functionality and waterproofing as a result of the Principal not

proceeding with the Site C OSD, and which may include alterations to the ground floor lobby, OSD lift shafts, access stairs, retail plantroom, façade parapet and waterproofing / screeding; and

- (b) the removal, elimination and/or reduction of scope from that shown in the AFC Design Documentation made possible as a result of the Principal not proceeding with the Site C OSD,

the indicative scope of which is shown in the document included in Schedule 50 with the following electronic file reference: 14.08.20_SiteC_AlterationPriorToOSD - RBG Comments.pdf.

"Site C OSD Developer" means the OSD Developer in respect of Site C.

"Site C OSD Works" means the physical works constructed, or to be constructed, by or on behalf of the Site C OSD Developer for the Over Station Development in respect of Site C.

"Site C Variation" means a Variation that is the subject of a Variation Order issued by the Principal's Representative in accordance with clause 2.3A(o)(iii)B.2).

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

- (a) Valuable Finds 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 (as defined in the WHS Legislation) or other spoil or waste;
- (f) topography of the Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) any underground strata;
- (i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (j) the Environment, water and weather or climatic conditions, or the effects of the Environment, water and weather or climatic conditions, including rain,

surface water runoff and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions;

(k) any adjoining property; and

(l) any latent conditions.

"Site Interface Work" has the meaning given to that term in clause 2.11(a)(ii).

"Site Office Lease" means the lease entered into between the Principal and the Landlord dated [REDACTED] in respect of [REDACTED] a copy of which is included in electronic form in Schedule 50.

"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).

"SSD" means State significant development.

"Stage 2 SSD Application" means any application for approval in respect of the Site C OSD Works submitted by the Principal to the NSW Minister for Planning and Public Spaces in accordance with Part 4 of the EP&A Act, which constitutes a detailed subsequent stage application to the Concept SSD Consent.

"Stage 2 SSD Consent (Site C OSD)" means any detailed SSD consent in respect of the Site C OSD Works granted by the NSW Minister for Planning and Public Spaces, in accordance with Part 4 of the EP&A Act, as modified from time to time.

"State Indemnified Party" means:

(a) the Principal;

[REDACTED]

"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.

"Station Portion" means each Portion other than the Trackway Portion.

"Station Specification" means the specification for Crows Nest Station contained in Exhibit A, comprising:

(a) the General Specification;

(b) the Particular Specification;

(c) the Construction Specification;

- (d) the AFC Design Documentation;
- (e) the Detailed Interface Specifications; and
- (f) the Detailed Interface Test Plans.

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

"Subcontractor" means:

- (a) for the purposes of clauses 11.8(c) and 16.11(f), any person who enters into a contract in connection with the CN Contractor's Activities with the CN Contractor; and
- (b) otherwise, any person (including a consultant or a supplier of goods or services including professional services and plant hire) who enters into a contract in connection with the CN Contractor's Activities with the CN Contractor or whose subcontract is in connection with any part of the Works or the CN Contractor's Activities and is in a chain of contracts where the ultimate contract is with the CN Contractor.

"Substantial Completion" has the meaning given in Schedule 1B.

"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 2017* (NSW).

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

"Sustainability Management Plan" means the Project Plan of that name.

"Sydney Metro City & Southwest" means the railway line from Chatswood to Bankstown, including:

- (a) the upgrade and conversion of the existing Bankstown line to metro standard, the stabling yard and maintenance depot at Marrickville, stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure; and
- (b) the integration of Sydney Metro Northwest to form a single end to end metro system from Cudgegong Road to Bankstown.

"Sydney Metro City & Southwest Strategic Objectives" means the strategic objectives set out in section 1.1 of the General Specification.

"Sydney Metro Northwest" means the railway line from Chatswood to Cudgegong Road, including the stabling yard and maintenance depot at Tallawong Road, the

stations, tunnels, viaducts, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure.

"Sydney Metro Principal Contractor Health and Safety Standard" means the document referred to as the "Sydney Metro Principal Contractor Health and Safety Standard (SM-PS-ST-221)", a copy of which is included in electronic form in Schedule 50.

"Sydney Metro Program Safety Management Plan" means the document referred to in the Sydney Metro Principal Contractor Health and Safety Standard.

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

"Systems Integration Plan" means the Project Plan of that name.

"TAHE" means Transport Asset Holding Entity of New South Wales, a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

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

"Temporary Areas" means the areas of the Site identified in section 4 of the Site Access Schedule and the areas of the Site described as "Temporary Areas" in the Site Access Schedule.

"Temporary Repairs" has the meaning given in clause 5A.8(a).

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

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

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

"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 contained in Schedule 4A and any Adjoining Property Owner Agreement which has been, or will be, entered into by the Principal.

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

"Trackway Portion" means those parts of the Works described as "Portion 1" in Table 2 of Schedule 1A.

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

"TSE Construction Completion" has the meaning given to the term "Construction Completion" in the TSE Contract with respect to the TSE Works.

"TSE Contract" means the contract titled "Sydney Metro City & Southwest Tunnel and Station Excavation Works Design and Construction Deed" dated 22 June 2017 between the Principal and the TSE Contractor to carry out the TSE Works, a redacted copy of which is included in electronic form in Schedule 50.

"TSE Contractor" means John Holland Pty Ltd ABN 11 004 282 268, CPB Contractors Pty Ltd ABN 98 000 893 667 and Ghella Pty Ltd ABN 85 142 392 461.

"TSE Cooperation and Integration Deed" means a deed to be entered into between the Principal, the CN Contractor and the TSE Contractor substantially in the form of Schedule 36.

"TSE Defect" means:

- (a) any defect, deficiency, fault, error or omission in the TSE Works; and
- (b) any:
 - (i) cracking, shrinkage, movement or subsidence in the TSE Works; or
 - (ii) other aspect of the TSE Works or the TSE Contractor's Activities (as that term is defined in the TSE Contract),

which is not in accordance with the [REDACTED]

which will:

- (c) cause the CN Contractor to incur additional cost;
- (d) delay the performance of the CN Contractor's Activities;
- (e) affect any warranty provided by the CN Contractor under this Contract; or
- (f) prevent the CN Contractor from complying with its obligations under this Contract,

but does not include [REDACTED]

"TSE Independent Certifier" means APP Corporation Pty Limited ABN 29 003 764 770 or such other person(s) as may be engaged by the Principal and the TSE Contractor in accordance with the TSE Independent Certifier Deed.

"TSE Independent Certifier Deed" means the deed so titled entered into between the TSE Contractor, the Principal and the TSE Independent Certifier.

"TSE Known Defect" means a TSE Defect which is listed in a TSE Notice of Construction Completion.

"TSE Notice of Construction Completion" has the meaning given to the term "Notice of Construction Completion" in the TSE Contract.



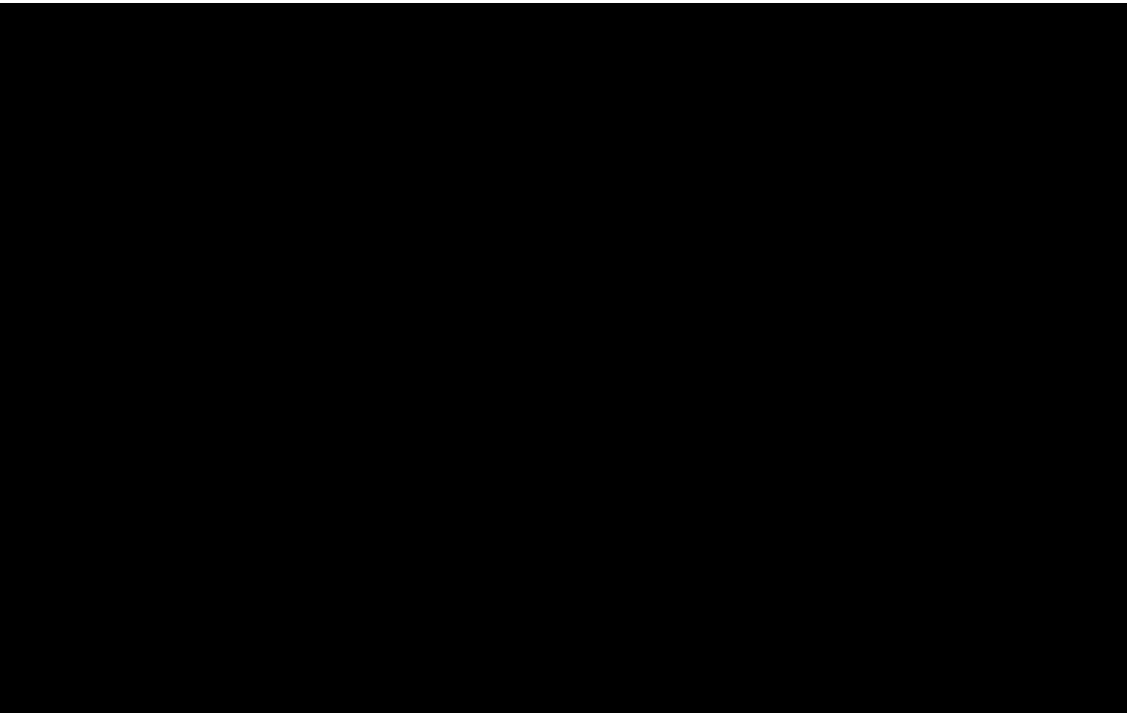
"TSE Works" means the works comprised within:

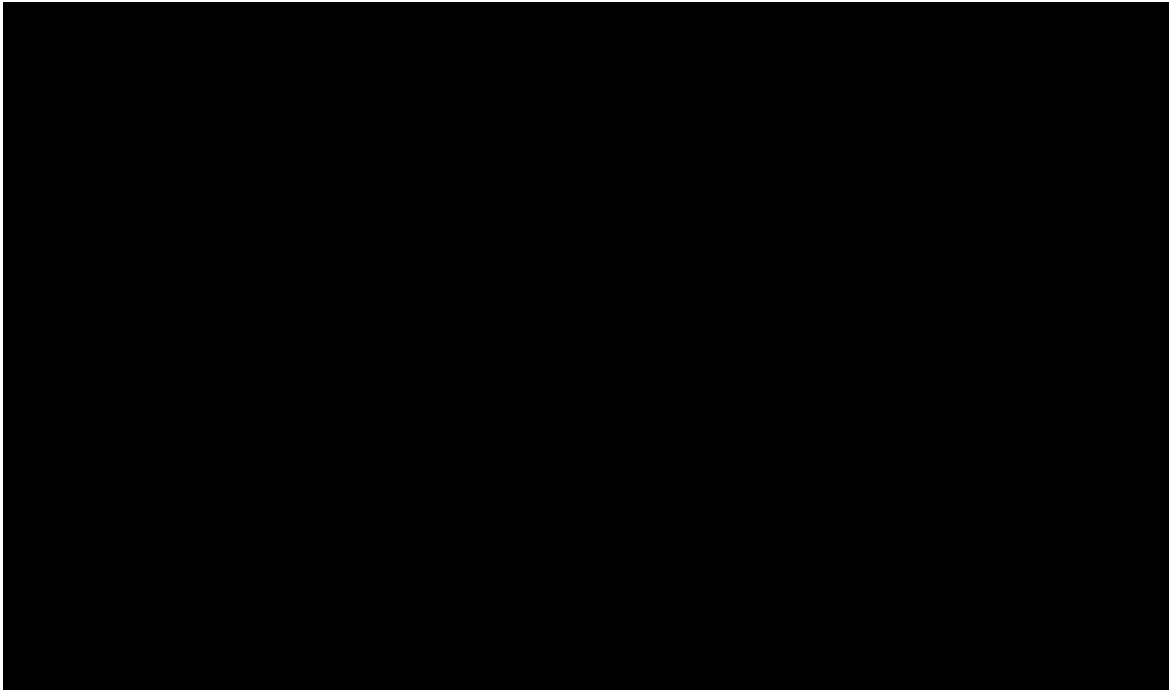
- (a) "Portion 9" of the TSE Contract relating to the "Crows Nest Station Box between the southern face and south of Hume Street bridge"; and
- (b) "Portion 10" of the TSE Contract relating to the "Crows Nest Station Box, between the northern face and south of Hume Street bridge, including Clark Lane and Nozzles".

"TSE Works Asset Management Information" means any "Asset Management Information" (as defined in the TSE Contract), including any draft "Asset Management Information" submitted to the Principal by the TSE Contractor under the TSE Contract, to the extent that "Asset Management Information" or draft "Asset Management Information" relates to the TSE Works.

"TSE Works O&M Manuals" means:

- (a) the operation and maintenance manuals forming part of the TSE Works Asset Management Information certified by the TSE Independent Certifier under the TSE Contract; or
- (b) to the extent the operation and maintenance manuals forming part of the TSE Works Asset Management Information have not yet been certified by the TSE Independent Certifier under the TSE Contract, the draft operation and maintenance manuals submitted to the Principal by the TSE Contractor under the TSE Contract (as provided by the Principal to the CN Contractor).





"TSOM Contract" means a contract between the Principal and the TSOM Contractor for the provision of the TSOM Works and, if required by the Principal, the operation and maintenance of Sydney Metro City & Southwest.

"TSOM Contractor" means any entity that is engaged by the Principal to carry out the TSOM Works and, if required by the Principal, the operation and maintenance of Sydney Metro City & Southwest.

"TSOM Works" means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the TSOM Contractor must, in accordance with the TSOM Contract, design, construct, manufacture, install, test and commission for the purposes of completing the Sydney Metro City & Southwest, including equipment, systems (including all information systems, central control systems and communications systems), hardware and software, rolling stock, platform screen doors and control centre.

"Unforeseeable SSD Consent Conditions" are requirements and conditions of the Stage 2 SSD Consent (Site C OSD) which:

- (a) are different to the Baseline SSD Consent Conditions (with the exception of minor differences); and
- (b) have a Material Adverse Planning Effect.

"Unowned Property Works Lands" means a parcel of land and any improvements of which the State is not the registered proprietor, lessee or licensee and in relation to which, or upon which, Property Works are to be undertaken.

"Utility Service" means any service utility, service facility or item of public or private infrastructure, including for the provision or measurement of water, electricity, gas, fuel, telephone, drainage, stormwater, sewerage, industrial waste disposal and electronic communications service (including power, electricity, gas, water, sewerage and telecommunications and all pipes, wires, cables, ducts and other conduits in connection with them).

"Utility Service Works" means the construction, modification, or relocation of Utility Services to be constructed by the CN Contractor and handed over to the Principal, an Authority or any other person in accordance with this Contract including any such works specified in the Station Specification (and including, to the extent relevant to such works, Variations directed or approved in accordance with this Contract).

"Valuable Finds" has the meaning given in clause 3.8(a).

"Variation" means any change to the Works, the Temporary Works or the CN Contractor's Activities including:

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

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

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

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

"WHS" means work health and safety.

"WHS Accreditation Scheme" means the Work Health and Safety Accreditation Scheme referred to in section 43 of the BCIIIP Act (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 2017* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works.

"Wilful Misconduct" means an act or failure to act by a party or its Associates that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

"Witness Point" means a point in a work process for which the CN Contractor must give prior notice to the Principal's Representative to allow the Principal's

Representative (or its nominee) to attend and witness the point in the work process should it choose to do so.

"Workplace Relations Management Plan" means the Project Plan of that name.

"Works" means the whole of the physical works, including:

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

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

1.2 Interpretation

In this Contract unless the context otherwise requires:

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

- (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Contract;
- (i) a reference to:
 - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Contract; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) subject to clause 3.6, a reference to this Contract includes all Schedules and Exhibits;
- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) not used;
- (m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:
 - (i) any extension of time to any Date for Substantial Completion, Date for Milestone Achievement or Date for Completion (as applicable) stated in days; or
 - (ii) any reference to "day",
will include only those days indicated in item 13 of Schedule 1, or otherwise approved by the Principal's Representative, as working days;
- (n) for all purposes (other than as set out in clause 1.2(m), or where otherwise designated as a Business Day), "day" means calendar day;
- (o) not used;
- (p) a reference to "\$" is to Australian currency;
- (q) not used;
- (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:
 - (i) the terms CN Contractor's Activities, Works, Temporary Works, Third Party Works, Local Area Works, Utility Service Works, Property Works, Site, Temporary Areas, Date for Substantial Completion, Date of Substantial Completion, Substantial Completion, Date for Completion, Date of Completion, Completion and Defects Rectification Period;
 - (ii) clauses 3.1A (Rights to land) to 3.1 (Access to the Site on or after the Site Access Date) (inclusive), 3.4 (Land in Addition to the Site), 7.7 (Cleaning Up), 8 (Defects), 10 (Time and Progress), 11.2 (Payment Claims), 12 (Milestone Achievement, Substantial Completion and Completion) and 13 (Care of the Works, Risks and Insurance); and
 - (iii) the Station Specification (including its component parts),

 will apply separately to each Portion (including any Portion determined under clause 12.6) and references therein to any of the terms in clause 1.2(t)(i) will mean so much of the CN Contractor's Activities, Works, Temporary Works, Third Party Works, Local Area Works, Property Works, Utility Service Works, Site or Temporary Areas as is comprised, or associated with, in the relevant Portion;
- (u) not used;
- (v) any reference to "intended purpose" in this Contract will be read as referring to the intended use or intended purpose having regard to any intended use or intended purpose stated in, contemplated by or ascertainable from the terms of this Contract including the requirement that:
 - (i) the Works when completed will be constructed; and
 - (ii) the Temporary Works when completed will be designed and constructed,

 in compliance with all health and safety requirements of the WHS Legislation;
- (w) words and terms defined in the GST Legislation have the same meaning in clauses concerning GST;
- (x) on the basis that the Principal is notionally liable to pay GST under the GST Legislation, 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;
- (y) 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; and

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

1.3 Ambiguous terms

- (a) If the Principal's Representative considers, or if the CN 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 direct the interpretation of this Contract which the CN 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.
- (c) The CN Contractor is not entitled to make, and the Principal will not be liable upon, any Claim against the Principal to the extent that a direction under clause 1.3(a) is consistent with the rules of construction in clause 1.4(a).
- (d) To the extent that a direction by the Principal's Representative under clause 1.3(a) is not consistent with the rules of construction in clause 1.4(a), it will be treated as a direction to which clause 17.1 applies.
- (e) The parties acknowledge and agree that this clause 1.3 and clause 1.4 do not apply to Constructability Issues or Design Errors.

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 Station Specification, 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 item 14 of Schedule 1 applies.
- (b) The documents which comprise this Contract (including the Station Specification and its component parts) are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Works comply with this Contract.

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:

- (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
 - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter.
- (b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under this Contract (including a breach of contract) and the Principal will have no liability to the CN Contractor in relation thereto.

1.7 Objectives for Sydney Metro City & Southwest

The Principal's objectives for Sydney Metro City & Southwest are to:

- (a) improve the quality of the transport experience for customers;
- (b) provide a fully integrated transport system that is able to satisfy long-term demand;
- (c) grow public transport patronage and mode share;
- (d) support the global economic corridor;
- (e) serve and stimulate urban development;
- (f) improve the resilience of the transport network;
- (g) improve the efficiency and cost effectiveness of the public transport system;
- (h) implement a feasible solution recognising impacts, constraints and delivery risk; and
- (i) deliver an enduring and sustainable legacy for Sydney.

1.8 Achievement of the Project Values

- (a) Each party will, subject to and in accordance with this Contract, perform its obligations under this Contract having regard to the achievement of:
 - (i) the Sydney Metro City & Southwest Strategic Objectives; and
 - (ii) the Principal's Vision Statement.
- (b) Each party will adhere to and uphold the Project Values and work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this Contract.
- (c) The obligations under clause 1.8(b) will not affect the exercise of a right or discretion under this Contract by the Principal or the Principal's Representative.

1.9 Electronic files

Where this Contract refers to an electronic file on a separate disc or other electronic storage device which forms part of this Contract, those electronic files are contained in the disc or other electronic storage device identified in Schedule 50.

2. CN Contractor's obligations

2.1 General

The CN Contractor:

- (a) must execute the CN Contractor's Activities, including construct, commission and hand-over the Works and each Portion, in accordance with this Contract;
- (b) warrants that the Temporary Works will at all relevant times be fit for their intended purposes;
- (c) must exercise all reasonable skill, care and diligence in the performance of the CN Contractor's Activities;
- (d) must, unless otherwise agreed by the Principal's Representative in writing, employ the person or persons specified in Schedule 49, including the CN Contractor's Representative, in the performance of the CN 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 CN Contractor's Activities; and
- (f) must liaise, cooperate and confer with the Principal and others as directed by the Principal.

2.2 Subcontracts

- (a) Subject to clause 2.2(b), the CN Contractor may enter into Subcontracts for the vicarious performance of its obligations under this Contract.
- (b) The CN Contractor must not enter into any Subcontract:
 - (i) with:
 - A. a Prohibited Subcontractor; or
 - B. an initial subcontract price equal to or over the amount specified in item 17 of Schedule 1 without the prior written approval of the Principal's Representative (which may be conditional but which will not be unreasonably withheld); or
 - (ii) for the parts of the Works specified in item 18 of Schedule 1 without the prior written approval of the Principal's Representative to the relevant

subcontractor (which may be conditional but which will not be unreasonably withheld).

Any request by the CN 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:

- (iii) the proposed Subcontract conditions, if requested by the Principal's Representative; and
- (iv) 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(i)), environmental compliance (including any environmental management system) and other performance, management systems and proposed safe working procedures.

Within 10 Business Days after a request by the CN Contractor for approval, the Principal's Representative will advise the CN Contractor whether the request is approved (and, if approved, any relevant conditions) or not and, where it is not approved, the reasons why approval is not given.

- (c) The CN Contractor must ensure that each Subcontractor referred to in item 19 of Schedule 1:
 - (i) effects and maintains professional indemnity insurance which:
 - A. covers the Subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Subcontractor or its Subcontractors in carrying out the work under the relevant Subcontract;
 - B. covers the Subcontractor for liability to the Principal or the CN Contractor for the relevant minimum amount listed in item 20 of Schedule 1;
 - C. unless the Subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and
 - D. remains in place at least until the expiration of a 7 year period from completion of the relevant Subcontract works or professional services; and
 - (ii) is obliged under the relevant Subcontract to comply with clause 13.7(c) of this Contract in relation to the insurance referred to in clause 2.2(c)(i).

- (d) The CN Contractor will be:
- (i) fully responsible for the CN Contractor's Activities despite subcontracting the carrying out of any part of the CN 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 CN Contractor's Activities.
- (e) The CN Contractor must:
- (i) without limiting clause 13A.5(d), ensure that each of its Subcontracts that has an initial subcontract price of the amount specified in item 21 of Schedule 1 or more includes provisions to the effect set out in Schedule 5 and a clause to the same effect as this clause 2.2(e)(i) that is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative;
 - (ii) not, without the prior written approval of the Principal's Representative (which must not be unreasonably withheld or delayed), direct a variation under a Subcontract with an initial subcontract price less than the amount specified in item 17 of Schedule 1 where the effect of such a direction would be to increase the subcontract price to or over the amount specified in item 17 of Schedule 1;
 - (iii) ensure that each Subcontractor (and their Subcontractors) executes a confidentiality undertaking in the form of Schedule 3 and provides this to the Principal's Representative within 5 Business 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 item 22 of Schedule 1; or
 - B. not used,
executes a deed in the form of Schedule 14 and provides this to the Principal's Representative within 5 Business Days of being engaged by the CN Contractor; and
 - (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).
- (f) Prior to Completion of the last Portion to reach Completion, the CN Contractor must procure and provide the Principal's Representative with

those warranties described in item 23 of Schedule 1 or elsewhere in this Contract from relevant Subcontractors undertaking or supplying the work or items the subject of the warranty.

These warranties:

- (i) must be in the form set out in Schedule 11 and must be in favour of the Principal and any other entity nominated in Schedule 10A, including any Rail Transport Agency; and
 - (ii) will not derogate from any rights that the Principal may have against the CN Contractor in respect of the subject matter of these warranties.
- (g) If directed by the Principal, the CN Contractor must, without being entitled to compensation, within 5 Business Days of the date of receipt by the CN Contractor of the direction, execute and deliver to the Principal a deed of novation in the form which appears in Schedule 18, such deed being between the Principal, the CN Contractor and the Subcontractor stated in item 24 of Schedule 1.
- (h) The CN Contractor irrevocably and severally appoints the Principal and any authorised representative of the Principal to be the CN Contractor's attorney to execute, sign, seal and deliver in the name of the CN Contractor, the deed referred to in clause 2.2(g) and all notices, deeds and documents for that purpose.

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

- (i) relieve the CN 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 CN Contractor (including those arising out of any warranties given under this Contract); or
- (iii) entitle the CN Contractor to make any Claim,

whether under this Contract or otherwise according to any Law.

- (i) The CN Contractor must:
- (i) ensure that, if any Law, including in the State or Territory in which the Works are situated or the Works are carried out (as the case may be), require that:
 - A. a person:
 - 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 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(i)(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 CN Contractor or Subcontractor (as the case may be) commences such work.
 - (j) The CN Contractor must:
 - (i) enter into the Nominated Subcontracts with the Nominated Subcontractors; and
 - (ii) ensure that Nominated Subcontract Work is carried out by the Nominated Subcontractors pursuant to the relevant Nominated Subcontract.
 - (k) The CN Contractor will:
 - (i) be liable to the Principal for the acts and omissions of the Nominated Subcontractors in connection with the CN Contractor's Activities as if such acts or omissions were acts or omissions of the CN Contractor; and
 - (ii) not be relieved of any obligation or liability it has to the Principal under the CN Station Contract Documents by reason of the CN Contractor entering into any Nominated Subcontract with a Nominated Subcontractor.

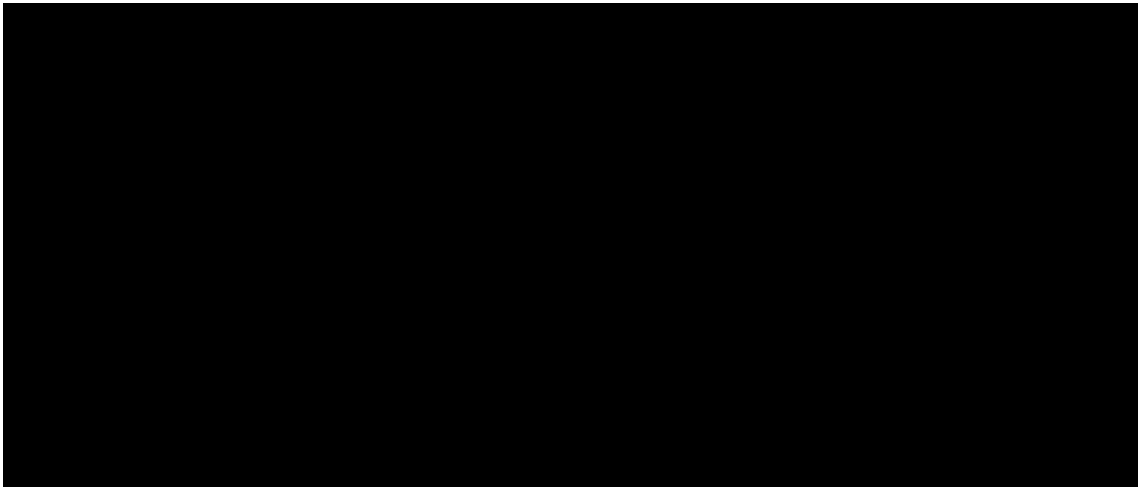
2.2A Lifts and Escalators Works

The CN Contractor acknowledges and agrees that:

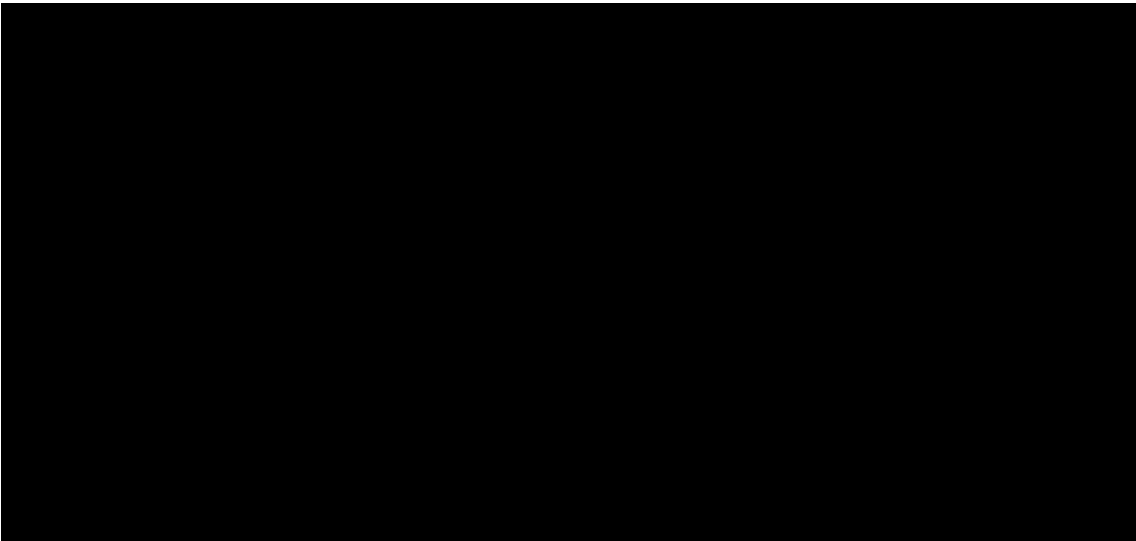
- (a) the Principal has entered into a framework contract with the L&E Contractor under which the L&E Contractor is required to make a standing offer to enter into contracts with other contractors of the Principal for Sydney Metro City & Southwest, including the CN Contractor on the terms and conditions set out in

the template form of L&E Supply and Installation Contract included in electronic form in Schedule 50;

- (b) in order to accept the offer made by the L&E Contractor under the framework contract, the CN Contractor must issue a notice to the L&E Contractor ("**L&E Supply and Installation Order**") (with a copy to the Principal's Representative) that is:
- (i) signed by a representative of the CN Contractor who has full authority to enter into the L&E Supply and Installation Contract on behalf of and to bind the CN Contractor; and
 - (ii) in the form of, and contains all information required by, Schedule 2 (*Form of Supply and Installation Order*) of the template form of L&E Supply and Installation Contract included in electronic form in Schedule 50, and includes:
 - A. in item 8A (*Delay Liquidated Damages*) of the L&E Supply and Installation Order, delay liquidated damages of [REDACTED] and [REDACTED]; and
 - B. in items 11 (*Original Supply and Installation Contract Sum*), 11A (*Security Amount*), 12 (*Support Services Fee*), 13 (*Additional off-site storage costs*) and 14 (*DCP Extension Fee*), the relevant amounts for each item of equipment forming part of the Lifts and Escalators Works which are consistent with the corresponding amounts set out in Schedule 2 (*DSI Contracts – Indicative scope and pricing schedule*) of the framework contract between the Principal and the L&E Contractor, as provided by the Principal to the CN Contractor;
- (c) upon issue of a valid L&E Supply and Installation Order to the L&E Contractor in accordance with clause 2.2A(b), the CN Contractor and the L&E Contractor will be deemed to have entered into the L&E Supply and Installation Contract, incorporating:
- (i) the terms and conditions set out in the template form of L&E Supply and Installation Contract included in electronic form in Schedule 50; and
 - (ii) the L&E Supply and Installation Order issued by the CN Contractor;
- (d) if the L&E Contractor notifies the CN Contractor that it considers a notice purported to be given by the CN Contractor under clause 2.2A(b) does not comply with the requirements of clause 2.2A(b), the CN Contractor must work directly and fully cooperate with the L&E Contractor in good faith and does everything reasonably necessary to facilitate the issue of a valid L&E Supply and Installation Order;



- (e) the CN Contractor is not entitled to make any Claim against the Principal arising out of or in connection with any delay or failure by the CN Contractor to issue a valid L&E Supply and Installation Order to the L&E Contractor; and

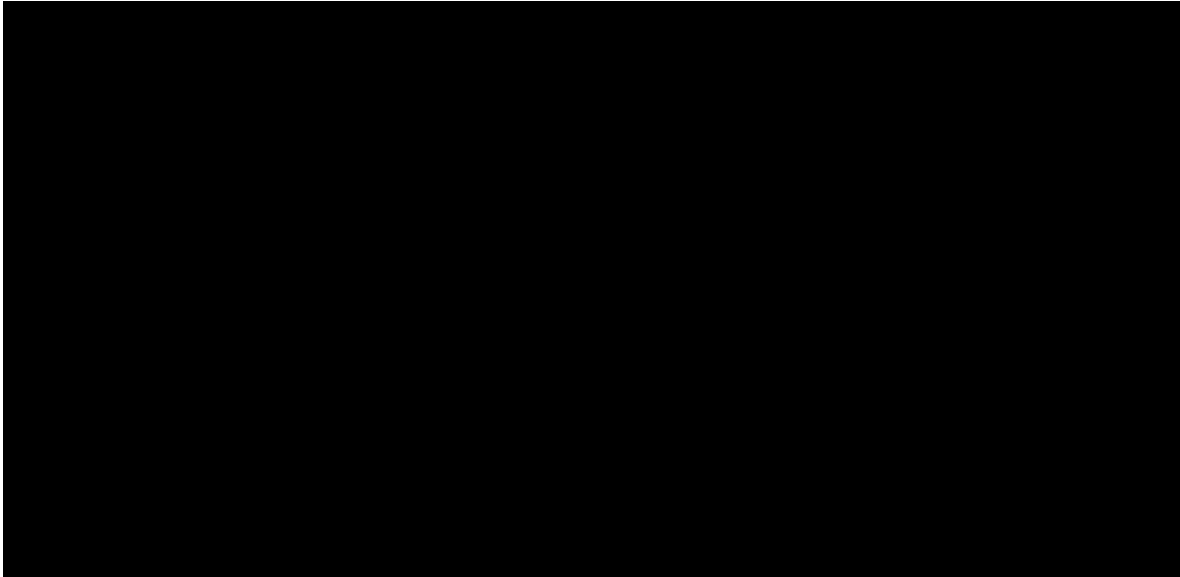


2.2B BMCS Works

The CN Contractor acknowledges and agrees that:

- (a) the Principal has entered into a framework contract with the BMCS Contractor under which the BMCS Contractor is required to make a standing offer to enter into contracts with other contractors of the Principal for Sydney Metro City & Southwest, including the CN Contractor on the terms and conditions of the template form of BMCS Supply and Installation Contract included in electronic form in Schedule 50;
- (b) in order to accept the offer made by the BMCS Contractor under the framework contract, the CN Contractor will be required to issue a notice to the BMCS Contractor ("**BMCS Supply and Installation Order**") (with a copy to the Principal's Representative) that is:
 - (i) signed by a representative of the CN Contractor who has full authority to enter into the BMCS Supply and Installation Contract on behalf of and to bind the CN Contractor; and

- (ii) in the form of, and contains all information required by, Schedule 3 (*Form of Supply and Installation Order*) of the template form of BMCS Supply and Installation Contract included in electronic form in Schedule 50;
- (c) upon issue of a valid BMCS Supply and Installation Order to the BMCS Contractor in accordance with clause 2.2B(b), the CN Contractor and the BMCS Contractor will be deemed to have entered into the BMCS Supply and Installation Contract, incorporating:
 - (i) the terms and conditions set out in the template form of BMCS Supply and Installation Contract; and
 - (ii) the BMCS Supply and Installation Order issued by the CN Contractor;
- (d) if the BMCS Contractor notifies the CN Contractor that it considers a notice purported to be given by the CN Contractor under clause 2.2B(b) does not comply with the requirements of clause 2.2B(b), the CN Contractor must work directly and fully cooperate with the BMCS Contractor in good faith and do everything reasonably necessary to facilitate the issue of a valid BMCS Supply and Installation Order;



- (e) the CN Contractor is not entitled to make any Claim against the Principal arising out of or in connection with any delay or failure by the CN Contractor to issue a valid BMCS Supply and Installation Order to the BMCS Contractor.

2.3 Compliance with Law

- (a) Subject to clause 2.3(c)(i), the CN Contractor must in carrying out the CN Contractor's Activities:
 - (i) comply (and ensure that its Associates comply) with, and ensure that the Works and the Temporary Works comply with, all applicable Law;

- (ii) not do, or fail to do (and ensure that its Associates do not do, or fail to do), anything that may cause the Principal to be in breach of any Law;
 - (iii) 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;
 - (iv) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it (or its Associates);
 - (v) at all times conform and comply with, and ensure that the Works and the Temporary Works conform and comply with, all Codes and Standards; and
 - (vi) not engage in any fraud, bribery or corruption.
- (b) Where there is a Change in Codes and Standards:
- (i) the CN 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 CN 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 CN 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 CN Contractor to disregard the Change in Codes and Standards; or
 - B. direct a Variation under clause 6.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 6.4.

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

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

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

- A. were obtained by the Principal prior to the date of this Contract;
or
 - B. will be obtained by the Principal after the date of this Contract where required;
- (ii) unless otherwise expressly specified in Schedule 4, comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the CN Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, including the Planning Approval, to comply with, satisfy, carry out and fulfil;
- (iii) in respect of any:
- A. Authority Approvals which are to be obtained by the Principal after the date of this Contract; or
 - B. conditions and requirements of Authority Approvals which pursuant to Schedule 4 are to be satisfied or fulfilled by the Principal,
- provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to obtain the Authority Approvals or satisfy or fulfil the conditions and requirements;
- (iv) for the purpose of obtaining all Authority Approvals as required by clause 2.3(c)(i), prepare all associated studies and reports required because of the design of the Temporary Works and the Shop Drawings proposed by the CN Contractor; and
- (v) as a condition precedent to Substantial Completion of the Trackway Portion and Completion of any other Portion, ensure that it has:
- A. obtained all Authority Approvals it is required to obtain under this Contract;
 - B. complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Contract;
 - C. without limiting clauses 2.3(c)(v)A and 2.3(c)(v)B, complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including obtaining the approval of any person for anything) under this Contract; and

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

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

(d) Where there is:

(i) a Change in Law that results in a change to, an addition to or omission from the Works; or

(ii) a Change in Law that is a COVID-19 Change in Law and any measures set out in the then current COVID-19 Management Plan are:

A. required to be changed in order for the CN Contractor to comply with the COVID-19 Change in Law; or

B. no longer necessary following the COVID-19 Change in Law in order for the CN Contractor to comply with Law,

and such changes to the measures set out in the then current COVID-19 Management Plan result in an increase or decrease in the CN Contractor's costs of carrying out the CN Contractor's Activities,

then:

(iii) if either party wishes this clause 2.3(d) to apply, then that party must, within 10 Business Days of the Change in Law [REDACTED]

[REDACTED]

[REDACTED], give a written notice to the other and the Principal's Representative stating that clause 2.3(d)(i) or clause 2.3(d)(ii) applies and containing details of the Change in Law including, where the notice is given by the CN Contractor, its impact on the CN Contractor's costs of carrying out the CN Contractor's Activities and any effect it will have on the CN Contractor's Program;

(iv) if such a notice is given, the Principal's Representative will determine:

A. where a Change in Law referred to in clause 2.3(d)(i) decreases the CN Contractor's costs of carrying out the CN Contractor's Activities in compliance with that Change in Law, a reasonable amount as the amount of the decrease;

B. where a Change in Law referred to in clause 2.3(d)(ii) decreases the costs of the CN Contractor carrying out the CN Contractor's Activities, a reasonable amount reflecting the changes being

required to the measures set out in the then current COVID-19 Management Plan as the amount of the decrease;

- C. where a Change in Law referred to in clause 2.3(d)(i) increases the CN Contractor's costs of carrying out the CN Contractor's Activities in compliance with that Change in Law, the amount of the additional costs reasonably and necessarily incurred by the CN Contractor on the basis that the CN Contractor took all reasonable steps to mitigate those increased costs; or
- D. where a Change in Law referred to in clause 2.3(d)(ii) increases the costs of the CN Contractor carrying out the CN Contractor's Activities, the amount of the additional costs reasonably and necessarily incurred by the CN Contractor in implementing the changes required to the measures set out in the then current COVID-19 Management Plan, on the basis that the CN Contractor took all reasonable steps to mitigate those increased costs,

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

- (v) the CN Contractor must comply with the Change in Law.
- (e) If a Change in Authority Approval occurs which necessitates a Variation, the CN Contractor must:
- (i) if the relevant Authority Approval was obtained by the Principal, within 10 Business Days of the date on which the CN Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or
 - (ii) otherwise within 10 Business Days of the Change in Authority Approval taking effect,

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

- (f) Other than as set out in clause 2.3(e), clause 6.3, clause 10.10 and clause 10.13, the CN 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 CN Contractor makes; or
 - B. failure by the CN Contractor to adequately satisfy itself,as to what work methodologies and Temporary Works might be permissible under all Authority Approvals.

(g) Notwithstanding clause 2.3(e), if:

- (i) any further environmental impact assessment is required under Part 4 or Division 5.1 of the EP&A Act (or their equivalents) in connection with the CN Contractor's Activities;
- (ii) the Principal determines that it is necessary to carry out any further environmental impact assessment under Part 5 of the EP&A Act (or its equivalent) in connection with the CN Contractor's Activities;
- (iii) an Authority Approval is modified or amended under the EP&A Act; or
- (iv) a new Authority Approval is issued under the EP&A Act in respect of the CN Contractor's Activities, either in substitution for or replacement of a Planning Approval or otherwise or any such new Authority Approval is modified under the EP&A Act,

arising out of or in connection with:

- (v) a Variation requested by the CN Contractor; or
- (vi) any failure by the CN Contractor to comply with its obligations under this Contract,

then the Principal will have no liability to the CN Contractor in relation to any such events and any actions or additional work arising out of or in connection with any such events, irrespective of who is required to, or does, carry out any such assessment.

2.3A Site C OSD – Stage 2 SSD Consent Conditions

- (a) The parties acknowledge and agree that:

- (i) the Principal is the proponent under the EP&A Act in respect of the Concept SSD Consent;
 - (ii) as at the date of this Contract, the Principal has submitted the Concept SSD Application;
 - (iii) the Baseline SSD Consent Conditions constitute the considered estimation by the Principal, at the date of this Contract, of the conditions and requirements that may be imposed under the Stage 2 SSD Consent (Site C OSD) and are not binding on the parties; and
 - (iv) notwithstanding clause 2.3(a)(iii), the terms of the Stage 2 SSD Consent (Site C OSD) which the NSW Minister for Planning and Public Spaces may issue arise from the exercise of a statutory discretion in accordance with the terms of the EP&A Act.
- (b) The CN Contractor warrants that the Baseline Contract Price (Site C OSD) contains sufficient allowances for compliance with the allocation of responsibility for the Baseline SSD Consent Conditions set out in clauses 2.6(b) and 2.6(c) of Annexure A to Schedule 15, in circumstances where the Principal elects to exercise Option 1 in accordance with clause 6.3.
- (c) The CN Contractor must, promptly following a request from the Principal:
- (i) provide assistance to the Principal and its Associates in relation to:
 - A. the Concept SSD Consent;
 - B. the Stage 2 SSD Application; and
 - C. the application process for the Construction Certificate (if required to be obtained),including attending any relevant meeting as required by the Principal, providing any information available to the CN Contractor and preparing any further documents, plans or reports required in respect of such processes; and
 - (ii) co-operate with the Principal in relation to the Stage 2 SSD Application and the application process for the Construction Certificate (if required to be obtained),
- each in accordance with Good Industry Practice.
- (d) Following the issue of the Concept SSD Consent by the NSW Minister for Planning and Public Spaces, the Principal will provide the CN Contractor with a notice attaching:
- (i) a copy of the Concept SSD Consent; and
 - (ii) a new clause 4 for Schedule 4 setting out the Principal's obligations in respect of the Concept SSD Consent, which must be based on clause 2.6(b) of Annexure A to Schedule 15 with such revisions as are

reasonable and necessary to reflect the terms of the Concept SSD Consent with which the CN Contractor will be required to comply if Option 1 is exercised by the Principal in accordance with clause 6.3.

(e) Within 15 Business Days of receiving notice from the Principal under clause 2.3A(d), the CN Contractor must give notice to the Principal's Representative setting out details of any requirements and conditions of the Concept SSD Consent which:

- (i) are not part of, or are different to, the Baseline SSD Consent Conditions; and
- (ii) the CN Contractor considers are likely to have a Material Adverse Planning Effect (on the assumption that the relevant requirement or condition will be replicated in the Stage 2 SSD Consent (Site C OSD)), including detailed reasons.

(f) The CN Contractor acknowledges and agrees that the Principal has no obligation and no liability to the CN Contractor in relation to:

- (i) any difference between the requirements and conditions of the Concept SSD Consent and the Baseline SSD Consent Conditions; or
- (ii) any Material Adverse Planning Effect notified by the CN Contractor pursuant to clause 2.3A(e),

but that the Principal may consider such information as part of the Stage 2 SSD Application process.

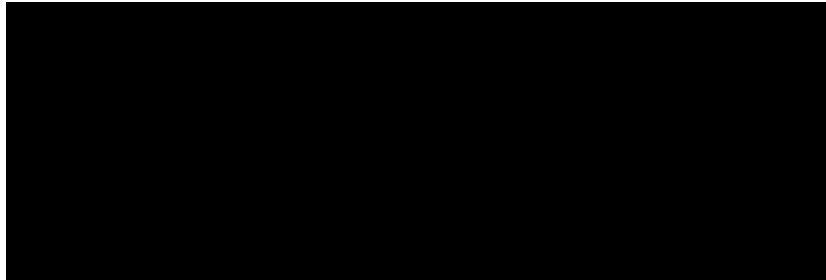
(g) Within 20 Business Days of the Stage 2 SSD Consent (Site C OSD) being issued by the NSW Minister for Planning and Public Spaces (or such longer period as the Principal reasonably requires), the Principal must give notice to the CN Contractor:

- (i) attaching:
 - A. a copy of the Stage 2 SSD Consent (Site C OSD);
 - B. a new clause 5 for Schedule 4 setting out the Principal's obligations in respect of Stage 2 SSD Consent (Site C OSD), which must be based on Schedule 4C with such revisions as are reasonable and necessary to reflect the terms of the Stage 2 SSD Consent (Site C OSD) (and with which the CN Contractor will be required to comply if Option 1 is exercised by the Principal in accordance with clause 6.3); and
 - C. if any amendments to the AFC Design Documentation for the Site C OSD Works (as set out in Annexure B of Schedule 15) are required in order to address the requirements or conditions of the Stage 2 SSD Consent (Site C OSD), the updated AFC Design Documentation for the Site C OSD Works; and

- (ii) stating the Principal considers that either:
 - A. there are no Unforeseeable SSD Consent Conditions; or
 - B. there are Unforeseeable SSD Consent Conditions, in which clause 2.3A(h) applies.

 - (h) If the Principal notifies the CN Contractor under clause 2.3A(g)(ii)B that it considers the Stage 2 SSD Consent (Site C OSD) contains Unforeseeable SSD Consent Conditions or issues updated AFC Design Documentation for the Site C OSD Works pursuant to clause 2.3A(g)(i)(C), then the CN Contractor must, within 10 Business Days of receiving the Principal's notice (or such longer period as the Principal's Representative reasonably agrees, having regard to the scope of the Unforeseeable SSD Consent Conditions or changes to the AFC Design Documentation, as applicable), provide the Principal's Representative with a written notice setting out:
 - (i) the CN Contractor's proposed adjustments to the Baseline Contract Price (Site C OSD), which must reflect the CN Contractor's reasonable assessment of the change in costs likely to be reasonably and necessarily incurred by the CN Contractor as a direct result of:
 - A. complying with, satisfying, carrying out and fulfilling the conditions and requirements of the Stage 2 SSD Consent (except to the extent that the new clause 5 for Schedule 4 provided by the Principal pursuant to clause 2.3A(g)(i)(B) states that the Principal will satisfy or fulfil any conditions and requirements of the Stage 2 SSD Consent (Site C OSD)), including:
 - 1) any additional costs likely to be reasonably and necessarily incurred by the CN Contractor as a direct result of the Unforeseeable SSD Consent Conditions; and
 - 2) any reduction in the costs likely to be reasonably and necessarily incurred by the CN Contractor as a direct result of any requirements and conditions of the Stage 2 SSD Consent (Site C OSD) being substantively different to the Baseline SSD Consent Conditions; and
 - B. the amendments (if any) to the AFC Design Documentation for the Site C OSD Works, as provided by the Principal pursuant to clause 2.3A(g)(i)(C),
- to be determined on the basis of:
- C. the prices and rates set out in Schedule 10 (where applicable or where it is otherwise reasonable to use them); or
 - D. to the extent clause 2.3A(h)(i)C does not apply, reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit), to be increased by the following amount:

- 1) where the proposed adjustment to the Baseline Contract Price (Site C OSD) is an increase:
 - a) the relevant percentage set out in item 29 of Schedule 1 of that amount; and



which will be in total satisfaction of all the CN Contractor's Overhead Costs and profit; or

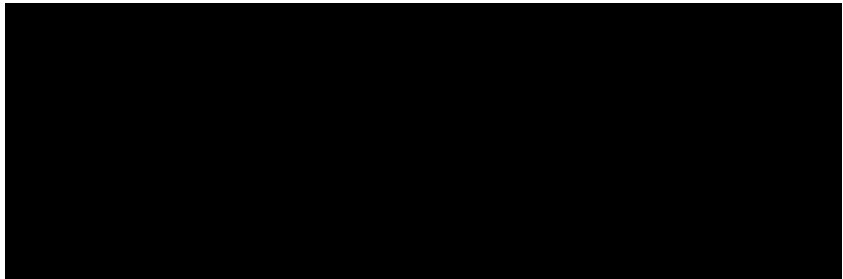
- 2) where the proposed adjustment to the Baseline Contract Price (Site C OSD) is a decrease, the relevant percentage set out in item 29 of Schedule 1 of the total amount for off-site Overhead Costs (as described in section 2 of Part B of Schedule 10) and profit;
- (ii) the effect (if any) that the CN Contractor considers the Unforeseeable SSD Consent Conditions and/or the changes to the AFC Design Documentation will have on the CN Contractor's Program, including:
- A. detailed particulars of:
 - 1) the likely delay (if any) to any activities that are critical to the maintenance of progress in the execution of the Site C OSD Works (on the assumption that the Principal will exercise Option 1 in accordance with clause 6.3) as a direct result of the Unforeseeable SSD Consent Conditions and/or the changes to the AFC Design Documentation (as applicable); and
 - 2) the measures the CN Contractor proposes to take to avoid, mitigate or minimise the effect on the CN Contractor's Program of the Unforeseeable SSD Consent Conditions and/or the changes to the AFC Design Documentation (as applicable);
 - B. if the CN Contractor considers that it will be delayed in carrying out the Site C OSD Works (on the assumption that the Principal will exercise Option 1 in accordance with clause 6.3) as a direct result of the Unforeseeable SSD Consent Conditions and/or the changes to the AFC Design Documentation (as applicable) in a manner that will delay it from achieving Substantial Completion of the Site C OSD Portion by [REDACTED] the CN Contractor's proposed extension of time to the Date for Substantial

Completion of the Site C OSD Portion (as set out in Schedule 15) together with the basis of calculating that period; and

- C. for the Principal's Representative's information only, an updated CN Contractor's Program that:
- 1) allows for the proposed extension of time to the Date for Substantial Completion of the Site C OSD Portion referred to in clause 2.3A(h)(ii)(B); and
 - 2) complies with and includes the details required by this Contract;
- (iii) the effect (if any) that the CN Contractor considers the Unforeseeable SSD Consent Conditions will have on the CN Contractor's ability to comply with its obligations under this Contract; and
- (iv) such other details as may be reasonably required by the Principal's Representative.
- (i) The Principal's Representative may, by written notice to the CN Contractor and in its absolute discretion:
- (i) accept or reject the CN Contractor's proposed adjustments to the Baseline Contract Price (Site C OSD), with reasons; and
 - (ii) accept or reject the CN Contractor's proposed extension to the Date for Substantial Completion of the Site C OSD Portion, with reasons,
- and if the Principal's Representative exercises Option 1 in accordance with clause 6.3 prior to providing written notice to the CN Contractor pursuant to this clause 2.3A(i), the Principal's Representative must provide such written notice to the CN Contractor within 15 Business Days of the date that Option 1 was exercised by the Principal's Representative.
- (j) If the Principal's Representative issues a notice under clause 2.3A(i) rejecting the CN Contractor's proposed adjustments to the Baseline Contract Price (Site C OSD):
- (i) the parties must discuss the CN Contractor's proposed adjustments to the Baseline Contract Price (Site C OSD) and the reasons why it was rejected by the Principal (as set out in the Principal's Representative's notice); and
 - (ii) use their reasonable endeavours to agree on a mutually acceptable adjustment to the Baseline Contract Price (Site C OSD).
- (k) If the parties are unable to reach agreement under clause 2.3A(j) within 15 Business Days of receipt of the Principal's notice under clause 2.3A(i), the Principal's Representative will:
- (i) determine an amount in respect of the change in costs likely to be reasonably and necessarily incurred by the CN Contractor as a direct

result of the Unforeseeable SSD Consent Conditions and/or the changes to the AFC Design Documentation on the basis of:

- A. the prices and rates set out in Schedule 10 (where applicable or where it is otherwise reasonable to use them); or
- B. to the extent paragraph (A) does not apply, reasonable prices and rates (which are to be exclusive of any amount for 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 amount:
 - 1) where the adjustment to the Baseline Contract Price (Site C OSD) is to be an increase:
 - a) the relevant percentage set out in item 29 of Schedule 1 of that amount; and



which will be in total satisfaction of all the CN Contractor's Overhead Costs and profit; or

- 2) where the adjustment to the Baseline Contract Price (Site C OSD) is to be a decrease, the relevant percentage set out in item 29 of Schedule 1 of the total amount for off-site Overhead Costs (as described in section 2 of Part B of Schedule 10) and profit,

provided however that the CN Contractor's entitlement under this paragraph (B) will not be greater than any amount set out in the CN Contractor's notice under clause 2.3A(h); and

- (ii) give the CN Contractor notice of the amount determined in accordance with clause 2.3A(k)(i).
- (l) If the Principal's Representative issues a notice under clause 2.3A(i) rejecting the CN Contractor's proposed extension to the Date for Substantial Completion of the Site C OSD Portion:
 - (i) the parties must discuss the CN Contractor's proposed extension of time and the reasons why it was rejected by the Principal (as set out in the Principal's Representative's notice); and

- (ii) use their reasonable endeavours to agree on a mutually acceptable extension to the Date for Substantial Completion of the Site C OSD Portion.
- (m) If the parties are unable to reach agreement under clause 2.3A(l) within 15 Business Days of receipt of the Principal's notice under clause 2.3A(i), the Principal's Representative will determine the reasonable extension of time to the Date for Substantial Completion of the Site C OSD Portion (as set out in Schedule 15) and give the CN Contractor notice of its determination.
- (n) If the CN Contractor disagrees with:
 - (i) the amount determined by the Principal's Representative under clause 2.3A(k)(i); or
 - (ii) the extension of time determined by the Principal's Representative under clause 2.3A(m),then:
 - (iii) the CN Contractor may refer the matter for dispute resolution in accordance with clause 15; and
 - (iv) if the Principal exercises Option 1 in accordance with clause 6.3:
 - A. the CN Contractor must proceed to implement the Option on the basis determined by the Principal's Representative notwithstanding that the matters in dispute have not been agreed or determined in accordance with clause 15; and
 - B. any necessary adjustments will be made following any agreement or determination under clause 15.
- (o) The CN Contractor acknowledges and agrees that:
 - (i) nothing in this clause affects or restricts the Principal's discretion in electing whether or not to proceed with Option 1;
 - (ii) the Principal may elect to proceed with Option 1 in circumstances where the adjustments to the Baseline Contract Price (Site C OSD) are not agreed or determined; and
 - (iii) if the Principal elects not to proceed with Option 1, the Principal must either:
 - A. engage a third party to construct the Site C OSD Works while the CN Contractor is still carrying out the CN Contractor's Activities on the Site, in which case:
 - 1) that third party will be the Site C OSD Developer and an Interface Contractor; and

- 2) clauses 2.9, 2.9C(b) and 2.9D will apply in respect of the Site C OSD Developer; or
- B. procure that the Final Design Documentation be updated to include the Site C Conversion Works and the Principal's Representative:
- 1) may issue a Variation Proposal Request under clause 6.1(a); and
 - 2) will issue a Variation Order under clause 6.2,
- in respect of the required changes to the Works as set out in the updated Final Design Documentation.
- (p) The Principal acknowledges and agrees that if it engages a third party to construct the Site C OSD Works in accordance with clause 2.3A(o)(iii)A, the CN Contractor will not be required to provide that third party with access to the Site prior to the Date for Milestone Achievement of Milestone 4.
- (q) The parties acknowledge and agree that:
- (i) the Original Contract Price and the Payment Breakdown Schedule contain an allowance of [REDACTED] for either:
 - A. the Site C Conversion Works; or
 - B. if the Principal exercises Option 1 in accordance with clause 6.3, part of the cost of carrying out the Site C OSD Works; and
 - (ii) if the Principal:
 - A. directs the Site C Variation:
 - 1) the adjustment to the Contract Sum and the Payment Breakdown Schedule set out in the Variation Order will be the amount determined or agreed in accordance with clause 6.4 less [REDACTED]; and
 - 2) other than for the adjustment to the Contract Sum referred to in clause 2.3A(q)(ii)A.1), the CN Contractor will not be entitled to any increase in the Contract Sum or to make any other Claim for payment in respect of the performance of the Site C Conversion Works;
 - B. notifies the CN Contractor that the Principal has engaged a third party to construct the Site C OSD Works in accordance with clause 2.3A(o)(iii)A:
 - 1) the Contract Sum will be deemed to be reduced by [REDACTED]; and

2) the item(s) in the Payment Breakdown Schedule relating to the Site C Conversion Works will be deemed to be deleted;
or

C. exercises Option 1, the Payment Breakdown Schedule will be amended in accordance with clause 2.5 of Annexure A to Schedule 15.

2.4 Legal Challenge to Planning Approvals

(a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for a Planning Approval or a modification of a Planning Approval, the CN Contractor must continue to perform its obligations under this Contract unless, as a result of that legal challenge, proceedings or action, it is otherwise:

- (i) ordered or directed by an Authority;
- (ii) ordered by a court or tribunal; or
- (iii) directed by the Principal or the Principal's Representative.

(b) Subject to clause 2.4(c), the Principal must pay the CN Contractor the additional costs reasonably and necessarily incurred by the CN Contractor as a direct result of:

- (i) an Authority order referred to in clause 2.4(a)(i);
- (ii) a court or tribunal order referred to in clause 2.4(a)(ii); or
- (iii) a direction by the Principal or Principal's Representative referred to in clause 2.4(a)(iii),

to the extent that such Authority order, court or tribunal order, or direction prevents the CN Contractor from achieving Substantial Completion of a Portion by the relevant Date for Substantial Completion, Milestone Achievement of the Milestone by the Date for Milestone Achievement or Completion of a Portion by the relevant Date for Completion. The CN Contractor's entitlements under this clause 2.4(b) and clause 10.13 will be its only right to payment arising out of or in any way in connection with an Authority order or direction, court or tribunal order or direction by the Principal or Principal's Representative in accordance with clause 2.4(a)(i), 2.4(a)(ii) or 2.4(a)(iii) (as applicable).

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

2.5 Utility Services

- (a) The CN Contractor must:
- (i) obtain and pay for any Utility Service it needs to perform its obligations under this Contract;
 - (ii) relocate, remove, modify, support, protect, reinstate and provide all Utility Services necessary for the CN Contractor to comply with its obligations under this Contract;
 - (iii) subject to clause 2.5(d), assume the risk of the existence, location, condition and availability of all Utility Services required for the execution of the CN Contractor's Activities;
 - (iv) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the CN Contractor to comply with its obligations under this Contract, including any such devices reasonably required by the Principal's Representative;
 - (v) carry out all Utility Service Works in accordance with the requirements of this Contract and, where applicable, the CN Contractor's obligations in Schedule 4B, Schedule 42 and Schedule 44;
 - (vi) exercise proper care when undertaking its obligations under clause 2.5(a)(ii) and make appropriate inquiries that any experienced and competent contractor would make to satisfy itself as to the existence, location, condition and/or availability of Utility Services;
 - (vii) despite any other provision in the Contract to the contrary, ensure that, as a consequence of or in relation to the performance of the CN Contractor's Activities:
 - A. there are no unplanned disruptions to the Utility Services;
 - B. any planned disruptions to the Utility Services are minimised; and
 - C. otherwise no Utility Services are:
 - 1) damaged or destroyed; or
 - 2) disconnected, disrupted, interfered with or interrupted during normal operating hours,by reason of the performance of the CN Contractor's Activities;
 - (viii) cooperate and coordinate with the owners of all Utility Services, and implement their requirements as part of the CN Contractor's Activities and must consult with and keep the Principal fully informed as to the CN Contractor's dealings with the Authorities providing the Utility Services;

- (ix) when each discrete part of the Utility Services Works are completed, provide the Principal's Representative with:
 - A. written notice from the relevant Authority with jurisdiction over the affected Utility Service confirming that the relevant part of the Utility Service Works is complete; or
 - B. if the relevant Authority has failed or refuses to provide such notice within 15 Business Days after it was requested by the CN Contractor:
 - 1) copies of all correspondence between the CN Contractor and the Authority relating to the notice referred to in clause 2.5(a)(ix)A; and
 - 2) evidence satisfactory to the Principal's Representative that the relevant part of the Utility Service Works is complete and satisfies the requirements of this Contract and, where applicable, the CN Contractor's obligations in Schedule 4B, Schedule 42 and Schedule 44; and
- (x) 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 CN Contractor's Activities, provided that the CN Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or its Associates contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.
- (b) Subject to clauses 2.5(c) and 2.5(d), the CN 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 Substantial Completion, Milestone Achievement or 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 CN Contractor's Activities.
- (c) If, in undertaking its obligations under clause 2.5(a)(ii), the CN Contractor is directed by a provider of a Utility Service to enhance or upgrade a Utility Service:
 - (i) the CN Contractor must immediately notify the Principal; and
 - (ii) the Principal's Representative will issue a Variation Order under clause 6.2 in respect of such enhancement or upgrade works.
- (d) If during the execution of the CN Contractor's Activities, the CN Contractor becomes aware of any Utility Services on the Site which are:
 - (i) not identified in the Station Specification; and

- (ii) not capable of otherwise having been anticipated by a competent and experienced contractor at the date of this Contract if such a contractor had:
 - A. examined all information made available in writing by the Principal to the CN Contractor (including the Station Specification) on or before the date of this Contract;
 - B. examined all information (including the Station Specification) relevant to the risks, contingencies and other circumstances and obtainable by the making of reasonable enquiries with respect to the CN Contractor's Activities; and
 - C. inspected the Site and its surroundings,

then:

- (iii) the CN Contractor must immediately notify the Principal; and
- (iv) if any updates to the Final Design Documentation are required as a consequence of the relevant Utility Service, the Principal's Representative will procure the required updates to the Final Design Documentation in accordance with clause 5.1A(b) and issue a Variation Order under clause 6.2 in respect of such updated Final Design Documentation.

2.5A Property Works

- (a) The CN Contractor must carry out the Property Works:
 - (i) in accordance with the requirements of this Contract; and
 - (ii) in a manner which minimises inconvenience and disruption to the Landowners of the Unowned Property Works Lands.
- (b) The CN Contractor must:
 - (i) rehabilitate any part of Unowned Property Works Lands to the state agreed between the CN Contractor and the Landowners of such Unowned Property Works Lands prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the CN Contractor obtaining access; and
 - (ii) otherwise repair any damage or degradation to any part of the Unowned Property Works Lands which arises out of or in any way in connection with the performance of its obligations under this clause 2.5A.
- (c) When each discrete part of the Property Works is completed, the CN Contractor must provide the Principal's Representative with:
 - (i) a certificate in the form of Schedule 13, duly executed by the relevant Landowner; or

- (ii) if the Landowner has failed or refused to sign a certificate in the form of Schedule 13 within 15 Business Days after it was provided by the CN Contractor to the relevant Landowner:
 - A. copies of all correspondence between the CN Contractor and the Landowner relating to the certificate referred to in clause 2.5A(c)(i); and
 - B. evidence satisfactory to the Principal's Representative that the relevant part of the Property Works is complete and satisfies the requirements of this Contract.
- (d) The CN Contractor must indemnify the Principal from and against any Claims, 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 Landowners of any Unowned Property Works Lands where:
 - (i) such Landowners have not duly signed a certificate in the form of Schedule 13; and
 - (ii) the Claim or loss arises out of or in any way in connection with a wrongful act or omission of the CN Contractor or its Associates in connection with the Property Works or a failure by the CN Contractor to comply with its obligations under this Contract relating to Property Works.

2.5B Local Area Works

- (a) The CN Contractor must carry out all Local Area Works in accordance with the requirements of this Contract and, where applicable, the CN Contractor's obligations in Schedule 4B, Schedule 42 and Schedule 44.
- (b) When the CN Contractor considers that a discrete part of the Local Area Works is complete, it must notify the Principal's Representative in writing and the Principal's Representative, the CN Contractor and a representative of the Authority with jurisdiction over the relevant part of the Local Area Works will jointly inspect the relevant part of the Local Area Works at a mutually convenient time.
- (c) When each discrete part of the Local Area Works are completed, the CN Contractor must provide the Principal's Representative with:
 - (i) written notice from the relevant Authority with jurisdiction over the relevant part of the Local Area Works stating that the Authority is satisfied that the relevant part of the Local Area Works is complete; or
 - (ii) if the relevant Authority has failed or refuses to provide such notice within 15 Business Days after it was requested by the CN Contractor:
 - A. a statement from the CN Contractor that the relevant Authority has failed to or refused to provide such notice; and

- B. copies of all correspondence between the CN Contractor and the Authority relating to the notice referred to in clause 2.5B(c)(i).

2.6 Crown Building Work

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

2.6A Home Building Act

- (a) Without limiting clause 2.3, the CN Contractor:
 - (i) warrants that it holds all required licences under the Home Building Act authorising it to carry out Home Building Work; and
 - (ii) must comply with the requirements set out in section 2 of Schedule 46.
- (b) The CN 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:
 - (i) the Home Building Act for alleged or actual liability for a breach of statutory warranties implied under the Home Building Act in relation to the Residential CODD Works or any alleged or actual liability on the part of the Principal under the Home Building Act in respect of the Residential CODD Works; and
 - (ii) breach by the CN Contractor of the warranty in clause 2.6A(a).
- (c) The parties acknowledge and agree that:
 - (i) prior to signing this Contract the CN Contractor provided the Principal with a copy of the Home Building Regulation Checklist; and
 - (ii) the Principal has signed the Home Building Regulation Checklist and has provided a signed copy of the Home Building Regulation Checklist to the CN Contractor.

2.7 Unconditional Undertakings and Parent Company Guarantee

- (a) Without limiting clause 2.7(e), the unconditional undertakings to be provided under this clause 2.7 are for the purpose of ensuring the due and proper performance by the CN Contractor of its obligations under this Contract.

- (b) The CN Contractor must give the Principal:
- (i) on the date of this Contract, [REDACTED] unconditional undertakings which in aggregate are equal to [REDACTED]; and
 - (ii) as a pre-condition to commencement of work on the Site, [REDACTED] further unconditional undertakings which in aggregate are equal to [REDACTED] so that, subject to its right of recourse, the Principal then holds unconditional undertakings which are in aggregate equal to [REDACTED].
- (c) Each unconditional undertaking to be provided under this clause 2.7 or clause 11.7(b) must:
- (i) be in the form of Schedule 8 (or such other form approved by the Principal);
 - (ii) be in favour of the Principal;
 - (iii) be issued by an Institution that:
 - A. is approved by the Principal; and
 - B. at all times maintains the Required Rating;
 - (iv) be payable at an office of the issuer in Sydney (or such other place approved by the Principal); and
 - (v) where required by Law, be duly stamped at the cost of the CN Contractor.
- (ca) If an unconditional undertaking provided under this clause 2.7 or 11.7(b) has an expiry date:
- (i) the CN Contractor must, if the Principal has not returned the relevant unconditional undertaking to the CN Contractor in accordance with this clause 2.7:
 - A. give the Principal's Representative at least 20 Business Days' prior written notice of the date on which it intends to provide a replacement unconditional undertaking under clause 2.7(ca)(i)B; and
 - B. no later than 20 Business Days prior to the relevant expiry date, provide the Principal with a replacement unconditional undertaking for the same amount as the unconditional undertaking that it is to replace and which satisfies the requirements of clause 2.7(c); and
 - (ii) promptly following receipt of such replacement unconditional undertaking, the Principal must deliver to the CN Contractor the unconditional undertaking that has been replaced.

- (cb) If the CN Contractor fails to provide the Principal with a replacement unconditional undertaking as required by clause 2.7(ca)(i)B, the Principal:
 - (i) may call on the full amount of the relevant unconditional undertaking which was required to be replaced without notice to the CN Contractor;
 - (ii) must hold the amount of that unconditional undertaking as a cash deposit (**Cash Deposit**) in a separate bank account in the name of the Principal (**Cash Deposit Account**);
 - (iii) may withdraw money (including accrued interest) from the Cash Deposit Account and use that money:
 - A. in accordance with clause 2.7(e)(i) as if the Cash Deposit were the amount secured by the relevant unconditional undertaking; and
 - B. to pay all costs, charges, expenses and Taxes payable in connection with that Cash Deposit Account; and
 - (iv) must return the amount held in the relevant Cash Deposit Account (including accrued interest but less any amounts payable to or by the Principal under clause 2.7(cb)(iii)) to the CN Contractor:
 - A. following receipt of a replacement unconditional undertaking subsequently provided by the CN Contractor (if any); or
 - B. if the CN Contractor does not provide a replacement unconditional undertaking, in accordance with clause 2.7(d) as if the amount in that Cash Deposit Account were the relevant unconditional undertaking.
- (d) Subject to its rights to have recourse to the unconditional undertakings and subject to clauses 2.7(h), 14.10 and 14.12, the Principal must:
 - (i) within 20 Business Days after the Date of Completion of the last Portion to reach Completion, release so much of the unconditional undertakings provided by the CN 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 20 Business 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 CN Contractor under clause 2.7(b) as may be then held by the Principal, █████ 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 20 Business Days after the date of the Final Certificate, release

the balance of the unconditional undertakings provided by the CN Contractor under clause 2.7(b) as may be then held by the Principal.

- (e) The Principal:
 - (i) may have recourse to any unconditional undertaking provided under this clause 2.7 or clause 11.7(b) at any time;
 - (ii) is not obliged to pay the CN 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(e)(ii)B on trust for the CN Contractor.
- (f) The CN Contractor must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of any unconditional undertaking provided under this clause 2.7 or clause 11.7(b) from paying the Principal pursuant to the unconditional undertaking;
 - (ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 2.7 or clause 11.7(b) or receiving payment under any such unconditional undertaking; or
 - (iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.7 or clause 11.7(b).
- (g) If item 25 of Schedule 1 states that a Parent Company Guarantee is required, the CN Contractor must:
 - (i) give the Principal:
 - A. on or before the date of this Contract, a guarantee duly executed by the Parent Company Guarantor in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped; and
 - B. within 5 Business Days of the date of this Contract, legal opinions:
 - 1) from appropriately qualified legal practitioners in both:
 - aa) Australia; and
 - bb) the jurisdiction of incorporation of the Parent Company Guarantor ("**Guarantor's Jurisdiction**"), who are satisfactory to the Principal;

- 2) on which the Principal is entitled to rely; and
- 3) in form and substance satisfactory to the Principal (in its absolute discretion),

which together confirm, amongst other things:

- 4) the due execution of the Parent Company Guarantee by the Parent Company Guarantor;
 - 5) that the Parent Company Guarantee is valid, binding and enforceable under both:
 - a) the relevant laws of New South Wales; and
 - b) the relevant laws of the Guarantor's Jurisdiction; and
 - 6) that the choice of New South Wales law under clause 11 of the Parent Company Guarantee will be upheld by the relevant court in the Guarantor's Jurisdiction and that the relevant court in the Guarantor's Jurisdiction will recognise and enforce a judgment obtained in a relevant Australian court against the Parent Company Guarantor following enforcement of the Parent Company Guarantee; and
- (ii) provide the Principal with any other assistance reasonably required by the Principal to enforce the Parent Company Guarantee in the Guarantor's Jurisdiction.
- (h) 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 CN 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 CN Contractor arising out of, or in any way in connection with, this Contract or the CN Contractor's Activities whether for damages (including liquidated damages) or otherwise.

2.8 Long Service Leave Levy

Where the CN Contractor is specified in item 26 of Schedule 1 as being responsible for payment of the long service leave levy, then, before commencing any construction work under this Contract (including any construction of Temporary Works), the CN Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service leave levy in respect of the CN 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 and co-ordination with Interface Contractors

- (a) Without limiting the CN Contractor's obligations under the Project Cooperation and Integration Deeds, the CN Contractor:

- (i) acknowledges that:

- A. the Interface Work forms part of Sydney Metro City & Southwest;
- B. the CN Contractor's Activities interface with the Interface Work;
- C. Interface Contractors will be executing work on parts of the Site or Extra Land, or adjacent to the Site or Extra Land, at the same time as the CN Contractor is performing the CN Contractor's Activities;
- D. the Principal may grant the Interface Contractors a non-exclusive licence to use and occupy the Site to carry out the Interface Works;
- E. it may require certain work methodology input from Interface Contractors to coordinate the Works and Temporary Works with the Interface Work;
- F. Interface Contractors may require the CN Contractor to provide work methodology information to them to coordinate the Interface Work with the Works and Temporary Works, and this must be provided in a timely manner by the CN Contractor; and
- G. any delay in the performance of the CN Contractor's Activities or in the CN 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 CN 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 (if the CN Contractor's consent or authority is required) to execute the Interface Work on the applicable parts of the Site or Extra Land, or on any adjacent property to the Site or Extra Land:
 - 1) at the same time as the CN Contractor is performing the CN 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 that they have safe, clean and clear access to those parts of the Site or Extra Land, or property adjacent to or in the vicinity of the Site or Extra Land, required by that Interface Contractor for the purpose of carrying out their work subject to, where the relevant Interface Contractor is carrying out Site Interface Work on the Site or Extra Land during any period in which the CN Contractor has been engaged as principal contractor, the Interface Contractor executing a deed poll in favour of the CN Contractor, as principal contractor, and the Principal in the form set out in Schedule 23;

- B. protect the Works, Temporary Works and other improvements on the Site or Extra Land from accidental damage by Interface Contractors and provide means of receiving and storing goods and equipment supplied by Interface Contractors;
- C. fully co-operate with the 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 CN Contractor's Activities with the Interface Work and for this purpose:
 - 1) make proper allowance in all programs for the Interface Work;
 - 2) review all programs provided by Interface Contractors and confirm that they adequately allow for the CN Contractor's Activities and the interfaces of the Interface Work with the CN 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 or progress of the CN Contractor's Activities or the achievement of Substantial Completion or Completion of any Portion or Milestone Achievement of any Milestone;
 - 5) provide the Interface Contractors with sufficient information about the current and expected CN Contractor's Activities to assist them to coordinate their Interface Work with the CN Contractor's Activities; and
 - 6) it must cooperate, meet with, liaise, and share information so that the CN Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);

- E. perform the CN Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- F. be responsible for coordinating the CN Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, the Interface Contractors' personnel and Interface Work, including providing to the Principal's Representative copies of work method statements for those parts of the Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- G. work directly with Interface Contractors where required to complete the design of the Temporary Works and Shop Drawings and:
 - 1) provide all necessary information to Interface Contractors in respect of the Works (excluding design information which has not been provided by or on behalf of the Principal to the CN Contractor) and Temporary Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal; and
 - 2) otherwise comply with this Contract, including Station Specification;
- H. attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others each 10 Business Days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- I. 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 Station Specification 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;
- J. ensure that any written notice given under clause 2.9(a)(ii) provides the Interface Contractor with the longest possible time for the provision of the information;
- K. when any information is requested by Interface Contractors (excluding design information which has not been provided by or on behalf of the Principal to the CN Contractor), including confirming the compatibility or suitability of work methods to be

used in, or any other aspect of, the Interface Work with the Works or the CN Contractor's Activities:

- 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; and
 - 2) ensure and warrant (as at the date the information is provided) that the information (excluding design information unless and to the extent it relates to the Temporary Works or Shop Drawings) provided is accurate; and
- L. use its best endeavours to resolve any problems (excluding design problems unless and to the extent they relate to the Temporary Works), and work closely and iteratively, with Interface Contractors, including providing work methodologies, to achieve the best solution to such problems, related to:
- 1) the provision of information;
 - 2) the obtaining of information;
 - 3) the adequacy of information provided to, or received from, Interface Contractors;
 - 4) the compatibility of the Works and Temporary Works with the Interface Work;
 - 5) coordination in accordance with this clause 2.9(a); and
 - 6) technical issues with the information provided to, or received from, Interface Contractors;
- (iii) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to construction work under this Contract or otherwise have an adverse effect upon the CN Contractor's Activities; and
- (iv) acknowledges that the Principal will ensure that conditions similar to those in this clause 2.9(a) applying to the CN Contractor will apply to all the Interface Contractors engaged by the Principal that are working on the Site.
- (b) Where the CN Contractor has complied with all its obligations in clause 2.9, the CN 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 CN Contractor's notice under clause 2.9(b):
- (i) the Principal's Representative must promptly convene a meeting between the CN Contractor, the relevant Interface Contractor and any

- other relevant person (as reasonably determined by Principal's Representative);
- (ii) the Principal's Representative must work in good faith with the CN Contractor and the Interface Contractor to resolve the issues or dispute; and
 - (iii) the CN Contractor must work in good faith with the Principal's Representative and the Interface Contractor to resolve the issues or dispute.
- (d) The CN Contractor:
- (i) acknowledges and agrees that:
 - A. the Interface Contractors will require access to the Site in order to perform their obligations under their respective contracts with the Principal;
 - B. no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the CN Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative); or
 - C. subject to clause 5A.6(c), clause 5A.7, clause 10.7 and clause 10.13 and except where the Principal's Representative directs a Variation in circumstances where the CN Contractor has fully complied with clause 2.9, the Principal will not be liable upon any Claim by the CN 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 CN Contractor's Program contain sufficient allowances for the assumption by the CN Contractor of the obligations and risks under clause 2.9(a) and this clause 2.9(d).

2.9A Cooperation and Integration Deeds

- (a) The CN Contractor must:
- (i) within 5 Business Days after receipt of a request from the Principal's Representative, provide to the Principal:
 - A. the TSE Cooperation and Integration Deed;
 - B. the Operator Cooperation and Integration Deed; and

- C. each Interface Contractor Cooperation and Integration Deed with any Interface Contractor nominated by the Principal,

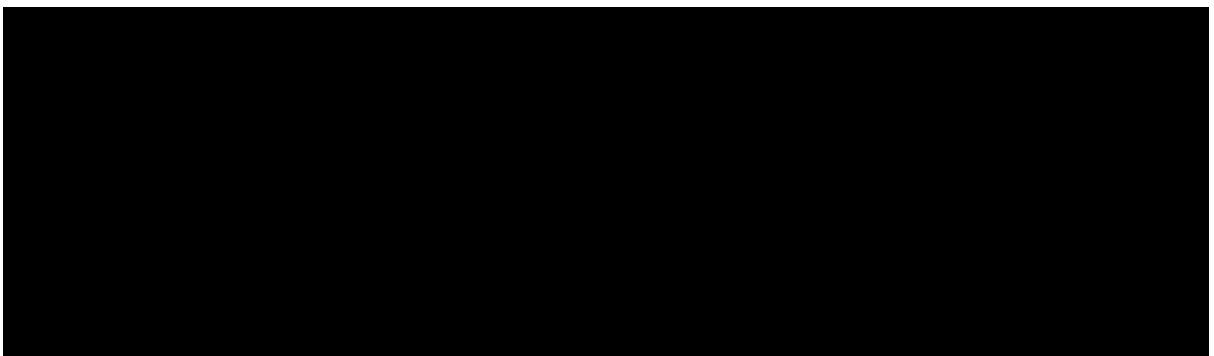
each duly executed by the CN Contractor in the number of counterparts required by the Principal; and
- (ii) at all relevant times comply with the terms of the Project Cooperation and Integration Deeds.
- (b) If the Principal makes a request under clause 2.9A(a)(i) for the CN Contractor to execute:
 - (i) a TSE Cooperation and Integration Deed to which the TSE Contractor will be party;
 - (ii) an Operator Cooperation and Integration Deed to which the Operator will be party; or
 - (iii) an Interface Contractor Cooperation and Integration Deed to which any Interface Contractor nominated by the Principal will be party,

the Principal must, within 20 Business Days of receiving the executed documents from the CN Contractor, itself execute, and procure that the TSE Contractor, the Operator or the relevant Interface Contractor nominated by the Principal (as applicable) executes, the relevant document.

2.9B Master Interface Protocols Deed Poll

- (a) The CN Contractor must:
 - (i) within [REDACTED] after receipt of a request from the Principal's Representative, provide to the Principal the Master Interface Protocols Deed Poll, duly executed by the CN Contractor; and
 - (ii) at all relevant times comply with the terms of the Master Interface Protocols Deed Poll.
- (b) The Principal will procure that the Operator and each Interface Contractor nominated by the Principal (not including the TSE Contractor) executes a Master Interface Protocols Deed Poll.

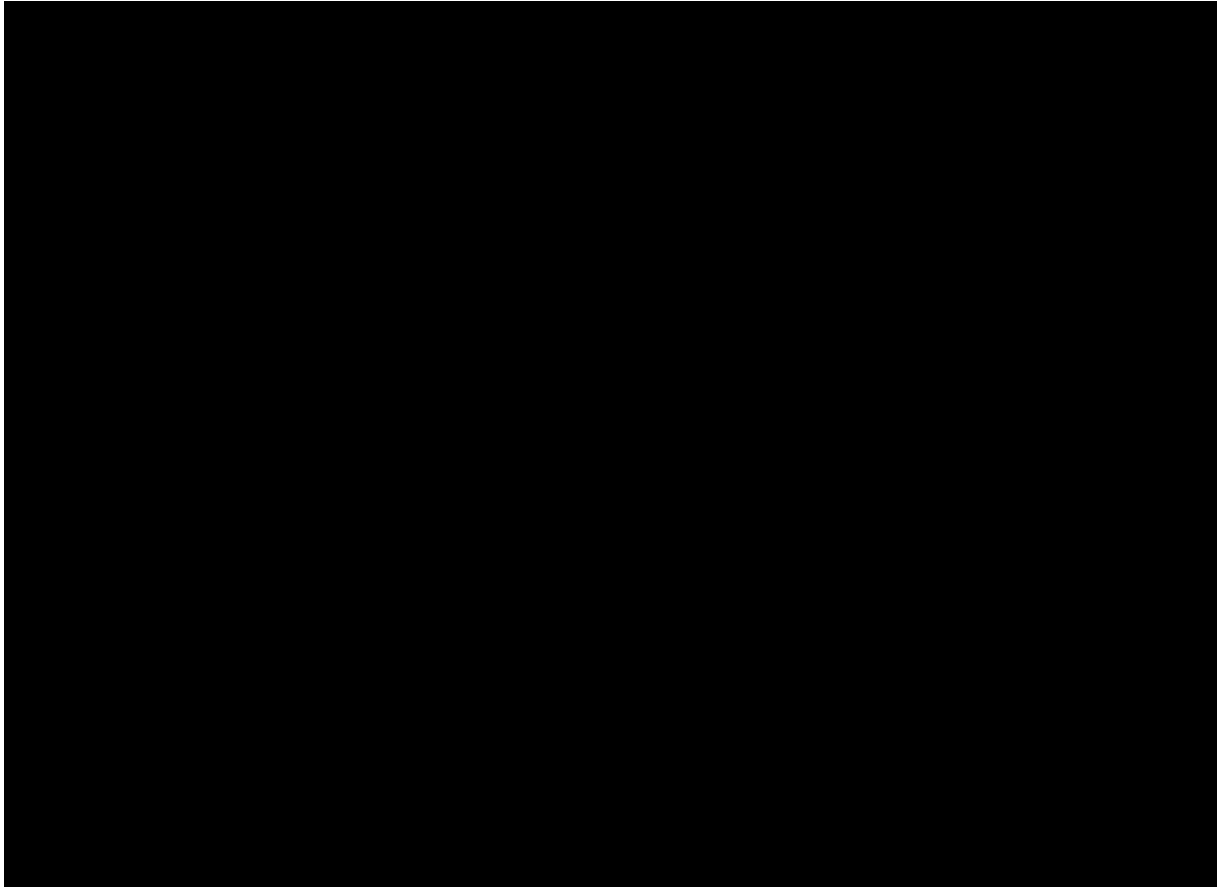
2.9C Collateral Warranty Deeds Poll



2.9D Interface with Over Station Development

The CN Contractor acknowledges and agrees that:

- (a) the Principal may engage one or more OSD Developers in respect of the Over Station Developments while the CN Contractor is still carrying out the CN Contractor's Activities on the Site;
- (b) the CN Contractor must provide the Principal such assistance, documentation and records as may be necessary or reasonably required by the Principal in relation to the procurement of the OSD Developer(s);
- (c) the CN Contractor must not engage with the OSD Developer(s), including in relation to the OSD Developer(s) being provided with access to the Site prior to the Date of Completion of the last Portion to achieve Completion, without the prior written approval of the Principal's Representative (which may be conditional but which will not be unreasonably withheld); and
- (d) subject to clause 10.7 and clause 10.13, the Principal will have no liability to the CN Contractor for any loss incurred or suffered by the CN Contractor or its Associates in connection with:
 - (i) the interface between the CN Contractor's Activities and the Over Station Developments; or
 - (ii) any act or omission of an OSD Developer.





2.10 Incident Management Reporting

- (a) The CN Contractor must identify clear guidelines for responding to any Incident arising from the performance of the CN Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the Station Specification.
- (b) Should an Incident occur which:
 - (i) is reportable under any relevant Law, the CN Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the Station Specification; and
 - (ii) relates to rail safety, the CN Contractor must notify the Principal and any relevant Rail Transport Agency management centre or the nearest network control officer.
- (c) In relation to any environmental or safety Incident involving Contamination, Pollution or other waste that arises during the performance of the CN Contractor's Activities, the CN Contractor must:
 - (i) at its own cost (subject to clause 2.10(k)) 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 (subject to clause 2.10(k)) 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.

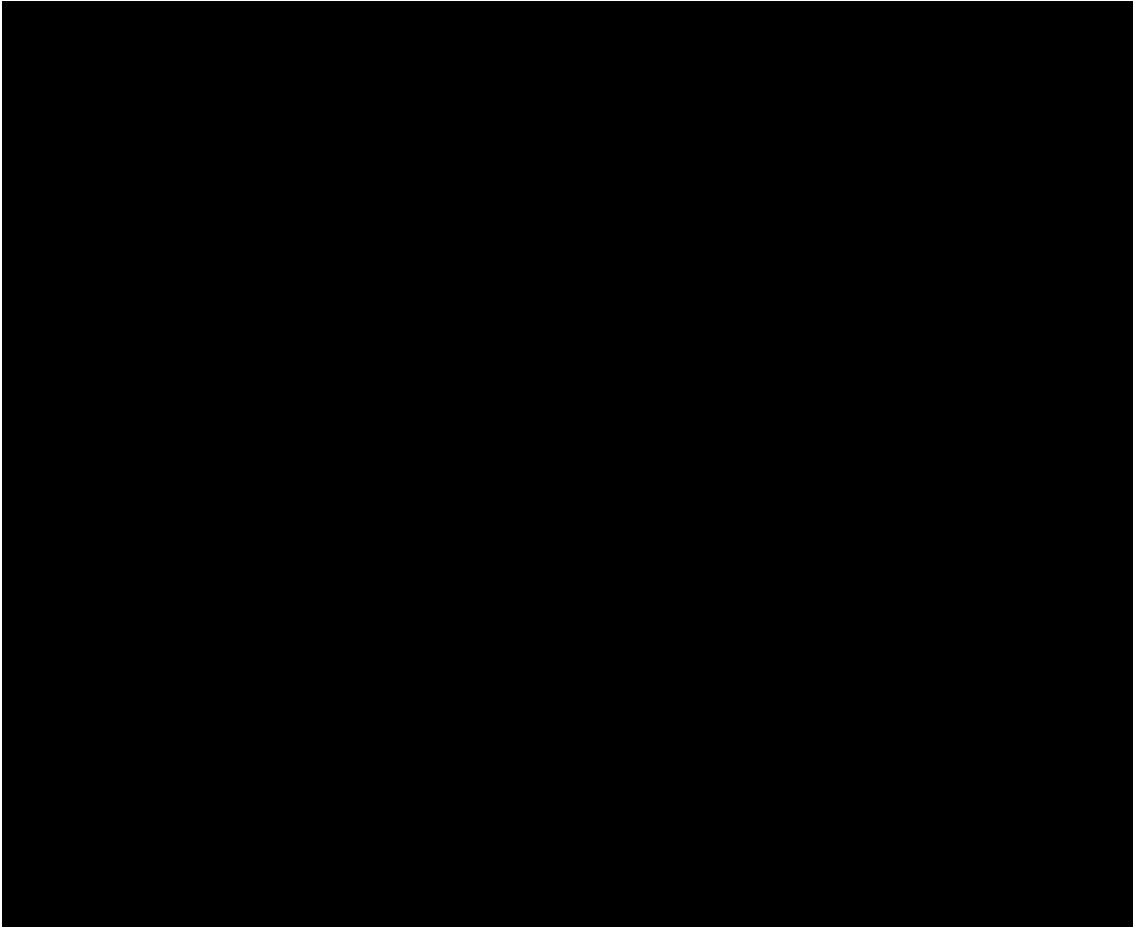
- (d) If the CN Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Contract, immediately terminate the Contract by written notice to the CN Contractor.
- (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 CN 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, subject to clause 2.10(j), be entitled to recover its reasonable costs and expenses from the CN Contractor as a debt due from the CN Contractor to the Principal.
- (f) Without prejudice to the Principal's other rights under this Contract, the Principal's Representative may issue a direction under clause 10.14 requiring the CN Contractor to suspend the carrying out of the whole or any part of the CN 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, ONRSR or other work health and safety regulator) or damage to property.

Subject to clause 2.10(k), the Principal will not be liable upon any Claim by the CN Contractor for any cost, expense, loss, delay, disruption or penalty arising out of or in connection with:

- (iii) any suspension of the CN Contractor's Activities 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(h), including complying with the steps which the Principal's Representative directs that the CN Contractor must take before the Principal's Representative will issue a direction to recommence the CN 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 CN Contractor may not recommence the CN Contractor's Activities in respect of the part of the CN

Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the CN Contractor permitting the CN Contractor to recommence the CN Contractor's Activities affected by the notice to suspend.

- (h) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.10(f) the Principal's Representative may also direct the CN Contractor as to the steps which the CN Contractor must take before the Principal's Representative will issue a direction pursuant to clause 10.14 permitting the CN Contractor to recommence the CN Contractor's Activities affected by the notice to suspend. In these circumstances the CN 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 CN Contractor has complied with the requirements of the direction issued under this clause 2.10(h) will the Principal's Representative issue a direction to the CN Contractor permitting the CN Contractor to recommence the CN Contractor's Activities affected by the notice to suspend.
- (i) The Principal will, subject to clause 2.10(j), 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 CN Contractor to the Principal.





2.11 Principal Contractor

- (a) In this clause 2.11 the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.

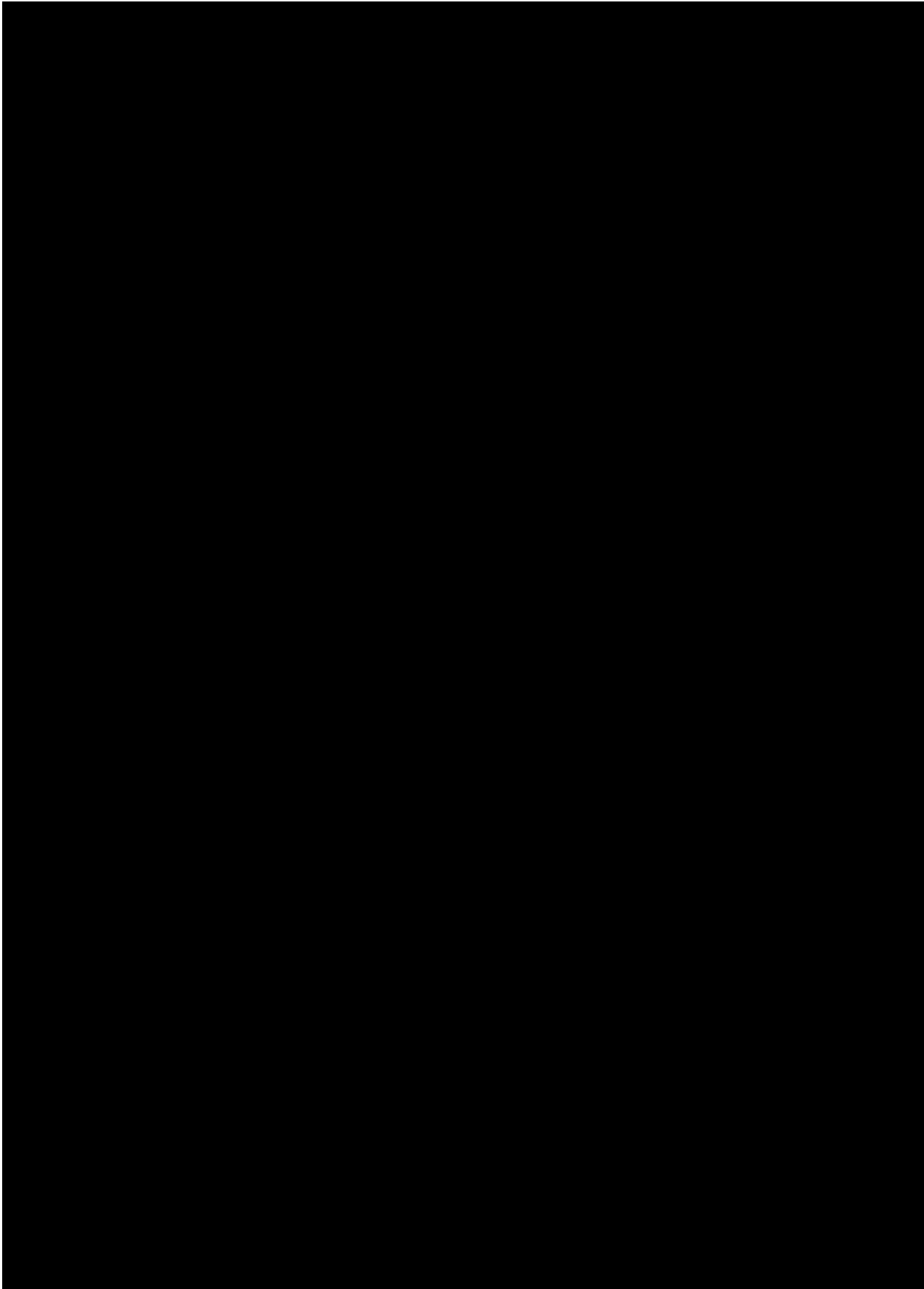
For the purpose of the WHS Legislation and the Contract:

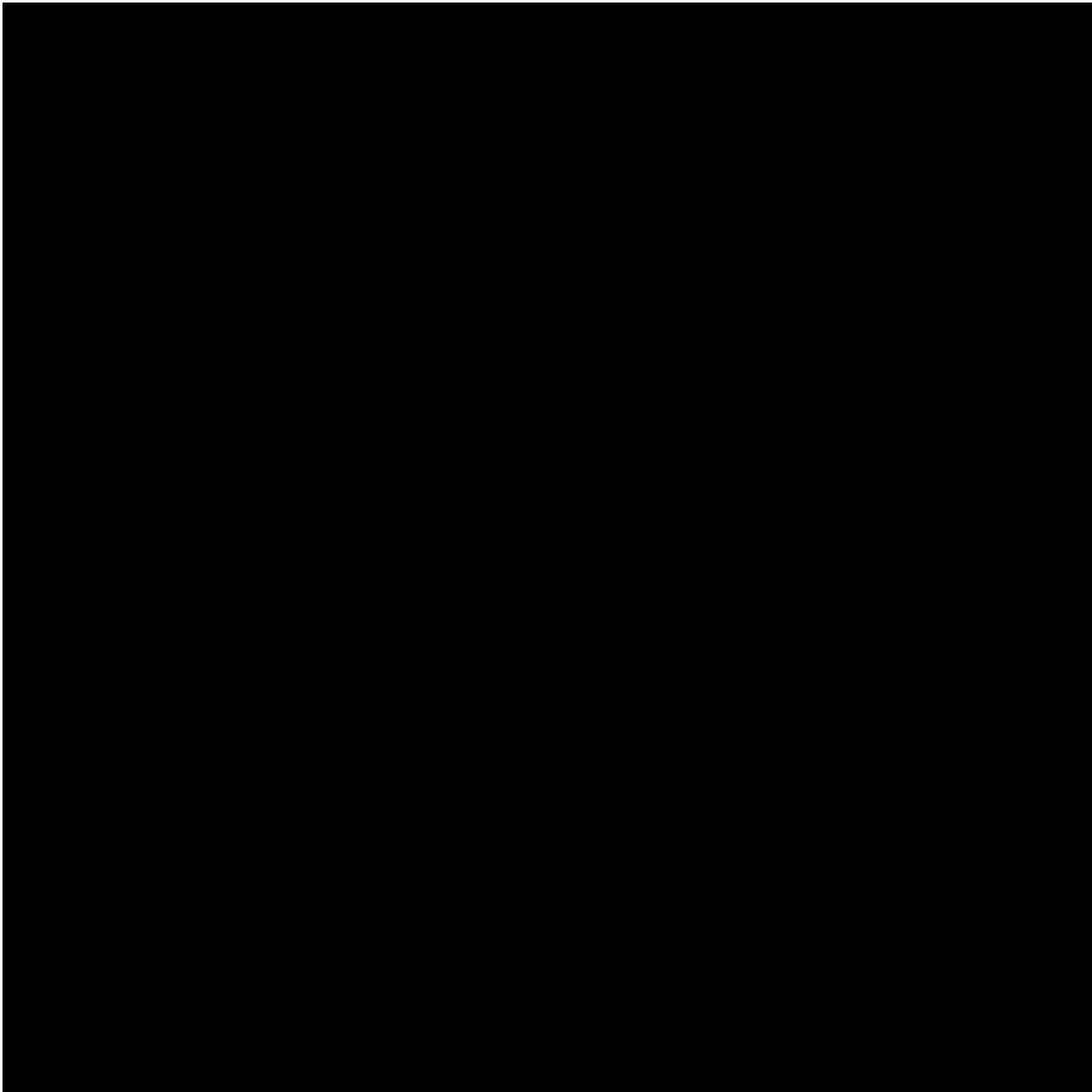
- (i) the construction work involved in the CN Contractor's Activities; and
- (ii) any construction work carried out on the Site by any Interface Contractor, the Principal or any other person which is performed during any period in which the CN Contractor has been engaged as principal contractor ("**Site Interface Work**"),

are taken to be part of the same 'construction project'.

- (b) If the CN Contractor is specified in item 27 of Schedule 1 as being the principal contractor:
- (i) to the extent that the CN Contractor's Activities or any Site Interface Work includes construction work, the Principal:
 - A. engages the CN Contractor as the principal contractor in respect of the CN Contractor's Activities and all Site Interface Work;
 - B. authorises the CN Contractor to have management and control over the Site and of each workplace at which the CN Contractor's Activities and the Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - C. during any period in which the CN Contractor has been engaged as principal contractor, must:

- 1) give the CN Contractor prior notice of any Interface Contractor undertaking Site Interface Work before such Interface Contractor commences; and
 - 2) provide the CN Contractor with executed deed polls in favour of the CN Contractor in the form set out in Schedule 23 from each Interface Contractor engaged by the Principal undertaking Site Interface Work; and
- (ii) the CN Contractor:
- A. accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation and the Contract;
 - B. must exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
 - 1) ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and
 - 2) enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Site.
- (c) To the extent not prohibited by Law, the CN Contractor must indemnify the Principal against any damage, expense, loss (including reasonable legal fees) or liability suffered or incurred by the Principal, arising out of or in connection with any failure of:
- (i) the CN Contractor to exercise or fulfil the functions and responsibilities of a principal contractor under the WHS Legislation that the CN Contractor is required to discharge in accordance with this clause 2.11; or
 - (ii) the CN Contractor to otherwise comply with the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law or other Law concerning work health and safety or clauses 4.4 and 7.8.
- (d) During any period where the CN Contractor is not specified in item 27 of Schedule 1 to be the principal contractor, the CN Contractor:
- (i) acknowledges that the person who is specified in item 27 of Schedule 1 is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that Site during the period which that person is specified as being the principal contractor in item 27 of Schedule 1; and
 - (ii) must comply with any exercise by the person referred to in clause 2.11(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.

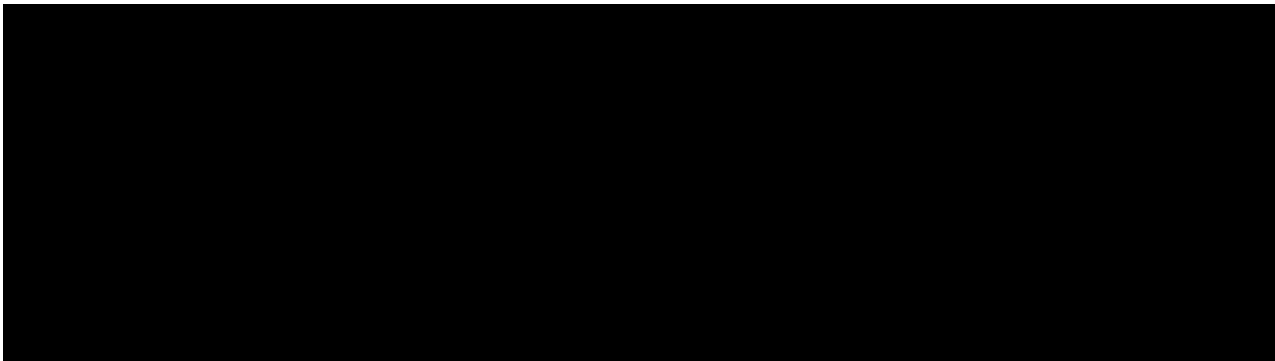


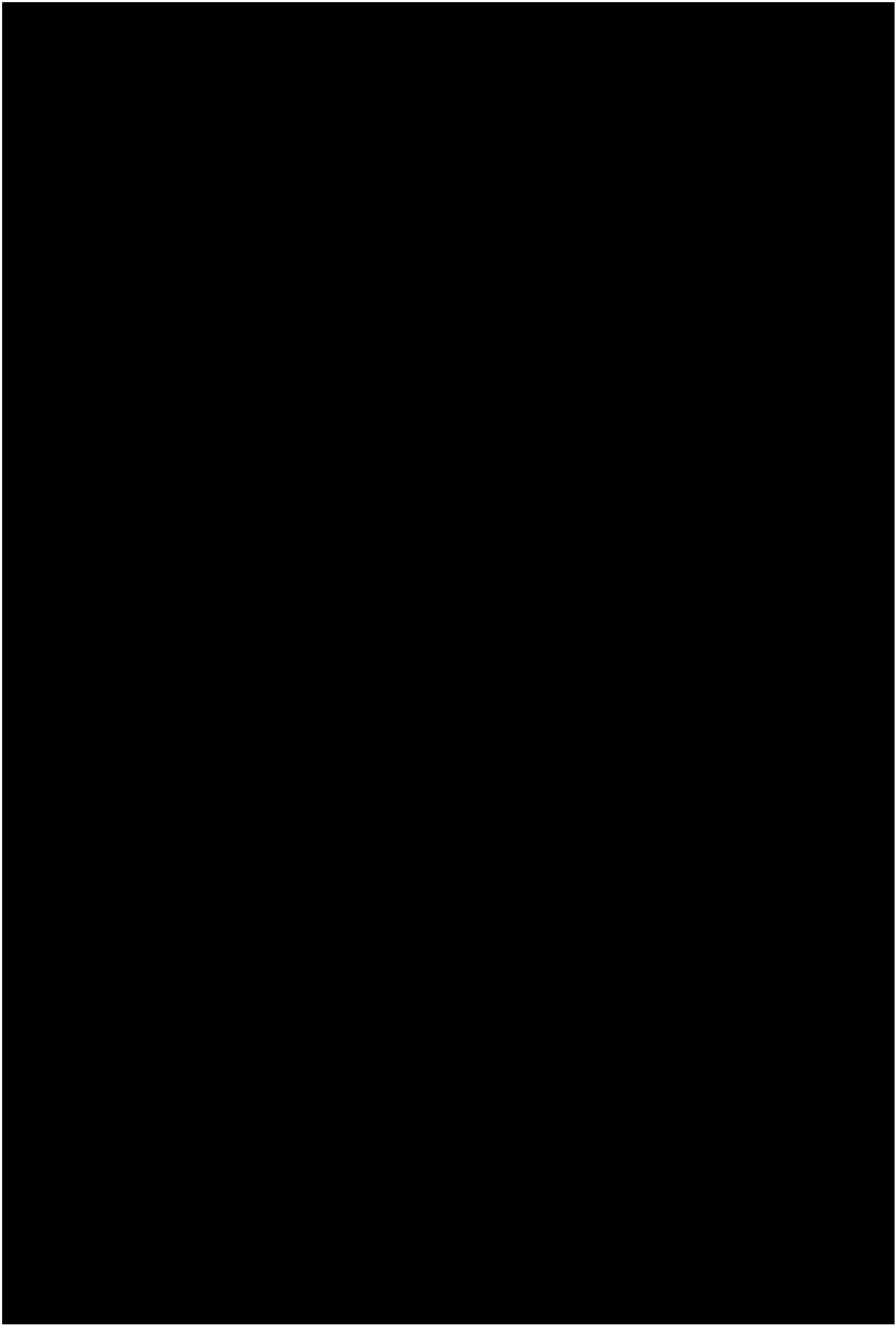


2.13 Not used

2.14 Not used

2.15 Adjoining Properties







2.16 Project Plans

- (a) The CN Contractor must:
 - (i) develop the Project Plans as required by the Station Specification;
 - (ii) ensure that the relevant Project Plans are consistent with (as applicable):
 - A. the Initial Project Plans; or
 - B. the strategies for certain Project Plans submitted by the CN Contractor as part of its Tender, as set out in Exhibit E;
 - (iii) update the Project Plans as required by the Station Specification or as directed by the Principal's Representative; and
 - (iv) comply with:
 - A. the Project Plans; and
 - B. to the extent the Project Plans are not finalised, the Initial Project Plans or the strategies set out in Exhibit E (as applicable) as if they were the Project Plans.
- (b) The CN Contractor warrants that:
 - (i) the Initial COVID-19 Management Plan includes:
 - A. all mitigation measures the CN Contractor is implementing with respect to COVID-19 (including, but not limited to, supply chain impacts and WHS Legislation), and those in response to any and all:

- 1) Laws in response to COVID-19; and
- 2) public health orders issued by the relevant Authority in New South Wales under the *Public Health Act 2010* (NSW) or by the relevant Authority in another Australian jurisdiction under the equivalent public health legislation in response to COVID-19,

("COVID-19 Laws") that are in place at the date of this Contract;
and

- B. any relevant COVID-19 related assumptions on which the Original Contract Price and the Initial CN Contractor's Program are based;
 - (ii) the Original Contract Price and the Initial CN Contractor's Program contain sufficient allowances for the assumption by the CN Contractor of all risk in relation to the impact of COVID-19 on the performance of the CN Contractor's Activities as at the date of this Contract, including for complying with and implementing the measures set out in the Initial COVID-19 Management Plan; and
 - (iii) any updated COVID-19 Management Plan will include all mitigation measures the CN Contractor is implementing with respect to COVID-19 (including, but not limited to, supply chain impacts and WHS Legislation), and those in response to any and all COVID-19 Laws in place at the date of the relevant update.

2.17 Hold Points and Witness Points

The CN Contractor:

- (a) must comply with the Hold Point and Witness Point procedures required by this Contract, including as set out in the Station Specification or as inserted in the CN Contractor's Program or other applicable document (including any Inspection and Test Plan (as defined in the General Specification)) by the Principal's Representative pursuant to clause 2.17(b) or the Station Specification.
- (b) acknowledges and agrees that the Principal's Representative may insert Hold Points or Witness Points in the CN Contractor's Program or other applicable document.

3. The Site and location of the Works

3.1A Rights to land

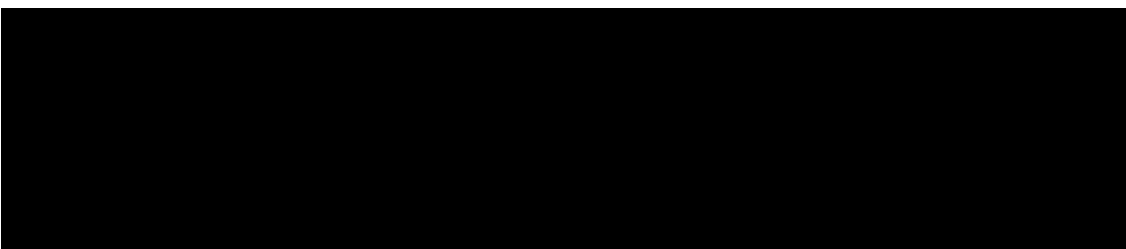
The Principal:

- (a) grants to the CN Contractor, and the CN Contractor accepts the grant of, a licence to access the Site in accordance with clauses 3.1B, 3.1 and 3.10; and

- (b) will give the CN Contractor rights to Adjoining Properties in accordance with clauses 2.12 and 2.15.

3.1B Early Access to the Site

- (a) The Principal may, but is not obliged to, grant the CN Contractor access prior to the Site Access Date to the whole or part of the Interface Works Site by granting either:
 - (i) if the relevant Interface Works Portion has reached completion, a Construction Licence; or
 - (ii) if the relevant Interface Works Portion has not reached completion, but the relevant Interface Contractor has consented to the CN Contractor accessing the Site, an Interim Access Licence.
- (b) The purpose of granting early access to the Interface Works Site under this clause 3.1B is to allow the CN Contractor to commence the CN Contractor's Activities early so as to mitigate any delays the CN Contractor may incur in reaching Substantial Completion or Completion of a Portion or Milestone Achievement of a Milestone and, subject to clause 3.1B(g), the CN Contractor must use that access to the Interface Works Site to commence the CN Contractor's Activities and optimise the additional time.
- (c) Grant of a Construction Licence or Interim Access Licence given under clause 3.1B(a) or deemed to be given under clause 3.1B(f):
 - (i) will be taken into account when making an assessment under clause 10.10 of claims by the CN Contractor for extensions of time; and
 - (ii) except to the extent set out in clause 3.1B(c)(i), will not affect any Dates for Milestone Achievement, Dates for Substantial Completion or Dates for Completion.
- (d) The Principal may give the CN Contractor one or more written notices of the date or dates ("**Interface Works Site Access Date**") on which a part of the Interface Works Site will be Accessible from a specified date that is prior to the Site Access Date. Any such notice must:
 - (i) specify whether a Construction Licence or Interim Access Licence will be granted; and
 - (ii) be given at least 5 Business Days prior to the date on which the relevant part of the Interface Works Site will be Accessible.



- (f) If an Interface Works Site Access Date is:
- (i) after the Early Site Access Date, the CN Contractor will be deemed to have taken a Construction Licence or Interim Access Licence to that part of the Interface Works Site on the Interface Works Site Access Date; or
 - (ii) prior to the Early Site Access Date, the CN Contractor will be deemed to have taken a Construction Licence or Interim Access Licence to that part of the Interface Works Site on the earlier to occur of:
 - A. the date on which the CN Contractor (by notice in writing to the Principal) accepts early access to the Interface Works Site; and
 - B. the Early Site Access Date.
- (g) Where the Principal gives the CN Contractor a notice under clause 3.1B(d) stating that a part of the Interface Works Site will be Accessible from a specified date, the CN Contractor will not be required to take, or be deemed to have taken, a Construction Licence or Interim Access Licence in respect of that part of the Interface Works Site where the date specified in the notice is prior to the Early Site Access Date.
- (h) Without limiting the CN Contractor's obligations under the relevant Project Cooperation and Integration Deed, to the extent that the CN Contractor uses or accesses the Accessible part of the Interface Works Site pursuant to an Interim Access Licence, the CN Contractor:
- (i) acknowledges that during an Interim Access Period:
 - A. the CN Contractor's Activities interface with the relevant Interface Works;
 - B. the relevant Interface Contractor may be executing work on parts of the Interface Works Site at the same time as the CN Contractor is performing the CN Contractor's Activities; and
 - C. the relevant Interface Contractor will be engaged as principal contractor in respect of the Interface Works Site;
 - (ii) must at all times:
 - A. fully cooperate with the relevant Interface Contractor;
 - B. carefully co-ordinate and interface the CN Contractor's Activities with the relevant Interface Works;
 - C. perform the CN Contractor's Activities so as to minimise any interference with or disruption or delay to the relevant Interface Works; and
 - D. attend co-ordination meetings as required in accordance with the relevant Project Cooperation and Integration Deed;

- (iii) must promptly advise the Principal's Representative of all matters arising out of the CN Contractor's access to any part of the Interface Works Site that may have an adverse effect upon the CN Contractor's Activities; and
- (iv) must:
 - A. where the CN Contractor has not entered into a Project Cooperation and Integration Deed with the relevant Interface Contractor, comply with the reasonable site access and work, health and safety procedures of that Interface Contractor; and
 - B. if requested by the Principal's Representative, execute a deed poll in favour of (as applicable):
 - 1) the TSE Contractor in the form of Schedule A12 to the TSE Contract; or
 - 2) the LW Contractor substantially in the form of Schedule 23.
- (i) The Principal will have no liability to the CN Contractor as a consequence of access by the CN Contractor to any part of the Interface Works Site during an Interim Access Period.

3.1 Access to the Site on or after the Site Access Date

- (a) The CN Contractor acknowledges and agrees that access to the Site will be provided to the CN Contractor as set out in the Site Access Schedule.
- (b) Subject to clause 3.1(c) and any other provision of this Contract affecting access, the Principal must:
 - (i) give, or ensure the CN Contractor has, access to each part of the Site by no later than the relevant Site Access Date; and
 - (ii) subject to clause 3.1(bd), once access to a part of the Site is provided to the CN Contractor, thereafter continue to allow, or ensure that the CN Contractor is continued to be allowed, access to that part of the Site in accordance with the Site Access Schedule.
- (ba) If the Principal considers that it will not be able to provide the CN Contractor with access to any part of the Site in accordance with clause 3.1(b)(i), the Principal's Representative must, as soon as reasonably practicable after forming that opinion, give the CN Contractor written notice of the estimated date on which access will be given to the relevant part of the Site. If the Principal subsequently considers that a change is required to the estimated date set out in the Principal's Representative's notice, the Principal's Representative must give further written notice to the CN Contractor of the revised estimated date on which access will be given to the relevant part of the Site.

- (bb) Each Interim Access Licence commences on the date access to the Interface Works Site is given, or deemed to be given under clause 3.1B(f), and expires on the earlier of:
 - (i) the Site Access Date for the corresponding part of the Site; and
 - (ii) termination of this Contract.

- (bc) The Construction Licence commences, in respect of each part of the Site, on the date access is given, or deemed to be given under clause 3.1B(f) ("**Construction Licence Commencement Date**"), for that part of the Site and terminates on the earlier of:
 - (i) if a Site Access Expiry Date is specified for the relevant part of the Site, the Site Access Expiry Date;
 - (ii) the relevant Portion Handover Date; and
 - (iii) the date of termination of this Contract.

- (bd) The CN Contractor acknowledges that:
 - (i) the Site Access Expiry Dates in respect of the Temporary Areas identified in section 4 of the Site Access Schedule are fixed and will not be extended for any reason; and
 - (ii) the CN Contractor must vacate those parts of the Site on the relevant Site Access Expiry Dates.

- (be) The CN Contractor must arrange the sequence of work so that the CN Contractor's Activities which must be performed on the parts of the Site referred to in clause 3.1(bd)(i) are completed prior to the relevant Site Access Expiry Dates.

- (c) The CN Contractor acknowledges and agrees that:
 - (i) access to the Site or any part thereof will only confer on the CN Contractor a right to such management and control as is necessary to enable the CN Contractor to execute the CN 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 CN Contractor access to any part of the Site until the CN Contractor has:
 - A. complied with clause 2.7(b) and clause 2.7(g) of this Contract;
 - B. submitted the Project Health and Safety Management Plan, the Construction Environmental Management Plan, the Construction and Site Management Plan and the Construction Traffic Management Plan, as required by the Station Specification, to the Principal's Representative under clause 9.8 and the

Principal's Representative has not rejected the proposed Construction Environmental Management Plan, Construction and Site Management Plan, Project Health and Safety Management Plan or Construction Traffic Management Plan within 15 Business Days after such submission in accordance with clause 9.8(c);

- C. effected the insurance policies required under clause 13.6;
 - D. complied with clause 13.6 with respect to each insurance policy; and
 - E. complied with the matters set out in item 28 of Schedule 1;
- (iii) the Principal is not obliged to provide, and the CN 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 CN Contractor which may be necessary to enable the CN Contractor to obtain access to the Site or carry out the CN Contractor's Activities;
 - (v) the Principal and others will engage Interface Contractors to work upon or in the vicinity of the Site and Extra Land at the same time as the CN Contractor;
 - (vi) without limiting or otherwise restricting any other provision under this Contract, the CN Contractor is responsible for all costs arising from or in connection with accessing any railway services or stations; and
 - (vii) the CN Contractor:
 - A. must access the Site only at the points of entry and exit and using the routes for ingress and egress set out in the Planning Approval;
 - B. acknowledges that the Principal has not secured rights of access over the routes for ingress and egress set out in the Planning Approval; and
 - C. except as expressly provided for in this Contract, is responsible, at its own cost and risk, for obtaining access to and from, and securing rights of ingress to and egress from, the Site and the Extra Land to perform the CN Contractor's Activities.
- (d) Not used.
 - (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 CN Contractor to:
 - (i) an extension of time to any relevant Date for Substantial Completion or Date for Completion of the relevant Portion or Date for Milestone

Achievement of the relevant Milestone under clause 10.10 if the requirements of that clause are satisfied; and

- (ii) claim the additional costs reasonably and necessarily incurred by the CN Contractor as a direct result of the delay in accordance with clause 10.13.
- (f) The CN 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).
- (g) To the extent the CN Contractor requires access to any part of the Site after the Construction Licence in respect of that part of the Site has terminated pursuant to clause 3.1(bc) (including in order to rectify Defects) any such access is subject to the CN Contractor:
 - (i) complying with:
 - A. the requirements of the applicable Project Cooperation and Integration Deeds; or
 - B. where the CN Contractor has not entered into a Project Cooperation and Integration Deed with the relevant Interface Contractor, the reasonable site access and work, health and safety procedures of that Interface Contractor; and
 - (ii) executing and complying with a deed poll substantially in the form of Schedule 23 in favour of the relevant principal contractor for the site.

3.2 Temporary Works

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

3.3 Management and Control of the Site

At all times after being given access to the Site or a part of the Site under clause 3.1 and before the relevant Portion Handover Date, the CN Contractor:

- (a) without limiting any right of the Principal or the Principal's Representative under this Contract, and subject to clause 2.11, will be responsible for the management and control of the Site;
- (b) must control access to, and the security and maintenance of, the Site or that part, except where the Principal's Representative advises otherwise;
- (c) must ensure public safety on and adjacent to the Site or that part;
- (d) must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths access ways and cycleways affected by the CN Contractor's Activities in accordance with this Contract;

- (e) must, subject to clauses 3.1 and 3.10 and the Station Specification, 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 CN Contractor's Activities;
- (f) 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
- (g) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from damage (including from theft and vandalism) until (where relevant) they are due for demolition by the CN Contractor if that forms part of the CN Contractor's Activities.

3.3A Access for Interface Contractors

Without limiting clause 2.9, the CN Contractor must give Interface Contractors access to the Works comprised in a Milestone from the Date of Milestone Achievement of that Milestone.

3.4 Land in Addition to the Site

The CN Contractor must:

- (a) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site, including any land owned by a Rail Transport Agency, which is necessary or which it may require for the purposes of carrying out the CN Contractor's Activities ("**Extra Land**");
- (b) at its own cost carry out all activities and procure all Utility Services necessary to make the Extra Land suitable for use by the CN Contractor;
- (c) as a condition precedent to Completion of a Portion:
 - (i) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - (ii) provide to the Principal's Representative:
 - A. unless not required by the Principal's Representative, a properly executed certificate in the form of Schedule 13 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Extra Land; and
 - B. if the CN Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the CN Contractor to the effect that the owner or occupier, or other person having an interest has failed or refused to execute such a

release within 15 Business Days after it being provided by the CN Contractor to the owner, occupier or other person together with copies of all correspondence with the Authorities and the owner, occupier or other person and evidence that the CN Contractor has complied with the requirements of the relevant Authorities and the owner, occupier or other person of the Extra Land; and

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

3.4A Site Conditions

- (a) Without limiting clause 3.6(c), the CN Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this Contract, the CN Contractor:
 - (i) examined this Contract, the Site, any Extra Land and their 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 CN Contractor or its Associates 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 CN 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;
 - B. in connection with the TSE Contract; and

- C. for construction 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, 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 those obligations impose on the CN Contractor.
- (b) Without limiting or otherwise affecting clauses 3.4A(c), 3.4A(d) and 3.6, the Principal makes no representation and gives no warranty to the CN Contractor or its Associates in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the CN Contractor's Activities or otherwise in respect of the condition of:
 - A. the Site, Extra Land or their surroundings; or
 - B. any structure or other thing on, under, above or adjacent to the Site or Extra Land; or
 - (ii) the adequacy or suitability of the Site or the Extra Land for the CN Contractor's Activities
 - (iii) the existence, location, condition or availability of any Utility Services on, under, above, adjacent to or related to the Site or Extra Land; or
 - (iv) the condition or characteristics of any Adjoining Property.
- (c) Subject to clauses 2.5(d), 3.8(d), 3.9, 5A.4A, 5A.6(c), 5A.7, 10.7 and 10.13, and without limiting the Principal's obligations under clause 5A.3(b) and clause 5A.11(a), the CN Contractor accepts:
- (i) the Site, the Adjoining Properties and any Extra Land; and
 - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Site, the Adjoining Properties and any Extra Land,
- in their present condition from time to time 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 Works, the Temporary Works or the CN Contractor's Activities,

arising out of, or in any way in connection with any defects or Site Conditions encountered in performing the CN Contractor's Activities and releases the Principal from all Claims, costs, liabilities, expenses, losses or damages in connection with such matters.

- (d) The CN Contractor must construct the Works and Temporary Works 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 CN Contractor's Activities; and
 - (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - A. the Site 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 or any Extra Land, the Environment or their surroundings.
- (e) Nothing in this clause 3.4A or clause 3.6 limits the operation of clauses 2.5(d), 3.8(d), 3.9, 5A.7, 10.7 and 10.13.

3.5 Not used

3.6 Information Documents and Materials

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

(c) The CN 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 CN 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:

A. the warranties, acknowledgements and agreements in clauses 3.6(c)(i) and 3.6(c)(ii); and

B. the agreements and acknowledgements in the CN Contractor's Tender.

(d) The CN Contractor releases and indemnifies the Principal from and against:

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

(ii) (without being limited by clause 3.6(d)(i)) any costs, expenses, losses or damages suffered or incurred by the Principal,

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 CN Contractor or its Associates or any other person to whom the Information Documents and Materials are disclosed by the CN Contractor or its Associates or a failure by the Principal to provide any information, data or documents to the CN Contractor (other than any information, data or documents which the

Principal is required to provide to the CN Contractor by the terms of this Contract);

- (iv) any breach by the CN Contractor of this clause 3.6; or
 - (v) the Information Documents and Materials being relied upon or otherwise used by the CN Contractor or by any other person to whom the Information Documents and Materials are disclosed by the CN Contractor, 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 (respectively) of the Australian Consumer Law in 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 CN Contractor's rights under clause 3.9.

3.7 Not used

3.8 Things of Value Found

- (a) All valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest found on the Site (all "**Valuable Finds**") are, and will as between the CN Contractor and the Principal be and remain, the property of the Principal.
- (b) The CN Contractor must:
 - (i) immediately notify the Principal's Representative if it discovers a Valuable Find;
 - (ii) ensure the Valuable Find is protected and not lost, removed, disturbed or damaged; and;
 - (iii) comply with the requirements of any Authorities and all Laws (noting that compliance with Law is a contractual requirement and does not constitute a direction by the Principal) and Codes and Standards in relation to the Valuable Find; and
 - (iv) comply with any directions of the Principal's Representative in relation to the Valuable Find.
- (c) The CN Contractor acknowledges and agrees that compliance with clause 3.8(b)(iii) does not constitute a direction of 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 Contract Sum will be increased by the additional costs reasonably and necessarily incurred by the CN Contractor as determined by the Principal's Representative in complying with:
 - A. requirements of Authorities in accordance with clause 3.8(b)(iii); or
 - B. the Principal's Representative's directions under clause 3.8(b)(iv); and
- (ii) the CN Contractor will be entitled to make a claim for an extension of time under clause 10.8 in respect of the discovery of a Valuable Find to the extent that the discovery of that Valuable Find results in the CN 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 CN Contractor's Activities, for more than 10 days in aggregate for each discovery of a Valuable Find,

but only to the extent that the Valuable Find was not identified in the Station Specification or could not have been reasonably anticipated by a competent and experienced contractor at the date of this Contract if such a contractor had:

- (iii) examined all information made available in writing by the Principal to the CN Contractor (including the Station Specification and the Reports) on or before the date of this Contract;
 - (iv) examined all information (including the Station Specification and the Reports) relevant to the risks, contingencies and other circumstances and obtainable by the making of reasonable enquiries with respect to the CN Contractor's Activities; and
 - (v) inspected the Site and its surroundings,
- as determined by the Principal's Representative.

3.9 Contamination

- (a) The parties acknowledge and agree that:
 - (i) there may be Contamination on, in, under or migrating from or on to the Site including in surface soils generally and locations which have been filled;
 - (ii) the Principal does not make any representation or warranty (express or implied) as to the nature or extent of any Contamination;
 - (iii) part of the CN Contractor's Activities include taking the appropriate steps referred to in this clause 3.9 in respect of any Contamination the CN Contractor discovers on the Site;



- (v) in addition to the requirements of the Planning Approval (but subject to clauses 3.9(a)(iv), 3.9(ca), 3.9(g) and 3.9(h)), the CN Contractor bears the risk of all Contamination:
 - A. on, in, over, under or about the Site to the extent it is disturbed by or interfered with in the carrying out of the CN Contractor's Activities;
 - B. which migrates:
 - 1) onto the Site as a result of the CN Contractor's Activities and which could have been reasonably anticipated by a competent and experienced contractor that had examined the Site and its surroundings and all Information Documents and Materials; or
 - 2) from the Site as a result of the CN Contractor's Activities;
 - C. on, in, over, under or about any Extra Land or migrating onto or from any Extra Land; and
 - D. which otherwise arises out of or in connection with the CN Contractor's Activities.
- (b) The CN Contractor must:
 - (i) provide for the management of any Contamination that may be present on, in, under or migrating from or on to 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 Station Specification; and
 - (ii) without limiting clause 3.9(b)(i) or clause 3.9(d), but subject to clause 3.9(ca) and except to the extent clause 3.9(a)(iv) applies, undertake Remediation of any Contamination on the Site and the Extra Land in accordance with Law, the Planning Approval and all guidelines made or approved by the EPA so that in respect of Contamination on, in, over, under or about:
 - A. the Site:
 - 1) the Site is suitable for the performance of the CN Contractor's Activities and the further construction, operation and maintenance of Sydney Metro City & Southwest; and

- 2) whole of life costs associated with the further construction, operation and maintenance of Sydney Metro City & Southwest at the relevant parts of the Site where the Remediation is undertaken are minimised; and
 - B. any land outside the Site, the relevant land is returned to the state that it would have been in if unaffected by the CN Contractor's Activities (unless otherwise agreed with the relevant third party).
- (c) Not used.
- (ca) To the extent that Contamination:
- (i) on, in, over, under or about the Site is disturbed by or interfered with in the carrying out of the CN Contractor's Activities, the CN Contractor is:
 - A. required to Remediate only those parts of such Contamination that are actually disturbed by or interfered with in the carrying out of the CN Contractor's Activities; and
 - B. is not required to Remediate the entire mass of such Contamination or trace to the source of the Contamination where that wider mass or source has not been disturbed by or interfered with in the carrying out of the CN Contractor's Activities; or
 - (ii) migrates onto the Site as a result of the CN Contractor's Activities, the CN Contractor is not required to trace to the source of such Contamination where such source is outside the Site.
- (d) Without limiting any obligation of the CN Contractor to comply with all Authority Approvals, the CN Contractor must:
- (i) in respect of all Compensable Contamination:
 - A. notify the Principal's Representative in writing within 5 Business Days of becoming aware of the existence of any Compensable Contamination on, in, under or migrating from or on to the Site, and thereafter provide the Principal's Representative with such further written details as the Principal's Representative may request;
 - B. promptly after providing a notice under clause 3.9(d)(i)A, submit a notice for the review of the Principal's Representative under clause 9.8 containing:
 - 1) details of the steps which the CN Contractor proposes to take to:
 - a) investigate, remediate, dispose of, manage, monitor, contain or otherwise deal with the Compensable Contamination so that the Site is remediated to a

standard suitable for the proposed use of the Site ("**Remediation Steps**");

- b) not used;
- c) dispose of Compensable Contamination off-site to a licensed waste disposal facility in accordance with clause 3.13; and
- d) 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;

- 2) the CN Contractor's estimate of any amount which will be payable in respect of any Compensable Contamination under clause 3.9(g) 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

- 3) a plan documenting the Remediation Steps determined pursuant to the criteria in clause 3.9(d)(i)B.1 ("**Remediation Action Plan**");

- C. only after the Principal's Representative has had the period referred to in clause 9.8(c)(ii) (or such shorter period as the Principal's Representative may advise to the CN Contractor in writing) and has not rejected the CN Contractor's notice under clause 3.9(d)(i)B, implement the Remediation Action Plan in accordance with relevant Laws, Authority Approvals and any direction of a relevant Authority where applicable; and

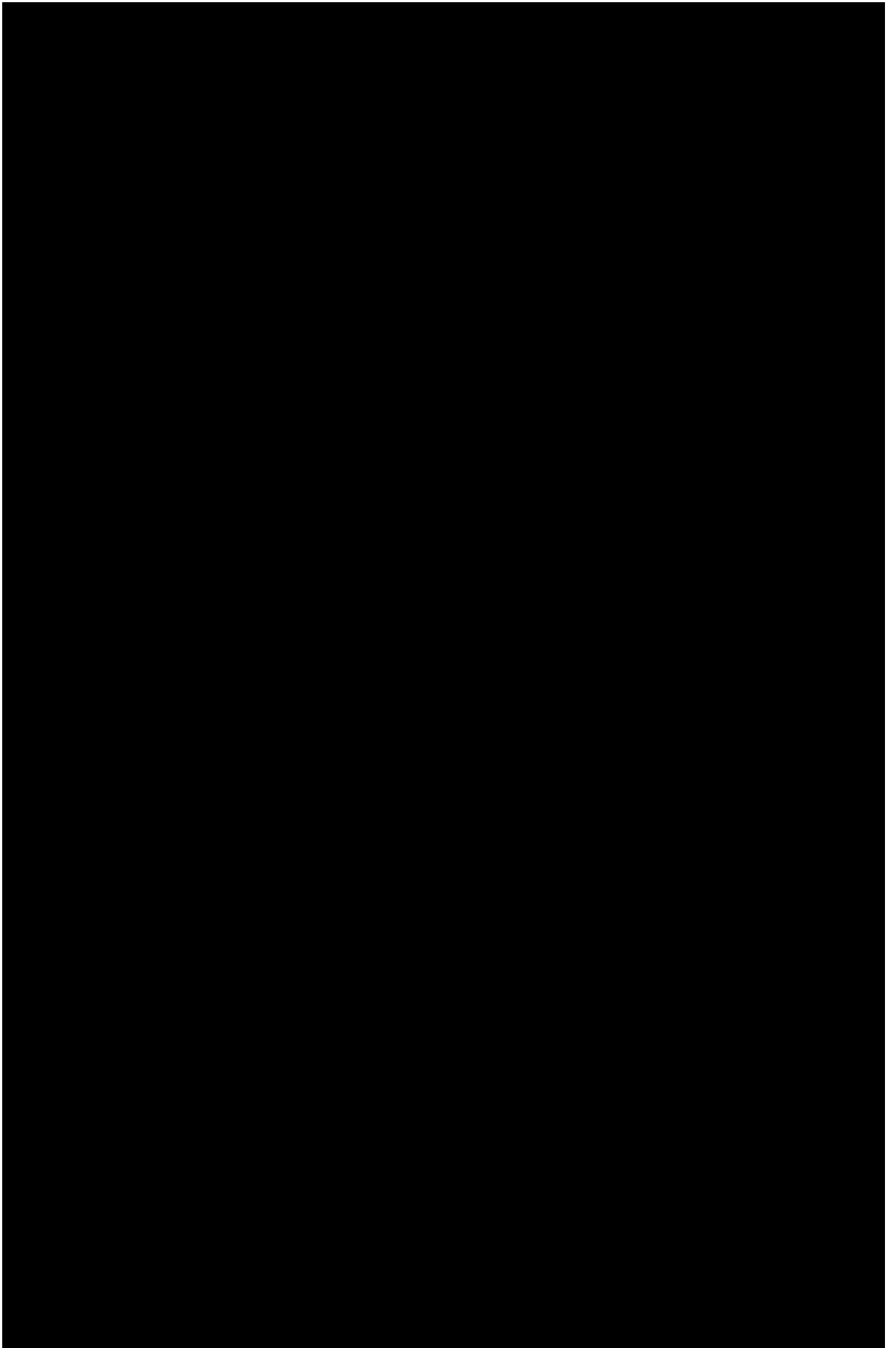
(ii) in dealing with any Contamination:

- 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.

- (e) The CN 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 CN Contractor to comply with any obligation under this clause 3.9, provided that the CN Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or an

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

- (f) The CN Contractor acknowledges and agrees that:
- (i) other than for the amounts referred to in clauses 3.9(g) and 3.9(h), the CN Contractor will not be entitled to any increase in the Contract Sum or to make any other Claim for payment:
 - A. for complying with this clause 3.9;
 - B. in respect of carrying out investigations of the Site or Extra Land to determine the presence and extent of any Contamination present on, in, under or migrating from or on to the Site or Extra Land;
 - C. in respect of any costs incurred in the management, handling and disposal of General Solid Waste;
 - D. except as provided in clause 10.13, for any costs incurred arising out of or in connection with any delay or disruption to the CN Contractor's Activities resulting from the presence of any Contamination on, in, under or migrating from or on to the Site or Extra Land including arising out of or in connection with complying with its obligations under this clause 3.9; or
 - E. for Remediating or overcoming Contamination;
 - (ii) subject to clause 3.9(f)(iii), the CN Contractor will not be entitled to an extension of time in respect of any delay arising out of or in connection with the discovery of Contamination or the discharge of its obligations under this clause 3.9; and
 - (iii) the CN Contractor may, if it is delayed as a consequence of Remediating any Contamination referred to in clause 3.9(h), claim an extension of time to the relevant Date(s) for Milestone Achievement, Date(s) for Substantial Completion and/or Date(s) for Completion.



3.10 Principal's Right to Access and Inspect

Subject to clause 3.14, the CN Contractor must:

- (a) without limiting clauses 3.3 and 3.4, minimise disruption or inconvenience to:
 - (i) the Principal, occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Site and Extra Land, including any occupation or use of the Works, a Portion or a part thereof under clause 12.6; and
 - (ii) others having a right of access to the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land; and
- (b) at all times:
 - (i) give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to:
 - A. the Works and the Temporary Works;
 - B. the Site or any Extra Land; or
 - C. any other areas where the CN Contractor's Activities are being carried out,including unobstructed vehicular access through the Site or any Extra Land; and
 - (ii) provide the Principal and the Principal's Representative with every reasonable facility necessary for the Inspection of the CN Contractor's Activities, including the CN Contractor's compliance with the Authority Approvals.

3.11 Not used

3.12 Condition Surveys

The CN Contractor must:

- (a) identify and prepare a condition survey of all property that could be affected or damaged by the CN Contractor's Activities and as required by the Planning Approval;
- (b) prepare this condition survey a minimum of two weeks prior to commencing any work on the Site, or on any other land which is necessary for performing the CN Contractor's Activities or undertaking the Works, where that work could damage property on or off the Site; and

- (c) in preparing this condition survey must use suitably skilled, qualified, and experienced personnel or Subcontractors.

3.13 Disposal of Contamination and other waste

- (a) The CN Contractor must remove from the Site 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 CN 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 or Extra Land holds all relevant Authority Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Authority Approvals to the Principal's Representative upon request.
- (c) The CN Contractor must:
 - (i) sort all Contamination and other waste (including separating Compensable Contamination from clean material and any other type of Contamination or other waste);
 - (ii) not contaminate clean material by intermixing any Contamination or other waste; and
 - (iii) not intermix Compensable Contamination with clean material or any other type of Contamination or other waste.
- (d) The CN Contractor must ensure, and must ensure that its Associates ensure, that their respective employees, agents and contractors, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws.
- (e) The CN Contractor must:
 - (i) keep complete, accurate and up to date records of all materials that are disposed of or otherwise removed from the Site or any Extra Land (including all Contamination and other wastes) including classification certificates and tip docket for all loads; and
 - (ii) if requested, provide a copy of any such records to the Principal's Representative.
- (f) The CN 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 CN Contractor to comply with any obligation under this clause 3.13, provided that the CN Contractor's liability to indemnify the Principal will be reduced

proportionally to the extent that an act or omission of the Principal contributed to the claim, damage, expense, loss, liability, fine or penalty.

3.14 Principal not in Control

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

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

3.15 Encumbrances

- (a) The CN Contractor must, at its cost, comply with the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Site as recorded in the register maintained by New South Wales Land Registry Services under the *Real Property Act 1900* (NSW).
- (b) The Principal may, at any time and from time to time, create or permit the creation on the title to the Site:
 - (i) any Encumbrance necessary, in the opinion of the Principal, to enable the construction, operation and/or maintenance and repair of Sydney Metro City & Southwest (including the Crows Nest Station); and
 - (ii) any Encumbrance required by an Authority.
- (c) The Principal must promptly provide the CN Contractor with written notice of any proposed Encumbrance to be created in accordance with clause 3.15(b), and its proposed terms.
- (d) If the Principal creates, or permits the creation of, any Encumbrance pursuant to clause 3.15(b) which:
 - (i) prevents the CN Contractor from complying with its obligations or exercising its rights under this Contract; or
 - (ii) increases the CN Contractor's costs of performing the Works in accordance with this Contract,

the CN Contractor will be entitled to be paid by the Principal the net incremental costs (excluding finance costs) reasonably incurred by the CN Contractor as a direct result of the existence of the Encumbrance, except where the relevant Encumbrance:

- (iii) was required by an Authority;

- (iv) relates to the grant of a licence to an Interface Contractor as contemplated by clause 2.9(a)(i)D;
 - (v) is required by reason of any change to the design of the Temporary Works by the CN Contractor; and/or
 - (vi) was known to the CN Contractor on the date of this Contract or otherwise should reasonably have been anticipated or contemplated by the CN Contractor at the date of this Contract having regard to the activities required to enable the construction and/or operation of Sydney Metro City & Southwest (including Crows Nest Station).
- (e) The CN Contractor must provide to the Principal's Representative such evidence of the extra costs claimed pursuant to clause 3.15(d) as may be reasonably required by the Principal's Representative to substantiate the costs claimed.
 - (f) The costs payable to the CN Contractor under clause 3.15(d) will be the CN Contractor's sole remedy in relation to any Encumbrance created, or permitted to be created, by the Principal pursuant to clause 3.15(b).
 - (g) The parties agree that the CN Contractor will not be liable to pay licence fees or rents to the Principal or any third party for any access or occupation right in respect of the Site.

3.16 Assignment of Site Office Lease and novation of Crane Hire Option Agreement

- (a) On the date of this Contract, the CN Contractor must deliver to the Principal:
 - (i) a deed of assignment in respect of the Site Office Lease in the form which appears in Part A of Schedule 48; and
 - (ii) a deed of novation in respect of the Crane Hire Option Agreement in the form which appears in Part B of Schedule 48,

each duly executed by the CN Contractor in the number of counterparts required by the Principal.

4. Compliance

4.1 Quality of Work

The CN Contractor must in carrying out the CN 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 CN Contractor's Activities. In the absence of any other requirement or specification, the CN Contractor must use

suitable new materials and ensure that workmanship and materials are fit for their intended purpose.

4.2 Station Specification

The CN Contractor must comply with the requirements of the Station Specification.

4.3 Environmental Management

The CN Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of the Station Specification for so long as any CN Contractor's Activities are carried out;
- (b) as part of the Project Plans, document, implement and maintain a contract specific Construction Environmental Management Plan for the management of environmental matters in accordance with the Station Specification;
- (c) carry out the CN 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 Station Specification in relation to environmental management on the Site and Extra Land; and
- (e) use, and be able to demonstrate the use of, ecologically sustainable development principles (including any Sydney Metro sustainability initiatives under the Sustainability Management Plan) in the construction of the Works, Temporary Works and all other CN Contractor's Activities.

4.4 WHS Management

The CN Contractor must:

- (a) not used;
- (b) as part of the Project Plans, develop, document and implement a contract specific Project Health and Safety Management Plan in accordance with the WHS Guidelines and Station Specification;
- (c) carry out the CN Contractor's Activities in accordance with the Project Health and Safety Management Plan;
- (ca) comply with the requirements applicable to a "Safety Management Plan" set out in the Sydney Metro Principal Contractor Health and Safety Standard;
- (d) create a safe working environment for ensuring the safety of all authorised personnel on the Site and Extra Land and that no unauthorised individual gains access to the Site; and

- (e) supervise any Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the Station Specification in relation to the WHS management on the Site and Extra Land.

4.4A Sydney Metro Principal Contractor Health and Safety Standard

- (a) The CN Contractor must comply with the Sydney Metro Principal Contractor Health and Safety Standard, as amended from time to time, except for those parts of the Sydney Metro Principal Contractor Health and Safety Standard that the Particular Specification provides that the CN Contractor is not required to comply with.
- (b) The CN Contractor acknowledges and agrees that:
 - (i) the Principal will update the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to the CN Contractor's Activities and the Sydney Metro City & Southwest; and
 - (ii) notwithstanding any other provision of this Contract, the CN Contractor will not be entitled to make, and the Principal will not be liable on, any Claim arising out of or in any way in connection with:
 - A. any update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard; or
 - B. any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard as being an obligation of the Principal or an Associate of the Principal).

4.5 No Relief from Obligations

The CN 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 CN Contractor;
- (b) compliance with the Project Plans by the CN 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 CN Contractor proceeding past any Hold Point or Witness Point identified in the Station Specification 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 CN Contractor's Representative and the Principal's Representative.

4.6 Engineering Authorisation

The CN Contractor represents and warrants that in each instance it or any of its Subcontractors will carry out Asset Lifecycle Services, that party will be an AEO and will have obtained ASA Authorisation to carry out the relevant Asset Lifecycle Services.

4.7 ASA Compliance

- (a) Not used.
- (b) Without limiting or otherwise restricting clauses 4.7(c) and 4.7(d), if the CN Contractor or its Subcontractors have ASA Authorisation to carry out the Asset Lifecycle Services or obtain that ASA Authorisation prior to Completion, the CN Contractor must:
 - (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the CN Contractor's Activities are carried out; and
 - (ii) on and from the date that ASA Authorisation was granted, comply (and must ensure that its Subcontractors and all personnel for which the CN Contractor is responsible comply) with the conditions of the applicable ASA Authorisation.
- (c) The CN Contractor must (and must ensure that its Subcontractors and all personnel for which the CN Contractor is responsible):
 - (i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;
 - (ii) immediately notify the Principal's Representative in writing of any non-compliance with clauses 4.6 and 4.7;
 - (iii) cooperate fully with the ASA in the performance of the ASA's functions;
 - (iv) provide access to premises and resources as reasonably required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;
 - (v) comply with the directions, instructions and requirements issued by the ASA;
 - (vi) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;

- (vii) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and
 - (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (d) The CN Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the requirements to obtain, or any delays or failure by the ASA in granting the CN Contractor, or its Subcontractors, ASA Authorisation or the obligation to comply with ASA Requirements with respect to ASA Authorisation.

5. Design and Design Documentation

5.1A Responsibility for preparation of and updates to design documentation

The parties acknowledge and agree that:

- (a) prior to the date of this Contract, the Principal procured the AFC Design Documentation to be prepared by the Design Contractor;
- (b) if any amendments are required to the Final Design Documentation after the date of this Contract, including any updates required:
 - (i) to resolve any Constructability Issues or Design Errors identified during execution of the CN Contractor's Activities; or
 - (ii) arising out of or in connection with a Variation,the Principal will:
 - (iii) procure that such amendments are made by the Design Contractor; and
 - (iv) issue the updated Final Design Documentation to the CN Contractor;
- (c) the CN Contractor:
 - (i) is not required to prepare any updates to the Final Design Documentation; but
 - (ii) is required to prepare:
 - A. all Temporary Works design documentation in accordance with clause 5.3; and
 - B. all Shop Drawings in accordance with clause 5.4; and
- (d) except as expressly provided for in this Contract:

- (i) where any amendments to the Final Design Documentation are required to resolve a Constructability Issue or Design Error identified during execution of the CN Contractor's Activities, the issue of any updated Final Design Documentation to the CN Contractor in accordance with clause 5.1A(b)(iv) will not constitute a direction by the Principal's Representative to which clause 17.1 applies; and
- (ii) the CN 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 updates to the Final Design Documentation.

5.1 Liability for Constructability Issues

- (a) The CN Contractor:
 - (i) acknowledges and agrees that:
 - A. prior to entering into this Contract, it undertook a review of the AFC Design Documentation to ensure that there were no Constructability Issues in relation to the AFC Design Documentation; and
 - B. without limiting clause 5.1A(b), it bears all risk in relation to all Constructability Issues; and
 - (ii) warrants that the Original Contract Price and the CN Contractor's Program contain sufficient allowances for the assumption by the CN Contractor of all risk in relation to Constructability Issues under clause 5.1(a)(i)B.
- (b) The CN Contractor will not be entitled to make any Claim against the Principal, and the Principal will not be liable upon any Claim by the CN Contractor arising out of, or in any way in connection with Constructability Issues.
- (c) Without limiting clause 5.1(a)(i)B or clause 5.1(b):
 - (i) if, during the execution of the CN Contractor's Activities, the CN Contractor becomes aware of a Constructability Issue which it considers will require a change to the Final Design Documentation, it may give notice to the Principal's Representative in accordance with clause 6.7A(a) proposing a Variation; and
 - (ii) the CN Contractor acknowledges and agrees that the approval of any Variation proposed by the CN Contractor in accordance with clause 5.1(c)(i) will not:
 - A. relieve the CN Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract); or
 - B. entitle the CN Contractor to an extension of time,

whether under this Contract or otherwise according to any Law.

5.2 Design Errors

- (a) If, during the execution of the CN Contractor's Activities, the CN Contractor becomes aware of any error or omission in the Final Design Documentation that is not a Constructability Issue (**Design Error**), the CN Contractor must immediately notify the Principal in writing, including appropriate details of the Design Error and how it considers the Design Error should be resolved.
- (b) The parties acknowledge and agree that:
 - (i) for the purposes of clause 5.2(a), the CN Contractor is not required to:
 - A. engage a designer to review the Final Design Documentation for Design Errors; or
 - B. verify any design calculations or carry out "proof engineering" in connection with the Final Design Documentation to identify Design Errors; and
 - (ii) if the CN Contractor gives notice of a Design Error under clause 5.2(a), the CN Contractor must continue with construction of the Works in accordance with clause 7.1(a)(i)A.2) (notwithstanding the existence of the alleged Design Error) and clause 10.1(a) unless otherwise directed by the Principal's Representative to suspend part of the CN Contractor's Activities pursuant to clause 10.14.
- (c) If the CN Contractor gives notice under clause 5.2(a), then:
 - (i) if the Principal's Representative (acting reasonably) does not consider the issue identified by the CN Contractor to be a Design Error, it must give written notice to the CN Contractor to that effect;
 - (ii) if the Principal's Representative agrees that the Design Error exists but considers (acting reasonably) that no amendments to the Final Design Documentation are required in order to address the relevant Design Error:
 - A. the Principal's Representative must direct the interpretation of the Final Design Documentation which the CN Contractor must follow to address the Design Error; and
 - B. subject to any entitlement pursuant to clause 10.14(b)(i) and clause 17.1, the CN Contractor will not be entitled to make any Claim against the Principal, and the Principal will not be liable upon any Claim by the CN Contractor arising out of, or in any way in connection with the relevant Design Error; or
 - (iii) if the Principal's Representative agrees that the Design Error exists and considers (acting reasonably) that amendments to the Final Design Documentation may be required in order to address the relevant Design

Error, the Principal's Representative must engage the Design Contractor to determine the scope of the required updates to the Final Design Documentation (if any), and:

- A. if any updates to the Final Design Documentation are required, procure that such updates are made by the Design Contractor and then clause 5.2(d) will apply; or
 - B. if the Principal determines (acting reasonably, in consultation with the Design Contractor) that no updates to the Final Design Documentation are required in order to address the relevant Design Error, clause 5.2(c)(ii) will apply.
- (d) Following completion of any required updates to the Final Design Documentation pursuant to clause 5.2(c)(iii)A:
- (i) if the Principal's Representative considers (acting reasonably) that:
 - A. the relevant Design Error was not capable of identification at the date of this Contract by a competent contractor experienced in the delivery of works and services similar to the CN Contractor's Activities if such a contractor had examined all information made available in writing by the Principal to the CN Contractor (including the AFC Design Documentation) on or before the date of this Contract but did not engage a designer; or
 - B. verification of design calculations or "proof engineering" in connection with the Final Design Documentation would have been required in order to identify the relevant Design Error,then the Principal's Representative:
 - C. may issue a Variation Proposal Request under clause 6.1(a); and
 - D. must issue a Variation Order under clause 6.2,in respect of the required changes to the Works as set out in the updated Final Design Documentation; or
 - (ii) if the Principal's Representative considers (acting reasonably) that:
 - A. the relevant Design Error was capable of identification at the date of this Contract by a competent contractor experienced in the delivery of works and services similar to the CN Contractor's Activities if such a contractor had examined all information made available in writing by the Principal to the CN Contractor (including the AFC Design Documentation) on or before the date of this Contract but did not engage a designer; and
 - B. no verification of design calculations or "proof engineering" in connection with the Final Design Documentation would have been required in order to identify the relevant Design Error,

then the CN Contractor will not be entitled to make any Claim against the Principal, and the Principal will not be liable upon any Claim by the CN Contractor arising out of, or in any way in connection with the relevant Design Error.

5.3 Temporary Works

- (a) The CN Contractor must design the Temporary Works:
 - (i) in accordance with Good Industry Practice; and
 - (ii) so that the Temporary Works satisfy the requirements of this Contract upon construction.
- (b) If requested by the Principal's Representative, the CN Contractor must submit to the Principal's Representative for its review under clause 9.8 the design documentation for the Temporary Works referred to in such notice within 5 Business Days of being requested to do so.
- (c) The CN Contractor may, at its own risk, use any Temporary Works design documentation requested in accordance with clause 5.3(b) prior to the expiry of the time period in clause 9.8(c)(ii).
- (d) If the CN Contractor exercises its right under clause 5.3(c) and Principal's Representative subsequently rejects the relevant Temporary Works design documentation (or any part) in accordance with clause 9.8(c)(ii)A or makes comments on the relevant Temporary Works design documentation (or any part) in accordance with clause 9.8(c)(ii)B, then (unless otherwise approved in writing by the Principal's Representative):
 - (i) the CN Contractor must immediately cease construction of any Temporary Works being carried out in accordance with the relevant non-compliant element of the Temporary Works design documentation (but the CN Contractor may commence or continue construction in accordance with any element of the Temporary Works design documentation that the Principal's Representative has not identified as being non-compliant with this Contract); and
 - (ii) clause 9.8(d)(i) or clause 9.8(d)(ii) (as applicable) will apply in relation to the non-compliant element of the Temporary Works design documentation.

5.4 Shop Drawings

- (a) The CN Contractor must:
 - (i) prepare the Shop Drawings in accordance with the Station Specification;
 - (ii) submit all Shop Drawings to the Principal's Representative:
 - A. subject to clause 5.4(c), at least 10 Business Days prior to commencing construction or fabrication of the relevant

component, part or element of the Works covered by such Shop Drawing; and

- B. without limiting clause 5.4(a)(ii)A, in a manner and at a rate which, having regard to the quantum of Shop Drawings submitted, will give the Principal's Representative a reasonable opportunity to review the submitted Shop Drawings in accordance with clause 9.8 (if it elects to do so);
- (iii) ensure the Shop Drawings prepared by or on behalf of the CN Contractor:
- A. satisfy the requirements of the Station Specification and the other requirements of this Contract and comply with all applicable Codes and Standards;
 - B. will be and remain at all relevant times fit for their intended purpose;
 - C. are accurate, complete, appropriate for the Works and consistent with the Final Design Documentation; and
 - D. are at a level of detail which is sufficient to permit the Principal's Representative to determine whether:
 - 1) the Shop Drawings comply with this Contract; and
 - 2) the Works which will be constructed in accordance with the Shop Drawings will comply with this Contract;
- (iv) provide any further information required by the Principal's Representative; and
- (v) submit any amendment to the Shop Drawings to the Principal's Representative (in which case this clause 5.4(a) will re-apply).
- (b) The CN Contractor:
- (i) warrants that the Shop Drawings comply with the Station Specification and the other requirements of this Contract;
 - (ii) remains responsible for ensuring that the Works comply with the Station Specification and the other requirements of this Contract despite the Shop Drawings; and
 - (iii) without limiting clause 5.4(c) or clause 5.4(d)(ii), bears all risks associated with the use of, or reliance upon, the Shop Drawings in performing its obligations or exercising its rights under this Contract and such use and reliance will not limit or otherwise reduce any of the CN Contractor's obligations under this Contract.
- (c) The CN Contractor may, at its own risk, use any Shop Drawings submitted in accordance with clause 5.4(a)(ii) for fabrication purposes prior to the expiry of the time period in clause 5.4(a)(ii)A.

- (d) If the CN Contractor exercises its right under clause 5.4(c) and Principal's Representative subsequently rejects the relevant Shop Drawings (or any part) in accordance with clause 9.8(c)(ii)A or makes comments on the relevant Shop Drawings (or any part) in accordance with clause 9.8(c)(ii)B, then (unless otherwise approved in writing by the Principal's Representative):
 - (i) the CN Contractor must immediately cease any construction or fabrication being carried out in accordance with the relevant non-compliant element of the Shop Drawings (but the CN Contractor may commence or continue construction or fabrication in accordance with any element of the Shop Drawings that the Principal's Representative has not identified as being non-compliant with this Contract); and
 - (ii) clause 9.8(d)(i) or clause 9.8(d)(ii) (as applicable) will apply in relation to the non-compliant element of the Shop Drawings.

5.5 Assignment and ownership of Intellectual Property

- (a) All Contract Documentation will be the Principal's property.
- (b) By this Contract, the CN Contractor assigns or transfers to the Principal all of its right, title and interest, including all Intellectual Property in or to:
 - (i) the Contract Documentation;
 - (ii) the materials, documents, images, photographs and software (other than processes and methods of working); and
 - (iii) the Works,

(collectively called the "**Contract Documentation and Materials**") created by or on behalf of the CN Contractor for or in connection with the CN Contractor's Activities or the Works, so that such right, title and interest throughout the world vests in the Principal immediately and automatically on creation.
- (c) The CN Contractor grants, and will procure from any applicable third party the grant of, an irrevocable, perpetual, non-exclusive, royalty free, fully assignable licence (including the right to sub-license) to use all Intellectual Property in or relating to:
 - (i) to the extent not assigned under clause 5.5(b), the Contract Documentation and Materials; and
 - (ii) to the Temporary Works and Construction Plant and the processes and methods of working relevant to the CN Contractor's Activities (collectively called the "**Contract Processes**"),

for:
 - (iii) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading,

altering or otherwise dealing with the whole or any part of the CN Contractor's Activities or the Works or the Temporary Works;

- (iv) any purpose associated with further development of the Site; and
- (v) any other purpose connected with transport projects in New South Wales,

which licence is effective immediately and will survive termination of this Contract on any basis.

- (d) For the purposes of clause 5.5(c), the Principal's use of the Contract Documentation and Materials and the Contract Processes 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 and Materials or the Contract Processes or part of the Works or Temporary Works to which the Contract Documentation and Materials or the Contract Processes or any other work provided by the CN 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.
- (e) The CN Contractor agrees to, and will procure any applicable third party to, do such things as reasonably requested by the Principal to assist the Principal and its licensees, assignees and successors and their licensees, and any other person authorised by it (each an "**Authorised User**") to obtain, perfect, enforce or defend its (or their) interest in the Intellectual Property assigned or licensed (as applicable) to the Principal under this Contract.
- (f) The Principal grants to the CN Contractor a royalty free licence (including the right to sublicense) to use:
 - (i) the Station Specification (including the AFC Design Documentation); and
 - (ii) the Intellectual Property assigned to the Principal under clause 5.5(b),solely to the extent necessary to enable the CN Contractor to perform the CN Contractor's Activities.
- (g) The CN Contractor represents and warrants that:
 - (i) neither the grant of the rights granted to the Principal under this Contract, nor their use by the Principal or any Authorised User infringes or will infringe the rights, including the Intellectual Property or Moral Rights, of or duties owed to any third party; and

- (ii) the Intellectual Property assigned or licensed to the Principal under this Contract are complete and they are the only Intellectual Property necessary or desirable to enable the Principal, and any Authorised User, to fully enjoy and exercise all rights granted to it under this Contract.
- (h) Without limiting clause 5.5(g), where any action or claim for infringement or alleged infringement of any Intellectual Property results in the use or enjoyment by the Principal or any Authorised User of the Contract Documentation and Materials, the Contract Processes, the CN Contractor's Activities or the Works or any part of them, being disrupted, impaired or adversely affected, the CN Contractor must at its own expense and at the Principal's option:
 - (i) procure for the benefit of the Principal and its Authorised Users the right to continue to use and exercise the rights granted to the Principal under this clause 5.5 in accordance with this Contract; or
 - (ii) modify or replace any relevant Contract Documentation and Materials, Contract Processes, CN Contractor's Activities or Works or any part of them so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, Contract Processes, CN Contractor's Activities or Works or relevant part of them in respect of which Intellectual Property is assigned or licensed pursuant to this clause 5.5 will:
 - A. comply with the requirements of this Contract; and
 - B. not limit or otherwise affect the Principal's rights, or the CN Contractor's ability to comply with its obligations, under this Contract or otherwise according to Law.
- (i) The CN Contractor must:
 - (i) 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:
 - A. a breach by the CN Contractor of any warranty set out in this clause 5.5; or
 - B. any actual or alleged infringement of any Intellectual Property in connection with the Contract Documentation and Materials, Contract Processes, CN Contractor's Activities or Works or relevant part of them;
 - (ii) ensure that all Subcontracts between the CN Contractor and all Subcontractors for design and documentation contain provisions to the same effect as clause 5.5(b);

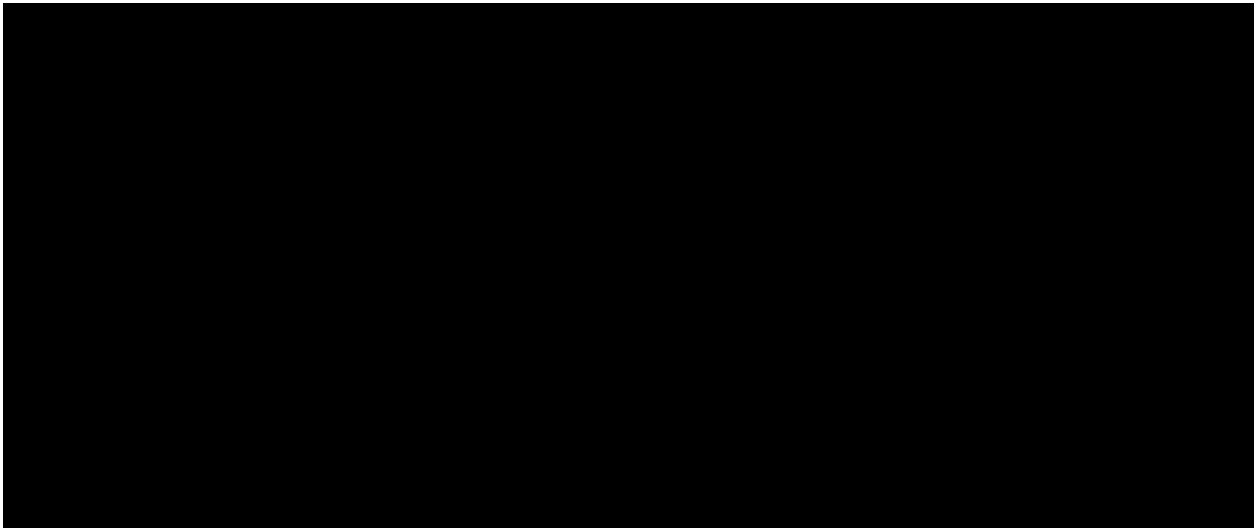
- (iii) obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such Subcontractors for design and documentation; and
- (iv) where requested by the Principal's Representative, obtain such an acknowledgement from other Subcontractors.

5.6 Delivery Up of Contract Documentation

If this Contract is frustrated or terminated the CN 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.

5A. TSE Contract



5A.2 Not used

5A.3 TSE Works Information

- (a) The Principal must provide the CN Contractor with a copy of:
 - (i) all TSE Works Asset Management Information which has been certified by the TSE Independent Certifier prior to the date of this Contract within 20 Business Days of the date of this Contract; and
 - (ii) any other TSE Works Asset Management Information submitted by the TSE Contractor to the Principal promptly following the later of:
 - A. the date of this Contract; and


B. receipt by the Principal.

The CN Contractor may or, if requested by the Principal's Representative, must, review the TSE Works Asset Management Information provided by the Principal in accordance with clause 5A.3(a)(ii) and (if applicable) provide written comments to the Principal's Representative within 5 Business Days after the date on which the CN Contractor received the TSE Works Asset Management Information. The Principal may provide a copy of any written comments provided by the CN Contractor to the TSE Independent Certifier and the TSE Contractor.

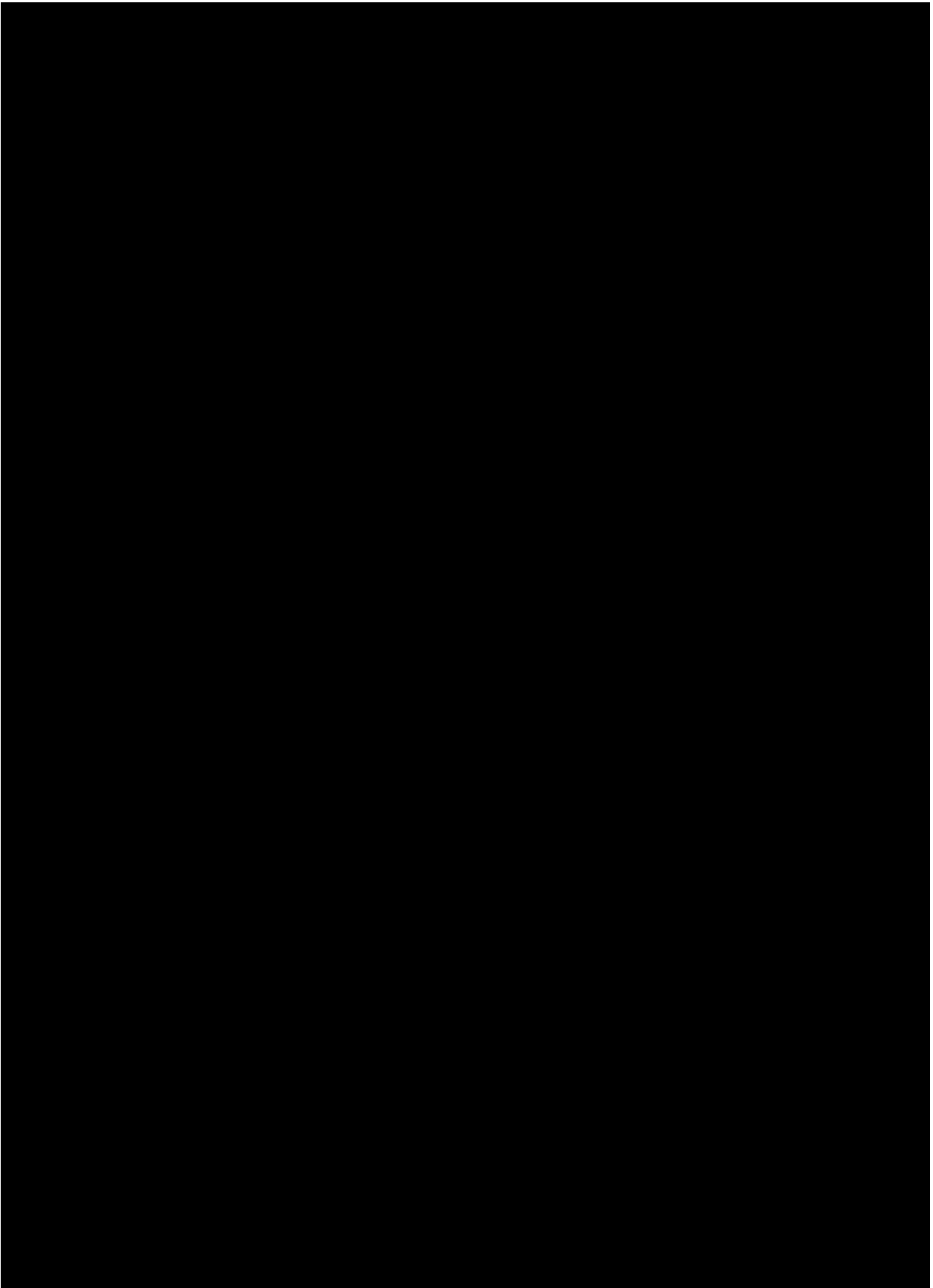
- (b) If requested by the CN Contractor, (and only to the extent that any documentation is not provided directly to the CN Contractor by the TSE Contractor or the TSE Independent Certifier) the Principal must provide the CN Contractor with copies of:
- (i) all documents or other information in respect of the design, construction, occupation, use and maintenance of the TSE Works which the TSE Contractor must give the Principal as a condition precedent to TSE Construction Completion;
 - (ii) any correspondence with, or certificates issued by, the TSE Independent Certifier in relation to the TSE Works (excluding any confidential commercial information regarding the TSE Contractor);
 - (iii) any notices of TSE Defects notified to the Principal by the TSE Contractor, or by the Principal to the TSE Contractor, after TSE Construction Completion; and
 - (iv) any documents the Principal is entitled to, and actually does, receive from the TSE Contractor in relation to the quality of the TSE Works.



5A.4 Inspection of TSE Works

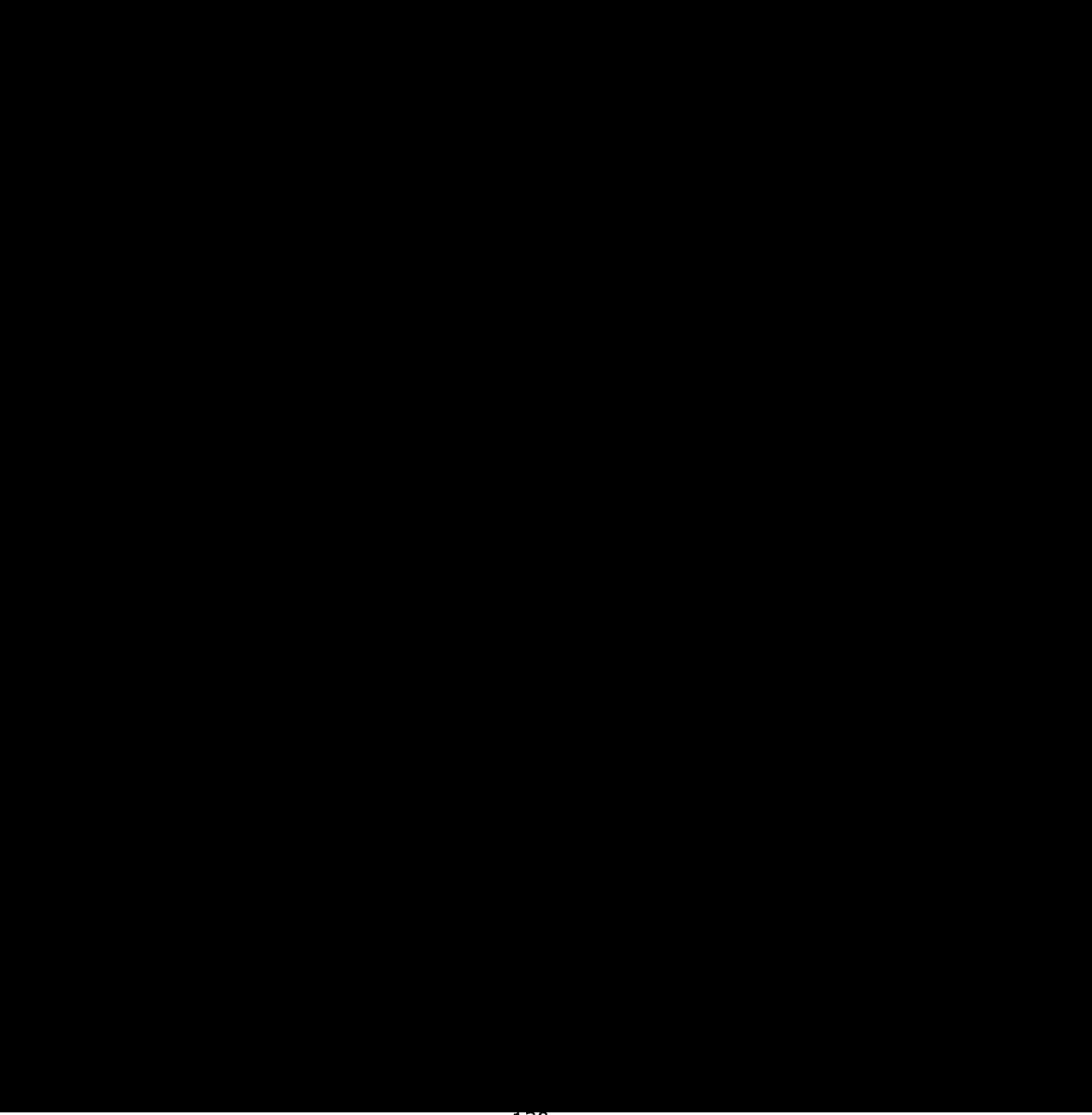
- (a) If the CN Contractor wishes to inspect the TSE Works, the CN Contractor must submit a written request to the Principal's Representative a minimum of 10 Business Days in advance of the date it wishes to carry out the inspection (or such other period of time as the Principal's Representative may agree). The Principal's Representative may attend any inspection by the CN Contractor of the TSE Works.
- (b) The Principal's Representative must facilitate all reasonable requests by the CN Contractor to inspect the TSE Works.
- (c) If the CN Contractor believes that the TSE Works are not in accordance with the  the CN Contractor must provide written

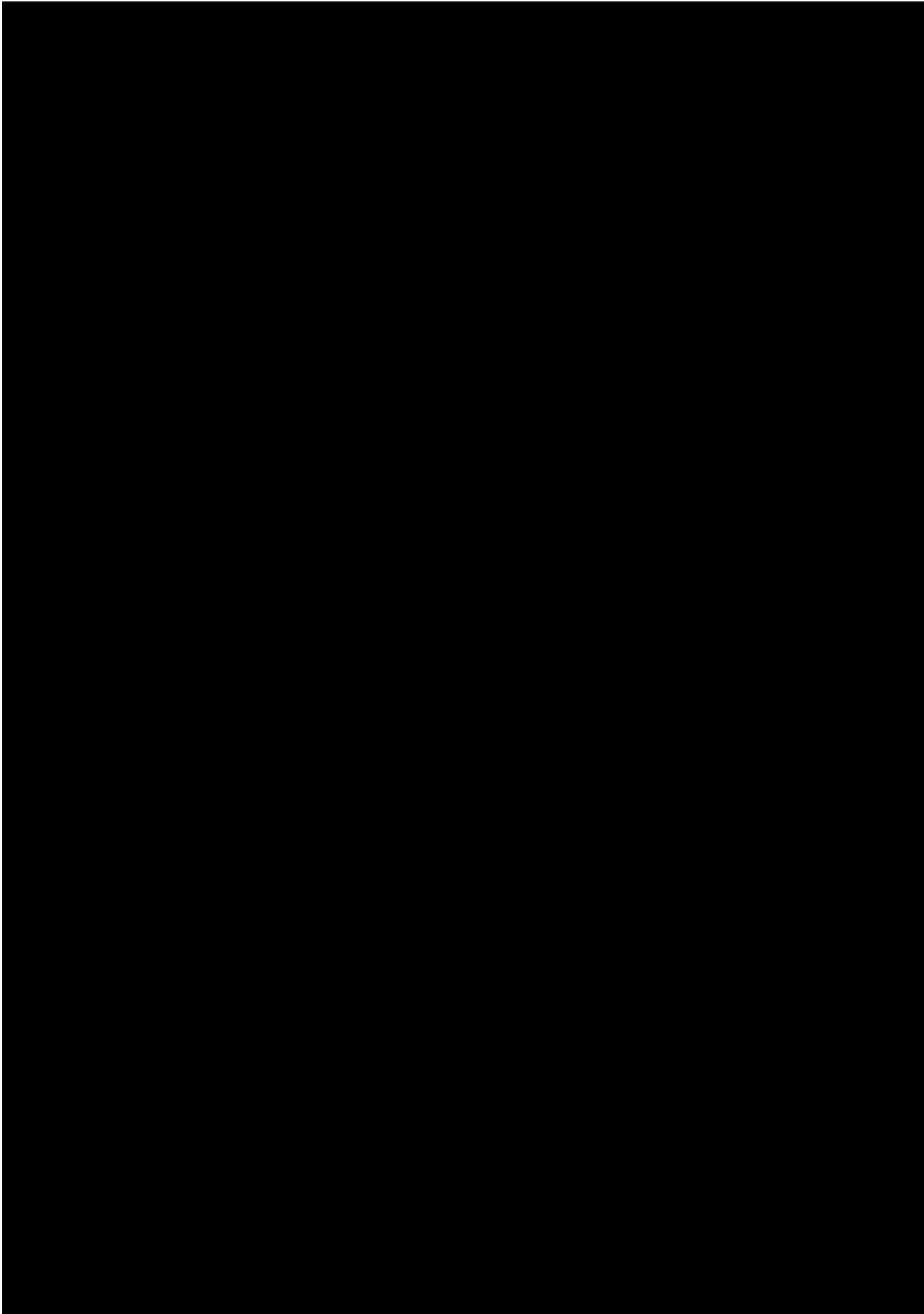
comments to the Principal's Representative within 5 Business Days after the date of the relevant inspection.





5A.5 Care and maintenance of TSE Works

- (a) Subject to clause 5A.6, clause 5A.7 and clause 13.1, the CN Contractor is responsible for the care and maintenance of any parts of the TSE Works located within the Site for the period from the Construction Licence Commencement Date for that part of the Site until the Date of Completion of the relevant Portion (or the Date of Substantial Completion in relation to the Trackway Portion) in accordance with the TSE Works O&M Manuals.
 - (b) The CN Contractor indemnifies the Principal from and against any loss that the Principal suffers or incurs as a consequence of the CN Contractor failing to carry out its obligations under clause 5A.5(a).
- 



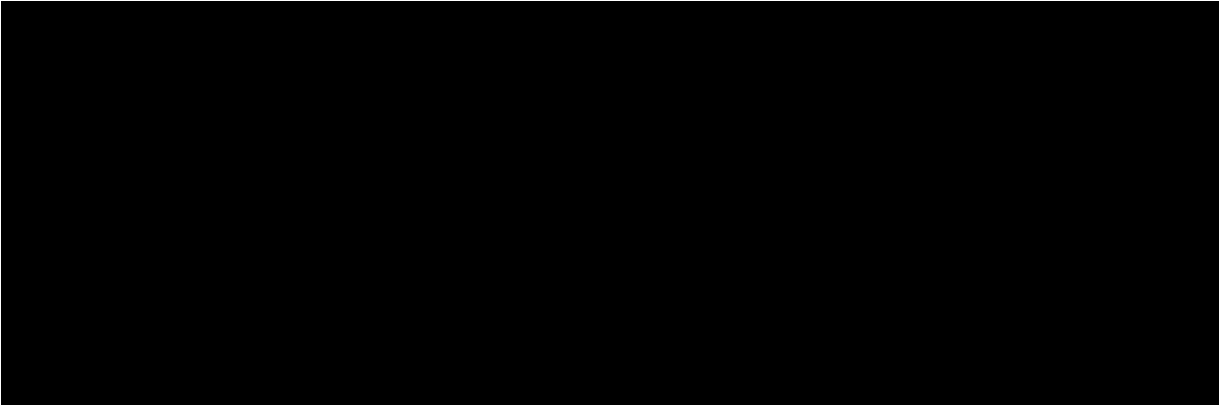


5A.9 Access by TSE Contractor

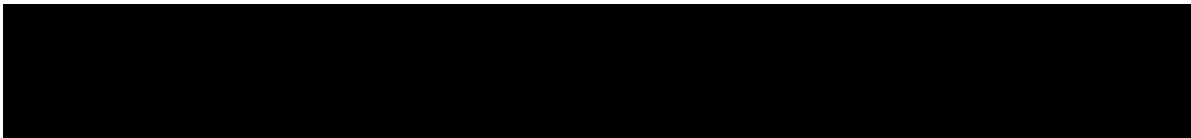
The CN Contractor must provide the TSE Contractor (and any person authorised by the TSE Contractor) with such access to the Site as is required by the TSE Contractor in order to meet its obligations under the TSE Contract and the TSE Cooperation and Integration Deed, including the rectification of:

- (a) any TSE Known Defects pursuant to clause 5A.6(a)(ii); and
- (b) any TSE Defects pursuant to clause 5A.7,

subject to the TSE Contractor complying with the CN Contractor's site access and work, health and safety procedures in accordance with the TSE Cooperation and Integration Deed.



5A.11 Handover Works

- (a) The Principal must, no later than 30 days before the relevant Site Access Date, provide the CN Contractor with a reasonable opportunity to inspect the Handover Works.
 - (b) The CN Contractor must operate and maintain the Handover Works.
- 

6. Variations

6.1 Proposed Variations

(a) At any time prior to the expiry of the Defects Rectification Period (but without limiting clauses 8 and 13.3) the Principal's Representative may issue a document titled "Variation Proposal Request" to the CN Contractor, which will set out details of a proposed Variation that the Principal is considering.

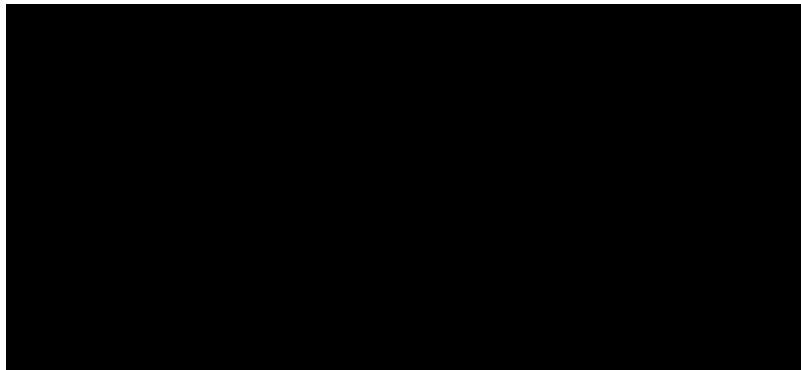
(b) Within 10 Business Days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative, the CN Contractor must provide the Principal's Representative with a written notice in which the CN Contractor sets out:

(i) the CN Contractor's proposed adjustments to the Contract Sum and the Payment Breakdown Schedule, to be determined on the basis of:

A. the prices and rates set out in Schedule 10 (where applicable or where it is otherwise reasonable to use them for valuing the Variation); or

B. to the extent clause 6.1(b)(i)A does not apply, the reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit), to be increased by the following amount:

1) where the proposed adjustment to the Contract Sum is an increase:



which will be in total satisfaction of all the CN Contractor's Overhead Costs and profit; or

2) where the proposed adjustment to the Contract Sum is a decrease, [redacted]



(ii) the effect (if any) that the proposed Variation will have on the CN Contractor's Program (including any extension of time required to a Date for Substantial Completion, Date for Completion or Date for

Milestone Achievement (if any) and the measures the CN Contractor proposes to take to avoid, mitigate or minimise the effect of the proposed Variation on the CN Contractor's Program);

- (iii) any Authority Approvals required to implement the proposed Variation, and the effect of the proposed Variation on any existing Authority Approvals or the CN Contractor's ability to comply with those Authority Approvals;
 - (iv) the effect (if any) which the proposed Variation will have on the CN Contractor's ability to satisfy its obligations under this Contract (including any warranties given by the CN Contractor under this Contract) or exercise its rights under this Contract;
 - (v) the CN Contractor's view on the likely impact of the proposed Variation on any Interface Works, including whether the CN Contractor considers that an Interface Works Change will, or is likely to, be required to enable the proposed Variation to be implemented or as a consequence of the proposed Variation and if so, any change that could be made to the proposed Variation (including any change to the timing of the proposed Variation or to the manner in which the Variation is proposed to be implemented) to reduce or avoid the impact of the proposed Variation on the relevant Interface Works; and
 - (vi) such other details as may be reasonably required by the Principal's Representative.
- (c) The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

6.2 Variation Orders

- (a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time prior to expiry of the Defects Rectification Period (but without limiting clauses 8 and 13.3) direct the CN Contractor to carry out a Variation by issuing a written document titled "Variation Order", in which the Principal's Representative will state one of the following:
 - (i) the proposed adjustments to the Contract Sum and the Payment Breakdown Schedule set out in the CN Contractor's notice under clause 6.1 are agreed and the Contract Sum and Payment Breakdown Schedule will be adjusted accordingly; or
 - (ii) any adjustment to the Contract Sum will be determined under clause 6.4(b).
- (b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Contract.
- (c) The CN Contractor must comply with a "Variation Order" irrespective of:

- (i) the nature, extent or value of the work the subject of the Variation;
 - (ii) the location or timing (including the impact on any Date for Substantial Completion, Date for Completion or Date for Milestone Achievement (if any)) of the work involved in the Variation; or
 - (iii) any Dispute related to the Variation.
- (d) The CN Contractor's entitlement (if any) to an extension of time and delay costs arising out of or in connection with a Variation will be dealt with under clause 10 and not this clause 6. The valuation of Variations under clause 6.4 will exclude any amount for costs incurred by the CN Contractor as a result of any delay or disruption caused by the Variation.
- (e) Except as directed in a Variation Order or where the Principal's Representative approves a Variation proposed by the CN Contractor under clause 6.7A(c), the CN Contractor will not be entitled to vary or change the Works or the Temporary Works.

6.3 Options

The Principal's Representative may, by written notice given to the CN Contractor at any time within the period stated in Schedule 15, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the CN Contractor must perform their obligations under this Contract on the basis that the Contract Sum, the Station Specification and the provisions of this Contract will be adjusted as set out in Schedule 15 for the relevant Option.

For the avoidance of doubt:

- (a) the Principal is not under any obligation whatsoever to exercise; and
- (b) the CN Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising,

any Option.

Where the Principal does not exercise its discretion to exercise an Option, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

The exercise of an Option by the Principal's Representative under this clause 6.3 will not:

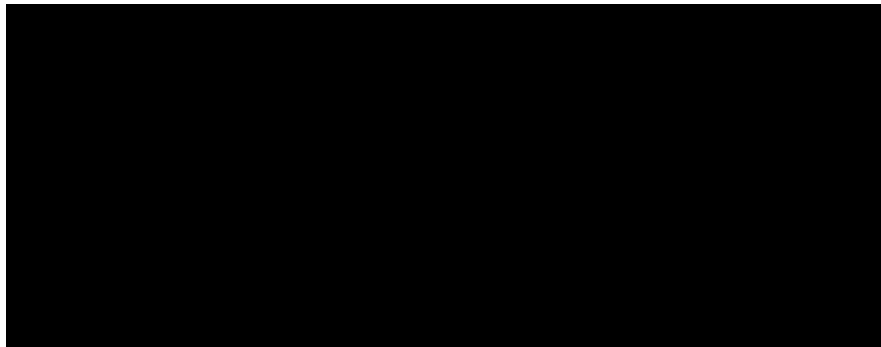
- (c) relieve the CN Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);
- (d) limit or otherwise affect the Principal's rights against the CN Contractor or the CN Contractor's rights against the Principal (including those arising out of any warranties given under this Contract); or
- (e) entitle the CN 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 Variations that have been directed by the Principal's Representative by:

- (a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order; or
- (b) to the extent that clause 6.2(a)(ii) applies, an amount in respect of the Variation to be determined by the Principal's Representative on the basis of:
 - (i) the prices and rates set out in Schedule 10 (where applicable or where it is otherwise reasonable to use them for valuing the Variation); or
 - (ii) to the extent clause 6.4(b)(i) does not apply, reasonable prices and rates (which are to be exclusive of any amount for 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 amount:
 - A. where the adjustment to the Contract Sum is to be an increase:



which will be in total satisfaction of all the CN Contractor's Overhead Costs and profit; or

- B. where the adjustment to the Contract Sum is to be a decrease,



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

6.5 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any part of the Works:

- (a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) the Principal will not be liable upon any Claim by the CN Contractor arising out of or in any way in connection with any work being omitted or deleted from the CN 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 Not used

6.7 Not used

6.7A CN Contractor initiated Variations

- (a) The CN Contractor may propose a Variation by giving written notice to the Principal's Representative with:
 - (i) details of:
 - A. the proposed Variation;
 - B. the reason for the proposed Variation;
 - C. the time within, and the manner in which, the CN Contractor proposes to implement the proposed Variation;
 - D. the effect (if any) of the proposed Variation on the CN Contractor's Activities; including the CN Contractor's Program and the Dates for Substantial Completion, Dates for Completion and Dates for Milestone Achievement;
 - E. the cost effect of assessing and carrying out the proposed Variation, including:
 - 1) where the proposed Variation will involve additional costs, any increased costs;
 - 2) where the proposed Variation will lead to cost savings, the cost savings that the CN Contractor expects to arise from the Variation; and
 - 3) the effect the proposed Variation will have on any operating and maintenance costs;
 - F. the effect (if any) that the proposed Variation will have on any Interface Works, including whether an Interface Works Change will, or is likely to, be required to enable the proposed Variation to be implemented, or as a consequence of the proposed Variation;

- (ii) a written statement stating that the proposed Variation:
 - A. will not adversely affect:
 - 1) the functional integrity of any of the elements of the CN Contractor's Activities; or
 - 2) the CN Contractor's ability to satisfy its obligations under this Contract (including any warranties given by the CN Contractor under this Contract and the performance standards required by this Contract); and
 - B. is consistent with and complies with the conditions and requirements of the Planning Approval.
- (b) On receiving a notice under clause 6.7A(a), the Principal may:
 - (i) give written notice to the CN Contractor requesting any other information and supporting documentation the Principal reasonably requires. The CN Contractor must provide the requested information or documentation to the Principal's Representative within 10 Business Days of receiving the request; and
 - (ii) engage the Design Contractor as part of its assessment of the proposed Variation, including to determine the scope of any updates to the Final Design Documentation that would be required as a result of the proposed Variation.
- (c) Subject to clause 6.7A(d), the Principal's Representative:
 - (i) (in its absolute discretion) may, by notice in writing, approve or reject any Variation the CN Contractor proposes; and
 - (ii) will be under no obligation to approve any such Variation for the convenience of, or to assist, the CN Contractor.
- (d) Prior to giving any direction under clause 6.7A(c), the Principal's Representative may seek to negotiate with the CN Contractor over the level of cost increase or savings arising from the proposed Variation. If the parties agree in writing upon a different level of cost increase or savings, the CN 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 CN Contractor.
- (e) If the Principal's Representative gives a direction under clause 6.7A(c) approving a Variation proposed by the CN Contractor, the CN Contractor must perform its obligations under this Contract in accordance with the approved Variation.
- (f) The CN Contractor will bear all costs:
 - (i) associated with proposing a Variation under clause 6.7A(a);

- (ii) associated with providing details under clause 6.7A(b); and
- (iii) reasonably incurred by the Principal (or the Principal's Representative), including any amounts that are payable by the Principal to the Design Contractor, any Interface Contractor or the Operator, in assessing the proposed Variation (such costs to be a debt due from the CN Contractor to the Principal),

regardless of whether the proposed Variation is approved or rejected by the Principal's Representative.

- (g) Unless otherwise agreed:
 - (i) where a proposed Variation that will involve additional costs is approved by the Principal's Representative, the CN Contractor will bear all costs associated with carrying out the proposed Variation, including:
 - A. any amounts that are payable by the CN Contractor or the Principal to any Interface Contractor(s) under any Project Cooperation and Integration Deeds or any other contracts entered into between the Principal and an Interface Contractor; and
 - B. any amounts that are payable by the Principal to the Design Contractor associated with updating the Final Design Documentation as a result of the Variation;
 - (ii) where a proposed Variation that results in a cost saving is approved by the Principal's Representative, the Contract Sum and the Payment Breakdown Schedule will be reduced by ■■■ of the reduction in costs incurred by the CN Contractor in carrying out the CN Contractor's Activities as a direct result of the Variation, as determined in accordance with clause 6.7A(h); and
 - (iii) subject to clause 6.7A(g)(ii), the CN Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with the Variation.
- (h) For the purposes of clause 6.7A(g)(ii), in respect of each Variation approved by the Principal's Representative, the Principal's Representative will notify the CN Contractor that the reduction in costs as a direct result of a Variation will be:
 - (i) the cost savings specified in the CN Contractor's notice under clause 6.7A(a); or
 - (ii) an amount in respect of the Variation determined by the Principal's Representative on the basis of:
 - A. the prices and rates set out in Schedule 10 (where applicable or where it is reasonable to use them for valuing the Variation); or

B. to the extent clause 6.7A(h)(ii)A does not apply, reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit):

- 1) to be agreed between the parties; or
- 2) failing agreement, determined by the Principal's Representative,

which will be increased by [REDACTED]

6.7B Consultation with Interface Contractors

Without limiting clause 2.9, if the CN Contractor becomes aware that a Variation will, or is likely to, impact on any Interface Works or necessitate an Interface Works Change, then prior to:

- (a) submitting a written notice in accordance with clause 6.1(b); or
- (b) proposing a Variation in accordance with clause 6.7A(a),

the CN Contractor must:

- (c) notify the relevant Interface Contractor(s) of the proposed Variation; and
- (d) work closely and iteratively with the relevant Interface Contractor(s) in good faith regarding the scope and, if relating to Temporary Works, design of the proposed Variation (and, where applicable, the corresponding Interface Works Change) in order to reduce the overall cost to the Principal of implementing the Variation.

6.8 CN Contractor's Entitlements

This clause 6 is an exhaustive code of the CN Contractor's rights in any way in connection with any Variation. The CN 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.

7. Construction

7.1 Construction

- (a) The CN Contractor must construct and handover to the Principal the Works and construct the Temporary Works:
 - (i) in accordance with:
 - A. subject to clause 7.1(b):
 - 1) the Station Specification;

- 2) the Final Design Documentation; and
 - 3) the Shop Drawings prepared by the CN Contractor in accordance with the requirements of this 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.
- (aa) The CN Contractor must not commence construction of any Third Party Works or the CN Contractor's Activities which interface with Third Parties until the relevant preconditions to commencement of that work in the relevant Third Party Agreement have been satisfied (or waived by the relevant Third Party).
 - (b) If there is any ambiguity, discrepancy or inconsistency between this Contract (including the Station Specification) and any Shop Drawings which have been prepared by the CN Contractor and not rejected by the Principal's Representative under clause 9.8, then, unless otherwise directed by the Principal's Representative, the requirements of this Contract will prevail.
 - (c) At monthly intervals during the construction work and at Substantial Completion and Completion of each Portion and Milestone Achievement of each Milestone, the CN Contractor must submit to the Principal's Representative a "Certificate of Construction Compliance" in the form of Schedule 20.

7.2 All Work Included

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

7.3 Provisional Sum Work

- (a) For each item of Provisional Sum Work, but subject to clause 7.3(aa), the Principal's Representative will give the CN Contractor a direction either

requiring the CN Contractor to proceed with the item of Provisional Sum Work or deleting the item of Provisional Sum Work.

- (aa) In the case of any item of Provisional Sum Work that is also a Call-off Service, the CN Contractor:
 - (i) must carry out such services when directed by the Principal's Representative under this Contract;
 - (ii) will, subject to clause 7.3(aa)(iii) and clause 7.3(ba), be paid for the performance of such services in accordance with item 30 of Schedule 1 or the relevant rates set out in Schedule 10 (as applicable); and
 - (iii) will be entitled to claim payment under clause 11.2 in respect of such services only once the aggregate amount payable in respect of the relevant category of Call-off Service has exceeded the amount allowed for the item of Provisional Sum Work in the Payment Breakdown Schedule.

- (b) Where the Principal's Representative gives the CN Contractor a notice requiring the CN Contractor to proceed with an item of Provisional Sum Work that is not a Call-Off Service, 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 the Payment Breakdown Schedule; and
 - (ii) either:
 - A. a fixed amount agreed between the CN Contractor and the Principal's Representative; or
 - B. if they fail to agree, the amount calculated in accordance with item 30 of Schedule 1 for the relevant item of Provisional Sum Work, as determined by the Principal's Representative, excluding any amount for the CN Contractor's Overhead Costs or profit.

- (ba) Where the Principal's Representative directs the CN Contractor to carry out a Call-Off Service and the aggregate amount payable by the Principal under this Contract in respect of that Call-off Service:
 - (i) has exceeded in total the provisional sum allowed for that Call-Off Service in the Payment Breakdown Schedule, the difference will be added to the Contract Sum; or
 - (ii) is in total less than the relevant provisional sum allowed for that Call-Off Service in the Payment Breakdown Schedule, the difference will be deducted from the Contract Sum and will be a debt due and payable from the CN Contractor to the Principal.

- (c) The CN Contractor acknowledges and agrees that:

- (i) the Original Contract Price includes an amount for the CN Contractor's Overhead Costs and profit in respect of all Provisional Sum Work set out in the Payment Breakdown Schedule; and
 - (ii) any adjustment to the Contract Sum determined in accordance with clause 7.3(b) or clause 7.3(ba) will not include any amount for the CN Contractor's Overhead Costs or profit.
- (d) Where the Principal's Representative gives the CN 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 the Payment Breakdown Schedule;
 - (ii) the Principal may thereafter either carry out the Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and
 - (iii) the Principal will not be liable upon any Claim by the CN Contractor arising out of the deletion of the item of Provisional Sum Work.

7.4 Not used

7.5 Setting Out

The CN Contractor must:

- (a) set out the Works in accordance with the requirements of this Contract, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the CN 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 CN Contractor discovers an error in the position, level, dimensions or alignment of any part of the Works, the CN Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the CN Contractor must at its cost rectify the error.

7.6 Survey

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

- (a) for its review under clause 9.8 a Survey Plan for the Works or the relevant Portion that:

- (i) has regard to the setback requirements in the 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; and
 - (vii) shows the location of the relevant Portion and all Utility Services; and
- (b) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
- (i) the elements of the Portion are in the positions and within the tolerances required by Law and this Contract;
 - (ii) the survey information included in the configuration materials provided pursuant to the Station Specification complies with the requirements of this Contract; and
 - (iii) any other matter identified by the Principal's Representative, complies with the requirements of this Contract.

7.7 Cleaning Up

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

- (a) keep the Site, Extra Land and the Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Site and Extra Land; and
- (c) as a condition precedent to Substantial Completion of the Trackway Portion and Completion of any Station Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site and Extra Land or the part of the Site or Extra Land relevant to the Works or the Portion, except where the retention of any of these are required for the correction of Defects during the Defects Rectification Period and this is approved in writing by the Principal's Representative.

7.8 Safety

- (a) The CN Contractor must carry out the CN Contractor's Activities:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- (aa) If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the CN Contractor's Activities:
 - (i) the Principal's Representative may direct the CN Contractor to change its manner of working or to cease working; and
 - (ii) the CN Contractor must, at its cost, comply with any direction by the Principal's Representative under clause 7.8(aa)(i).
- (b) The CN Contractor must:
 - (i) ensure that in carrying out the CN Contractor's Activities:
 - A. it complies with all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), Codes and Standards, 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 7.8 and their respective obligations under all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and Chain of Responsibility Provisions), Codes and Standards, 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 immediately (and in the event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the CN Contractor's Activities, unless otherwise directed by the Principal;
 - (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;

- (iv) provide the Principal's Representative with the written assurances obtained pursuant to clause 7.8(b)(iii), together with written assurance(s) from the CN Contractor about the CN Contractor's ongoing compliance with the WHS Legislation;
 - (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 9.5, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.8), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the CN Contractor's compliance with the WHS Legislation;
 - (vi) consult, cooperate and coordinate with the Interface Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
 - (ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 7.8.
- (c) Without limiting clause 16.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Works, the Environment, other property or the health or safety of people.
- (d) If the action taken by the Principal is action which the CN Contractor was required to take under this Contract but did not take, the amount of any penalty, fine, damage, expense, cost (including any reasonable legal fees), loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:
- (i) taking the action contemplated in this clause 7.8(c); or
 - (ii) the CN Contractor's failure to take that action,
- will, except to the extent prohibited by Law, be a debt due from the CN Contractor to the Principal.
- (e) Where clause 16.28 applies, the CN Contractor:
- (i) warrants that it is accredited under the WHS Accreditation Scheme; and
 - (ii) must comply with all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while "building work" (as defined in section 5 of the BCIIIP Act) is carried out.

7.9 Construction Plant and Materials Removal

Except for the purpose of achieving Substantial Completion of the Trackway Portion or Completion of a Station Portion as contemplated by clause 7.7(c), the CN Contractor must not remove from the Site or the CN Contractor's Activities any:

- (a) significant materials or major items of Construction Plant; or
- (b) materials or Construction Plant specified in any written notice issued by the Principal's Representative,

without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

7.10 Not used

7.11 Rail Safety

(aa) Without limiting any other clause in this Contract, the CN Contractor must comply, and ensure that its Associates comply, with the Rail Safety National Law and the Principal's reasonable requirements in relation to rail safety.

(ab) The CN Contractor acknowledges that:

- (i) the CN Contractor's Activities and the Works are being undertaken for the purpose of constructing a railway;
- (ii) the Principal holds Accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and
- (iii) to the extent that the CN Contractor's Activities comprise Railway Operations (as that term is defined in the Rail Safety National Law), for the purposes of the Rail Safety National Law it carries out those CN Contractor's Activities for and on behalf of the Principal under the Principal's Accreditation.

(a) In carrying out any part of the CN Contractor's Activities which require Accreditation as a Rail Infrastructure Manager, the CN Contractor:

- (i) must comply with all conditions of the Principal's Accreditation as a Rail Infrastructure Manager and the Principal's Safety Management System;
- (ii) must not do anything or fail to do anything that may cause the Principal to breach its obligations under the Rail Safety National Law; and
- (iii) must ensure that the CN Contractor's Subcontractors engaged in or in connection with the CN Contractor's Activities comply with clauses 7.11(a)(i) and 7.11(a)(ii).

(b) In carrying out any part of the CN Contractor's Activities which require Accreditation as a Rolling Stock Operator, the CN Contractor must:

- (i) ensure that the CN Contractor, or one of the CN Contractor's Subcontractors, holds the necessary Accreditation for that part of the CN Contractor's Activities; and
- (ii) comply with the conditions of that Accreditation.
- (c) Without limiting or otherwise affecting any other provision under this Contract, the CN Contractor must, and must ensure that the CN Contractor's Subcontractors, comply with all obligations under the Rail Safety National Law including entering into interface agreements required by Part 3 of the Rail Safety National Law in respect of any part of the CN Contractor's Activities which require Accreditation as a Rolling Stock Operator.
- (d) To the extent not prohibited by Law, the CN Contractor must indemnify the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in any way in connection with the CN Contractor's failure to comply with this clause 7.11.

8. Defects

8.1 Defects Liability

- (a) If during the Defects Rectification Period, any Defect is found in the Works (whether or not it is the subject of a notice under clause 8.2), the CN Contractor must rectify such Defect and any damage to the Works to the extent caused by the Defect.
- (b) Without limiting clause 8.1(a), the CN Contractor must:
 - (i) following Substantial Completion or Completion of a Portion or Milestone Achievement of a Milestone (as applicable), use its best endeavours to correct all Minor Defects and Agreed Defects identified in a Notice of Substantial Completion, Notice of Completion or Notice of Milestone Achievement (as applicable) within 30 days after the achievement of Substantial Completion, Completion or Milestone Achievement (as applicable); and
 - (ii) ensure that all Minor Defects and Agreed Defects identified in:
 - A. a Notice of Substantial Completion for the Trackway Portion are corrected within 90 days after the Date of Substantial Completion of the Trackway Portion; or
 - B. a Notice of Completion for any Station Portion are corrected within 90 days after the Date of Completion of the relevant Portion.
- (c) When rectifying Defects which existed at:
 - (i) in respect of the Trackway Portion, the Date of Substantial Completion of the Trackway Portion; and

- (ii) in respect of any other Portion, the Date of Completion of that Portion, the CN Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Works or a Portion, Local Areas, Utility Services (or any access to them) and the adjacent community as is reasonably possible.

8.2 Defect Notification

If at any time prior to the expiration of any Defects Rectification Period, the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the CN Contractor a direction which identifies the Defect and does one or more of the following:

- (a) requires the CN Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;
- (b) following consultation with the CN Contractor, advises the CN 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 CN Contractor that another contractor (which may include an Interface Contractor) will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a change or variation under its contract with the Principal 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 CN Contractor must rectify the Defect (or the part of it notified):
 - (i) within the times specified in the Principal's Representative's direction, which will generally be limited to the periods during which the rectification work will cause minimal or no inconvenience to the operators, including any Rail Transport Agency (where relevant), and occupants of the Works; and
 - (ii) if after the relevant Portion Handover Date:
 - A. at other times otherwise agreed with the Principal's Representative;
 - B. in accordance with the requirements of the operators of the Works, including any Rail Transport Agency (where relevant), and any other relevant Authority;
 - C. so as to minimise the impact on the use of the Works or the Portion;
 - D. in a manner which causes as little inconvenience as possible to users of the Works or the Portion or the public, any Utility Service or any access to the Works or the Portion;

- E. if an Interface Contractor has taken possession of the relevant part of the Site, in accordance with the reasonable requirements of the relevant Interface Contractor in relation to access and site safety; and
 - F. in accordance with its obligations under the Project Cooperation and Integration Deeds; and
- (b) if the CN 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 CN Contractor with respect to the Defect under this Contract or otherwise at Law, give the CN Contractor a direction under clause 8.2(c) and have the rectification work carried out at the CN Contractor's expense, and the cost of the rectification work incurred by the Principal will be a debt due from the CN Contractor to the Principal.

The CN Contractor must pay the Principal all costs incurred by the Principal in providing access to the Works or a Portion, or arranging the availability of any resources (including the resources of any other Rail Transport Agency), as may be necessary for the CN Contractor to rectify any Defect during the Defects Rectification Period.

8.4 No Claim for Correction of Defect

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

8.5 Acceptance of Work

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

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

- B. not be changed where the amount determined by the Principal's Representative is positive.

8.6 Extension of Defects Rectification Period

If:

- (a) the Principal's Representative gives the CN Contractor a notice under clause 8.2(a) during any Defects Rectification Period; and
- (b) the CN 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 item 4 of Schedule 1, commencing upon completion of the rectification of the Defect (or the part notified).

8.7 Defect Rectification by Other Contractor

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

- (a) without limiting or otherwise affecting clause 2.9, the CN Contractor must not impede the other contractor from having sufficient access to the Site or Extra Land to rectify the Defect or carry out the change or variation under its contract with the Principal (as applicable); 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 or variation under its contract with the Principal (as applicable), will be a debt due from the CN Contractor to the Principal.

8.8 Rights Not Affected

Neither the Principal's rights, nor the CN 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 CN 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 CN 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 CN Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Contract.
- (e) 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.
- (f) The Principal will not be liable upon any Claim by the CN Contractor arising out of or in connection with any 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 CN 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 Issue in accordance with clause 15.3.

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 CN 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 CN 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 CN 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 CN Contractor's Personnel

- (a) The CN Contractor must notify the Principal's Representative in writing of the name of the CN Contractor's Representative (who at the date of this Contract is the relevant person listed in Schedule 49) and of any subsequent changes.
- (b) The CN Contractor must:
 - (i) employ the individuals nominated by the CN Contractor and listed in Schedule 49 in the positions specified in Schedule 49 or equivalent positions;
 - (ii) subject to clause 9.4(b)(iii), not replace the individuals referred to in clause 9.4(b)(i) without the Principal's Representative's prior written approval which will not be unreasonably withheld; and
 - (iii) if any of the individuals referred to in clause 9.4(b)(i):
 - A. dies;
 - B. becomes unable to continue in their positions due to illness;
 - C. resigns from the employment of the CN Contractor (other than to accept other employment with the CN Contractor or any Related Body Corporate of the CN Contractor); 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 CN

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 CN Contractor's Activities. The CN Contractor must then cease to engage that person in the CN Contractor's Activities and must appoint a replacement.

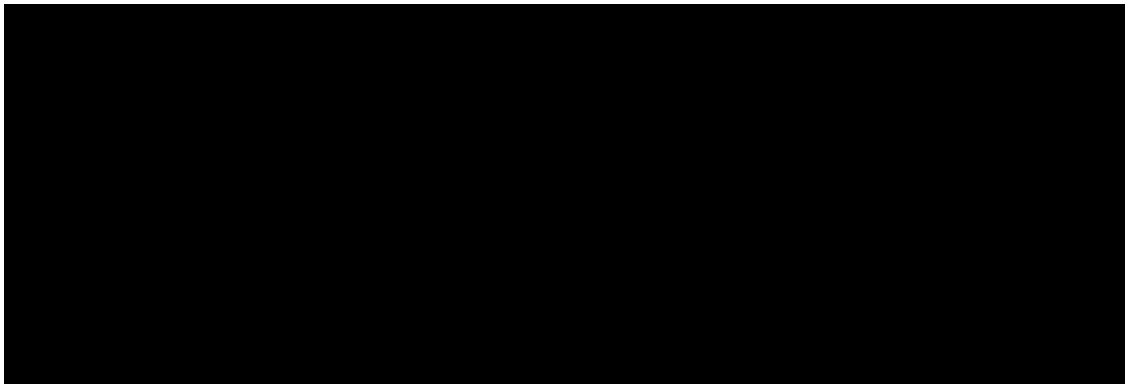
- (d) The CN Contractor must ensure that any person the subject of a direction under clause 9.4(c) is not again employed in the CN Contractor's Activities or on the Site.
- (e) Any direction under clause 9.1(a) will be deemed to have been given to the CN Contractor if given to the CN Contractor's Representative. Matters within the knowledge of the CN Contractor's Representative will be deemed to be within the knowledge of the CN Contractor.

9.5 Site Meetings

The CN 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 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 last Portion to reach Completion until all Defects Rectification Periods (including any extension under clause 8.6), have expired or at such other intervals as may otherwise be agreed.

9.5A Independent Certifier



- (b) Once the final form of the Independent Certifier Deed is agreed in writing between the Principal, the CN Contractor, the Independent Certifier and the Operator:
 - (i) the Principal will provide the final version of the Independent Certifier Deed to the CN Contractor; and
 - (ii) the CN Contractor must provide to the Principal the Independent Certifier Deed, duly executed by the CN Contractor in the number of counterparts required by the Principal's Representative, within 10

Business Days after receipt of the final version of the Independent Certifier Deed from the Principal's Representative.

- (c) Without limiting [REDACTED] clause 9.5A(b):
 - (i) the Principal's Representative may, by written notice to the CN Contractor and in its absolute discretion, request the CN Contractor to execute an IC Letter of Intent in the form attached to the Principal's Representative's notice, which must be substantially in the form set out in Schedule 38; and
 - (ii) if requested by the Principal's Representative, the CN Contractor must:
 - A. provide to the Principal the IC Letter of Intent, duly executed by the CN Contractor in the number of counterparts required by the Principal, within 10 Business Days after receipt of the Principal's Representative's request; and
 - B. at all relevant times thereafter comply with the terms of the IC Letter of Intent.
- (d) The Independent Certifier will be engaged on the terms of:
 - (i) the IC Letter of Intent (if required by the Principal's Representative pursuant to clause 9.5A(c)(i)); and
 - (ii) the Independent Certifier Deed.
- (e) The Independent Certifier is obliged to act independently of the Principal, the CN Contractor and their respective Associates.
- (f) Both parties must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
 - (i) to attend meetings; and
 - (ii) access to all premises,as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the IC Letter of Intent (if applicable) and the Independent Certifier Deed.
- (g) All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (h) The Principal's Representative may provide comments to the Independent Certifier in respect of the CN Contractor's Activities.

9.5B Effect of Independent Certifier decisions

- (a) No certification or determination by the Independent Certifier will:
 - (i) constitute an approval by the Principal of the CN Contractor's performance of its obligations under this Contract;
 - (ii) be taken as an admission or evidence that the Works or Temporary Works or any other matters certified or determined by the Independent Certifier comply with this Contract; or
 - (iii) prejudice any rights or powers of the Principal under this Contract or otherwise according to Law, including any rights which the Principal may have in respect of Defects in the Works.
- (b) No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier:
 - (i) is an act or omission by the Principal (including a breach of contract) under or in connection with the CN Station Contract Documents; or
 - (ii) without limiting clause 9.5B(a), will give rise to any liability of the Principal to the CN Contractor.

9.6 Environmental Representative

The CN Contractor acknowledges and agrees that:

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

reasonable steps the CN Contractor must take to avoid or minimise unintended or adverse environmental impacts;

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

9.7 Industrial Relations

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

- (a) assume sole responsibility for and manage all aspects of industrial relations for the CN Contractor's Activities (but, for the avoidance of doubt, excluding any industrial relations matters resulting from the Interface Works or works by the Principal's Associates, except to the extent required as part of the CN Contractor's obligations under clause 2.9);
- (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 CN Contractor's Activities, are always observed in full;
- (d) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the CN Contractor's Activities;
- (e) without limiting clause 2.3 and clause 20, comply with all the requirements of the NSW Guidelines;
- (f) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the CN Contractor as part of the Project Plans, in accordance with the Station Specification and clause 9.8;
- (g) prepare, document and implement a project Workplace Relations Management Plan which must be based on the draft Workplace Relations Management Plan submitted with the CN Contractor's Tender (as set out in Exhibit D);
- (h) not commence any work on the Site or Extra Land until the Workplace Relations Management Plan has been submitted to the Principal's Representative and the Principal's Representative has not rejected it under clause 9.8;
- (i) submit to the Principal's Representative, before beginning work on the Site or Extra Land, a statement detailing:

- (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 CN Contractor and Subcontractors involved in the CN Contractor's Activities; and
 - (iii) the names of those responsible for coordinating industrial relations for the CN Contractor's Activities;
- (j) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the CN Contractor's Activities;
- (k) before beginning work on the Site or Extra Land, submit a statement on the CN Contractor's letterhead and signed by an authorised person, attesting to the CN 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 CN 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 CN Contractor's Activities.

If the CN 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 CN Contractor under clause 9.7(i).

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

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

The CN 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 CN Contractor must submit each Document:
 - (i) in accordance with the times stated in this Contract or otherwise progressively and in a timely manner to ensure that the CN 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 CN Contractor's Program which is not rejected by the Principal's Representative; or
 - B. in the absence of a time or period in the CN 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 CN 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 CN 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 CN Contractor of such Document or resubmitted Document (or, in respect of Shop Drawings submitted by the CN Contractor in accordance with clause 5.4(a)(ii), within 10 Business Days of submission):

- A. reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this Contract, stating the nature of the non-compliance;
 - B. make comments on the Document; or
 - C. notify the CN 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 CN 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 CN 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 CN 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 CN Contractor must not commence construction of any part of the Works to which any Document (other than the CN Contractor's Program, Shop Drawings or any Temporary Works design documentation requested by the Principal's Representative in accordance with clause 5.3(b)) 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 CN 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 CN Contractor must not amend for construction purposes 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 CN 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 CN Contractor to review, or in reviewing, a Document submitted by the CN Contractor, including for errors, omissions or non-compliance with this Contract.

- (h) The CN 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 CN 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 CN Contractor, or any other direction by the Principal's Representative in connection with the Document, will:
 - (i) constitute a direction to carry out a Variation pursuant to clause 6.2, unless it is in a written document titled "Variation Order" and describes the nature of the Variation in accordance with clause 6.2(a);
 - (ii) relieve the CN 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 CN Contractor, whether under this Contract or otherwise according to any Law.
- (j) In considering any Document, the Principal's Representative may provide copies of the Document to, and consult with and take into account any views or requirements of, the Independent Certifier, the Design Contractor, any Interface Contractor and/or any relevant Authority.
- (k) Unless otherwise advised by the Principal's Representative, the CN 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 (in both pdf and native formats) via the PDCS, which must be virus free; and
 - (ii) 1 printed version.

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 CN Contractor adopts or proposes to adopt is impractical or impossible or that the CN Contractor, with or without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle the CN 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 CN Contractor authorises the Principal and its Associates to make information concerning the CN 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 CN Contractor to the Principal and any information relating to the CN Contractor's performance under this Contract.

The CN Contractor acknowledges that any information about the CN 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 CN Contractor future opportunities for NSW government work.

The CN Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the CN 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 CN 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 CN Contractor and any Subcontractors;
- (b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the date of commencement of the Works; and

it must, if requested by the Principal's Representative, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment.

9.12 Aboriginal Participation

The CN Contractor must comply with the requirements of the NSW Government Aboriginal Participation in Construction (**APIC**) Policy (June 2018) as specified in section 2.8.6 of the General Specification.

9.13 Waste Reduction and Purchasing Policy

The CN Contractor must:

- (a) use its best endeavours to reduce wastage and increase the use of recycled materials in accordance with the GREP;

- (b) address as part of the Construction Environmental 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 Act 2007 (Cth)

The CN Contractor acknowledges and agrees that:

- (a) if any of the CN Contractor's Activities, or the activities of any of the CN Contractor's personnel, in connection with the CN 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 CN Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, despite the operation of clause 9.15(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the CN Contractor, the CN Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the CN Contractor;
- (c) if the Principal requests it, the CN 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 CN Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time;
- (d) the CN Contractor must also provide to the Principal all Greenhouse Data and other information which the CN Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the CN Contractor provides that Greenhouse Data or other information to that other person;

- (e) the CN Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the CN 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);
- (f) 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
- (g) nothing in this clause 9.15 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the CN Contractor may have regarding the provision of Greenhouse Data to any Authority.

9.16 Independent Property Impact Assessment Panel

- (a) The CN 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 CN 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 or Extra Land and inspect the CN Contractor's Activities provided that the CN Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the CN 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 CN Contractor is given reasonable prior written notice of any such meeting.

9.17 Risk Register

- (a) The CN Contractor must develop, implement and maintain a consolidated and up-to-date register ("**Risk Register**") of:
 - (i) all reasonably foreseeable risks associated with the CN Contractor's Activities which may give rise to a risk of:
 - A. a delay to:
 - 1) Milestone Achievement of any Milestone;
 - 2) Substantial Completion of any Portion; or
 - 3) Completion of any Portion;
 - B. an adverse effect on the performance of the CN Contractor's Activities or the Works;
 - C. a Claim by the CN Contractor; or
 - D. a party being in breach of any term of this Contract;
 - (ii) all potential opportunities associated with the CN Contractor's Activities.
- (b) Without limiting section 2.2.2 of the General Specification, the Risk Register must include, in respect of each risk or potential opportunity:
 - (i) a description of the risk or potential opportunity applicable to all stages and phases including transition between phases and their likely impact;
 - (ii) an analysis, assessment and evaluation of the risk or potential opportunity;
 - (iii) in relation to risks only:
 - A. details of specific risk control measures and proposed treatments for the identified risk to eliminate or reduce the risk; and
 - B. the current and residual risk level assessed in terms of consequence and likelihood;
 - (iv) the personnel responsible for managing the risk or potential opportunity and monitoring implementation of treatment measures; and
 - (v) as applicable (in relation to risks only), a demonstration that the risk has been eliminated, or has been minimised and managed so far as is reasonably practicable.
- (c) The CN Contractor must submit the Risk Register to the Principal's Representative as part of the monthly Progress Report submitted by the CN Contractor in accordance with section 5.2.2 of the General Specification, or as otherwise directed by the Principal's Representative.

9.18 Risk management meetings

Without limiting section 2.2.3 of the General Specification, at each risk management meeting facilitated by the CN Contractor in accordance with section 2.2.3 of the General Specification, the parties agree to:

- (a) review the current Risk Register;
- (b) develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register, including what assistance the Principal may be able to provide to the CN Contractor, and the CN Contractor must inform the Principal's Representative if it considers any such proposal or solution would give rise to a Variation or otherwise give rise to a Claim by the CN Contractor;
- (c) decide upon any specific action to be taken by the parties in response to the risks and potential opportunities listed on the Risk Register; and
- (d) remove from the Risk Register those risks which have been avoided or passed.

10. Time and Progress

10.1 Rate of Progress

- (a) The CN Contractor must:
 - (i) immediately commence, and thereafter regularly and diligently progress the CN Contractor's Activities;
 - (ii) proceed with the CN Contractor's Activities with due expedition and without delay; and
 - (iii) achieve:
 - A. Substantial Completion of each Portion by the relevant Date for Substantial Completion;
 - B. Completion of each Portion by the relevant Date for Completion; and
 - C. Milestone Achievement of each Milestone by the Date for Milestone Achievement of that Milestone.
- (b) Without limiting the CN Contractor's rights under the *SOP Act*, the CN Contractor must not suspend the progress of the whole or any part of CN Contractor's Activities except where directed by a court or by the Principal's Representative under clause 10.14.
- (c) Without limiting the next paragraphs of this clause 10.1 or clause 10.4, the CN Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the CN

Contractor to carry out the CN 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, direct in what order and at what time the various stages or parts of the CN Contractor's Activities must be performed. If the CN Contractor can reasonably comply with the direction, the CN Contractor must do so. If the CN Contractor cannot reasonably comply, the CN Contractor must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1.
- (f) If compliance with a written direction expressly stated to be pursuant to this clause 10.1 causes the CN Contractor to necessarily incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued as if it were a Variation except where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the CN Contractor to comply with its obligations under this Contract.
- (g) Such costs shall be the CN Contractor's sole entitlement, and the CN Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 10.1.

10.2 The CN Contractor's Programming Obligations

The CN Contractor must:

- (a) within the time specified in item 31 of Schedule 1 after the date of this Contract, prepare and submit to the Principal's Representative for its review in accordance with clause 9.8 an update to the Initial CN Contractor's Program that:
 - (i) complies with and includes the details required by this Contract and any requirements of the Principal's Representative; and
 - (ii) is in the native file format, which must be compatible with Oracle Primavera P6 Professional Release 8.2 (or any subsequent upgraded version if permitted by the Principal's Representative);
- (b) without limiting clause 10.2(a), submit the CN Contractor's Program to the Principal's Representative for its review in accordance with clause 9.8 at any time required by the Station Specification;
- (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 CN 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 CN Contractor's Program:
 - (i) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative in accordance with clause 10.10, the actual progress made by the CN Contractor, Variations and any other changes to the CN Contractor's Activities but excluding claims for extensions of time to any Date for Substantial Completion, Date for Completion or Date for Milestone Achievement which have been submitted by the CN Contractor to the extent that they have not been granted by the Principal's Representative; and
 - (ii) on a monthly basis or whenever directed to do so by the Principal's Representative;
- (e) prepare and provide for the Principal's Representative's information only versions of all CN Contractor's Programs prepared in accordance with clause 10.2(d) that also allow for those claims for an extension of time that have been made by the CN Contractor in accordance with clause 10.8 but to which the Principal's Representative has not yet responded in accordance with clause 10.10;
- (f) comply with the requirements of the Principal's Representative and its other obligations under this Contract in preparing and using programs, including the requirements in clause 9.8; and
- (g) not depart from the current version of the CN 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 CN 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 CN Contractor's Program) prepared by the CN Contractor, by the Principal's Representative in connection with the program, will:

- (a) relieve the CN 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 Substantial Completion, Date for Completion or Date for Milestone Achievement or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the CN Contractor's Activities; or
- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Contract.

10.4 Compression by CN Contractor

If the CN Contractor chooses to compress the CN 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 CN Contractor to achieve Substantial Completion or Completion of a Portion before the relevant Date for Substantial Completion or Date for Completion (as applicable) or Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement;
- (b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) the CN Contractor does so at its own cost and risk.

10.5 Importance of Milestone Achievement, Substantial Completion and Completion on Time

The CN Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 10.1 to enable Interface Contractors to carry out and complete the activities of the Interface Contractors within the time required by their respective Interface Agreements, including so as to enable the Principal to pursue improved public transport in Sydney; and
- (b) that the Date for Substantial Completion or Date for Completion of any Portion or Date for Milestone Achievement of any Milestone will only be extended in accordance with clause 10.10 or clause 10.12, or when so determined under clause 15.

10.6 Risk and Notice of Delay

- (a) Except as expressly provided for in clause 10.10, the CN Contractor accepts the risk of all delays in, and disruption to, the carrying out of the CN Contractor's Activities and performance of its obligations under this Contract both before and after any Date for Substantial Completion, Date for Completion or Date for Milestone Achievement.
- (b) The CN Contractor must, within 5 Business Days of becoming aware (or when the CN Contractor ought reasonably to have first become aware) 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 CN Contractor's Activities;
 - (ii) details of the cause; and
 - (iii) how any Date of Substantial Completion, Date of Completion or Date of Milestone Achievement (as applicable) is likely to be affected (if at all).

10.7 Entitlement to Claim Extension of Time

(a) If the CN Contractor is, or will be, delayed on or prior to the Date for Substantial Completion or Date for Completion of a Portion or the Date for Milestone Achievement of a Milestone (as applicable) by reason of:

(i) an act or omission of the Principal or the Principal's Representative (including any breach of this Contract or Variation directed by the Principal's Representative but excluding any act or omission of the Principal or the Principal's Representative authorised or permitted by this Contract); or

(ii) a cause set out in item 32 of Schedule 1,

in a manner that will delay it from achieving Substantial Completion or Completion of a Portion by the relevant Date for Substantial Completion or Date for Completion (as applicable) or Milestone Achievement by the relevant Date for Milestone Achievement, the CN Contractor may claim an extension of time to the relevant Date for Substantial Completion, Date for Completion or Date for Milestone Achievement (as applicable).

(b) If the CN Contractor is, or will be, delayed from achieving:

(i) Substantial Completion of a Portion after the relevant Date for Substantial Completion;

(ii) Completion of a Portion after the relevant Date for Completion; (as applicable); or

(iii) Milestone Achievement after the relevant Date for Milestone Achievement,

by reason of:

(iv) an act or omission of the Principal or the Principal's Representative (including any breach of this Contract or Variation directed by the Principal's Representative but excluding any act or omission of the Principal or the Principal's Representative authorised or permitted by this Contract); or

in a manner which will delay it in achieving Substantial Completion or Completion of the Portion or Milestone Achievement of the Milestone (as applicable), the CN Contractor may claim an extension of time to the relevant Date for Substantial Completion, Date for Completion or Date for Milestone Achievement (as applicable).

(c) The CN Contractor acknowledges and agrees that, when determining the CN Contractor's entitlement to claim an extension of time pursuant to clause 10.7(a) where the CN Contractor is delayed by reason of the cause set out in paragraph (g) of item 32 of Schedule 1, the CN Contractor will only be

entitled to claim an extension of time in respect of each day of delay that occurs after the 10 day period referred to in paragraph (g) of item 32 of Schedule 1 has elapsed.

10.8 Claim for Extension of Time

To claim an extension of time the CN Contractor must:

- (a) within 15 Business Days after the CN Contractor's initial notice under clause 10.6(b), submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Substantial Completion, Date for Completion or Date for Milestone Achievement (as applicable), 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 CN Contractor's Activities;
 - (ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:
 - A. conditions precedent to an extension of time in clause 10.9 have been met; and
 - B. occurrence actually delayed or will delay it in achieving Substantial Completion, Completion or Milestone Achievement (as applicable) in the manner described in clause 10.7;
 - (iii) if early access to the Site was given, or deemed to be given under clause 3.1B(f), gives detailed particulars of how the CN Contractor has used Accessible parts of the Interface Works Site to mitigate the delay; and
 - (iv) attaches an updated CN Contractor's Program which complies with the requirements of clause 10.2(e); and
- (b) if the effects of the delay continue for more than 20 Business Days after the commencement of the occurrence causing the delay and the CN 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 15 Business Days after the first written claim made under clause 10.8(a) (or such other period as may be approved by the Principal's Representative in writing);
 - (ii) within 5 Business Days after the end of the effects of the delay; and
 - (iii) containing the information required by clause 10.8(a) (except to the extent otherwise directed by the Principal's Representative).

The Principal's Representative may, within 10 Business Days of receiving the CN Contractor's claim or further claim for an extension of time for Substantial Completion, Completion or Milestone Achievement (as applicable), by written notice to the CN Contractor, request additional information in relation to the claim or further claim. The CN Contractor must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.

10.9 Conditions Precedent to Extension of Time

It is a condition precedent to the CN Contractor's entitlement to an extension of time to any relevant Date for Substantial Completion, Date for Completion or Date for Milestone Achievement that:

- (a) the CN Contractor gives the notices and claims required by clauses 10.6(b) and 10.8 as required by those clauses;
- (b) the CN Contractor complies with any request for additional information under clause 10.8 within the time required;
- (c) the cause of the delay is beyond the reasonable control of the CN Contractor; and
- (d) the CN Contractor is actually, or will be, delayed in achieving Substantial Completion, Completion or Milestone Achievement (as applicable):
 - (i) on or prior to the Date for Substantial Completion or Date for Completion of the relevant Portion or the Date for Milestone Achievement of the relevant Milestone (as applicable) by reason of one or more of the causes set out in clause 10.7(a) in the manner described in clause 10.7(a); or
 - (ii) after the Date for Substantial Completion or Date for Completion of the relevant Portion or the Date for Milestone Achievement of the relevant Milestone (as applicable) by reason of an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative but excluding any act or omission of the Principal or the Principal's Representative authorised or permitted by this Contract) in the manner described in clause 10.7(b).

If the CN Contractor fails to comply with the conditions precedent in this clause 10.9:

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

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

10.10 Extension of Time

- (a) Subject to clause 10.11, if the conditions precedent in clause 10.9 have been satisfied, the Principal's Representative must determine the reasonable extension of time to the Date for Substantial Completion or Date for Completion of a Portion or the Date for Milestone Achievement of a Milestone (as applicable) to which the CN Contractor is entitled either:
 - (i) within 15 Business Days after the latest of the:
 - A. CN Contractor's written claim under clause 10.8(a); and
 - B. provision by the CN Contractor of any additional information regarding the claim required under clause 10.8; or
 - (ii) in the case of an ongoing delay, within 15 Business Days after receiving a claim with complies with:
 - A. clause 10.8(a);
 - B. clause 10.8(b)(i); or
 - C. clause 10.8(b)(ii),by giving the CN Contractor:
 - (iii) written notice of the determination which includes the extension of time granted and the adjusted Date for Substantial Completion, Date for Completion or Date for Milestone Achievement (as applicable), with reasons where the extension of time granted is for a shorter period of time than that claimed by the CN Contractor; or
 - (iv) if no extension is granted, written notice of that decision, with reasons.
- (b) A failure of the Principal's Representative to grant a reasonable extension of time to the Date for Milestone Achievement, Date for Substantial Completion or Date for Completion within the relevant 15 Business Day period will not cause an affected Date for Milestone Achievement, Date for Substantial Completion or Date for Completion to be set at large, but nothing in this clause 10.10 will prejudice any right of the CN Contractor to damages or to dispute a determination or decision by the Principal's Representative, or failure to provide a determination or decision, under this clause 10.10.

10.11 Reduction in Extension of Time

The Principal's Representative will reduce any extension of time to the relevant Date for Substantial Completion, Date for Completion or Date for Milestone Achievement (as applicable) it would otherwise have determined under clause 10.10 to the extent that:

- (a) the CN Contractor or any of its Associates caused or contributed to the delay or the occurrence causing the delay;

- (b) the CN Contractor failed to take all reasonably practicable steps necessary to preclude the cause of the delay or to avoid or minimise the consequences of the delay (including by performing the CN Contractor's Activities on the Interface Works Site after early access was given under clause 3.1B(a) or deemed to be given under clause 3.1B(f), where relevant to the cause of delay the subject of the CN Contractor's claim, but only to the extent that the CN Contractor's use of such early access was a reasonably practicable step at the time early access was granted to preclude the cause of the relevant delay or to avoid or minimise the consequences of the relevant delay (as applicable));
- (c) a delay caused by an Excusable Cause of Delay and a delay caused other than by an Excusable Cause of Delay occurred at the same time and the CN Contractor would have been delayed [REDACTED] even if the Excusable Cause of Delay had not occurred; or
- (d) the CN Contractor failed to comply with:
 - (i) a Project Cooperation and Integration Deed; or
 - (ii) its obligations under this Contract in connection with the Interface Contractors,and such failure caused or contributed to the delay the subject of the CN Contractor's claim.

For the purposes of clause 10.11(c), "Excusable Cause of Delay" means:

- (e) on or prior to the Date for Substantial Completion or Date for Completion of a Portion or the Date for Milestone Achievement of a Milestone (as applicable), a delay caused by one or more of the causes set out in clause 10.7(a) in the manner described in clause 10.7(a); or
- (f) after the Date for Substantial Completion or Date for Completion of a Portion or the Date for Milestone Achievement of a Milestone (as applicable), a delay caused by one or more of the causes set out in clause 10.7(b) in the manner described in clause 10.7(b).

10.12 Unilateral Extensions

- (a) Whether or not the CN Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Substantial Completion, Date for Completion or Date for Milestone Achievement (as applicable), or is entitled to be, or has been, granted an extension of time to any relevant Date for Substantial Completion, Date for Completion or Date for Milestone Achievement (as applicable) under clause 10.10, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the CN Contractor and the Principal, unilaterally extend any Date for Substantial Completion, Date for

Completion or Date for Milestone Achievement by any period specified in a notice to the CN Contractor and the Principal.

- (b) The Principal's Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the CN Contractor.
- (c) The discretion to grant an extension of time under this clause 10.12 may only be exercised by the Principal's Representative and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 15 or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert, the IDAR Panel or any arbitrator or court).

10.13 Delay Damages

- (a) For each day by which the Date for Substantial Completion or Date for Completion of a Portion or the Date for Milestone Achievement of a Milestone is extended due to a cause set out in item 33 of Schedule 1, the CN Contractor will be entitled to be paid the additional costs reasonably and necessarily incurred by the CN Contractor as a direct result of the delay the subject of the extension of time (as determined by the Principal's Representative) up to but not exceeding the maximum daily amount set out item 34 in Schedule 1.
- (b) Not used.
- (c) The amounts payable pursuant to this clause 10.13 will be a limitation upon the Principal's liability to the CN Contractor for any delay or disruption that:
 - (i) the CN Contractor encounters in carrying out the CN Contractor's Activities; and
 - (ii) arises out of, or in any way in connection with, the breach of this Contract by the Principal,

and the CN Contractor will not be entitled to make, nor will the Principal be liable upon, any Claim in these circumstances other than for the amount which is payable by the Principal under this clause 10.13.

10.14 Suspension

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

If the suspension under this clause 10.14 arises in the circumstance set out in clause 2.10(f) then clauses 2.10(f) and 2.10(g) will apply, otherwise where it arises as a result of:

- (a) the CN Contractor's failure to carry out its obligations in accordance with this Contract (including under clause 4.6 or clause 4.7 or where the CN

Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this Contract or where any process, procedure, test method, calculation, analysis or report required by this Contract has resulted in or will result in a non-conformance), the CN 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 CN Contractor's failure to perform its obligations in accordance with this Contract:
 - (i) a direction to suspend under this clause 10.14 will entitle the CN Contractor to:
 - A. be paid by the Principal the additional costs reasonably and necessarily incurred by it as a direct result of the suspension as determined by the Principal's Representative; and
 - B. an extension of time to any relevant Date for Substantial Completion, Date for Completion or Date for Milestone Achievement (as applicable) where it is otherwise so entitled under this clause 10;
 - (ii) the CN Contractor must take all steps possible to mitigate the additional costs incurred by it as a result of the suspension; and
 - (iii) the CN Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.14(b).

10.15 Compression

- (a) The Principal's Representative may direct the CN Contractor to compress the CN Contractor's Activities by taking those measures which are necessary:
 - (i) if the CN Contractor makes a claim under clause 10.8, 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 (as applicable):
 - A. Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement;
 - B. Substantial Completion of a Portion by the relevant Date for Substantial Completion; or
 - C. Completion of a Portion by the relevant Date for Completion; or
 - (ii) to complete the CN Contractor's Activities in advance of the dates for completion of those activities shown on the CN Contractor's Program, including to achieve (as applicable):

- A. Milestone Achievement of a Milestone prior to the relevant Date for Milestone Achievement;
 - B. Substantial Completion of a Portion prior to the relevant Date for Substantial Completion; or
 - C. Completion of a Portion prior to the relevant Date for Completion.
- (b) The Principal's Representative will have the right to direct that the CN Contractor's Activities be compressed by means of overtime, additional crews, additional shifts, resequencing of the CN Contractor's Activities, or otherwise, whether or not the CN Contractor's Activities are progressing without delay or in accordance with the CN Contractor's Program.
- (c) Prior to carrying out any compression of the CN Contractor's Activities, the CN Contractor must provide the Principal's Representative with a plan for such compression, including:
- (i) the methodology required for an effective and economical compression of the CN Contractor's Activities; and
 - (ii) where the compression is pursuant to a direction under this clause 10.15, an estimate of the additional direct costs for complying with the direction, including sufficient information to support the estimate.
- (d) In respect of a direction given by the Principal's Representative under clause 10.15(a)(i):
- (i) the Principal's Representative may give such a direction whether or not the cause of delay for which the CN Contractor has made its claim under clause 10.8 entitles the CN Contractor to an extension of time to any relevant Date for Milestone Achievement, Date for Substantial Completion or Date for Completion;
 - (ii) the Principal's Representative may at any time by notice in writing withdraw any such direction, after which the CN Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the CN Contractor made a claim under clause 10.8;
 - (iii) any extension in accordance with clause 10.15(d)(ii) will be determined having regard to the effect which the compression of the CN Contractor's Activities taken by the CN Contractor prior to the withdrawal of the direction has had on mitigating the delay which is the subject of the claim for an extension of time made by the CN Contractor under clause 10.8;
 - (iv) if the Principal's Representative's direction to compress under clause 10.15(a)(i) only applies to part of a delay, the CN 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 10.15(a)(i),

will only be reduced to the extent to which the direction to compress requires the CN Contractor to compress to overcome the delay; and

- (v) the Principal must pay the CN Contractor:
 - A. subject to clause 10.15(d)(v)B, the additional costs reasonably and necessarily incurred by the CN Contractor, as determined by the Principal's Representative, as a direct result of compliance with such a direction; or
 - B. where the cause of the delay in relation to which the Principal's Representative has issued a direction to compress under clause 10.15(a)(i) is the cause set out in paragraph (b) of item 32 in Schedule 1:
 - 1) in respect of each of the first 14 days by which the CN Contractor is directed to compress the CN Contractor's Activities, the amount set out item 35 in Schedule 1; and
 - 2) in respect of each day thereafter, the additional costs reasonably and necessarily incurred by the CN Contractor, as determined by the Principal's Representative, as a direct result of compliance with such a direction,

provided that where the direction to compress is subsequently withdrawn under clause 10.15(d)(ii), the CN Contractor will only be entitled to additional payment in relation to the compression:

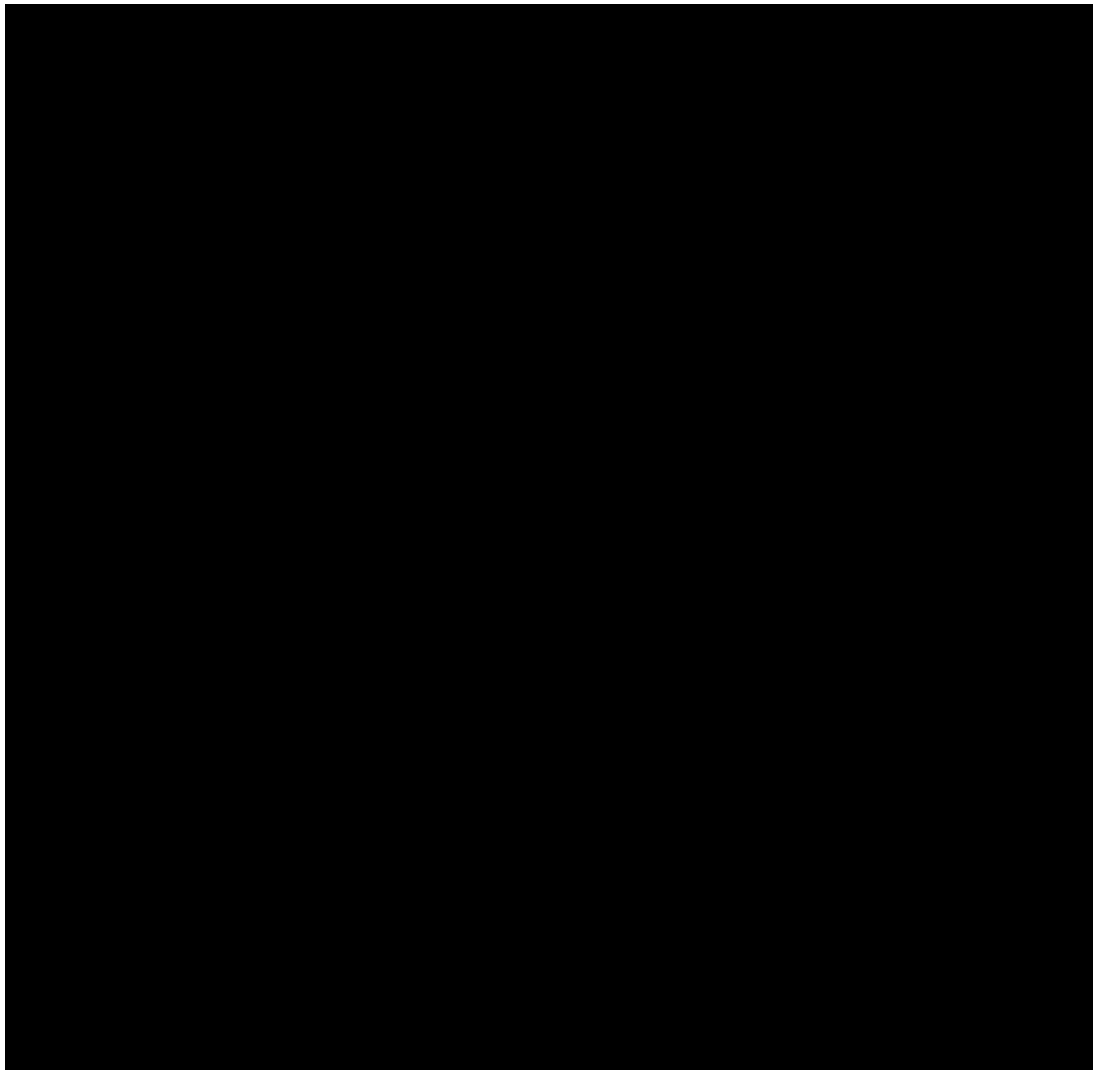
- C. if the withdrawal was not caused or contributed to by the CN Contractor; and
 - D. in respect of the period up to the date of withdrawal of the direction.
- (e) In respect of a direction given by the Principal's Representative under clause 10.15(a)(ii):
 - (i) the direction may specify revised Dates for Milestone Achievement, Dates for Substantial Completion and/or Dates for Completion as a consequence of the acceleration. Those revised dates may be earlier than the then current Dates for Milestone Achievement, Dates for Substantial Completion and Dates for Completion;
 - (ii) where the CN Contractor considers that such a direction constitutes a Variation, the CN Contractor must give the Principal's Representative notice under and in accordance with clause 17.1;
 - (iii) the CN Contractor must comply with such a direction except to the extent:
 - A. it is not reasonably possible for the CN Contractor to perform the proposed acceleration; and

- B. the CN Contractor, in a notice required under clause 17.1, gives a detailed explanation of the reasons why it is not reasonably possible for the CN Contractor to perform the proposed acceleration;
- (iv) the Principal's Representative may, at any time, by notice in writing to the CN Contractor withdraw such a direction;
- (v) the Principal must pay the CN Contractor the additional costs reasonably and necessarily incurred by the CN Contractor, as determined by the Principal's Representative, as a direct result of compliance with such a direction, but only to the extent that:
 - A. the need for acceleration is not related to, or a consequence of, any breach of the Contract by the CN Contractor (for example, a failure to reach Milestone Achievement by the Date for Milestone Achievement); and
 - B. the direction was not, in effect:
 - 1) a direction to the CN Contractor to perform the CN Contractor's Activities in accordance with the Contract (other than this clause), or consistently with the Contract;
 - 2) a direction to the CN Contractor to take corrective action to rectify any non-compliance with the requirements of this Contract; or
 - 3) related to rectification of a Defect.
- (f) The CN Contractor will not be entitled to make any Claim, and releases and waives any entitlement it may have to a Claim, against the Principal in respect of any compression of the CN Contractor's Activities, except as provided for under this clause 10.15.

11. Payment

11.1 CN Contractor's Payment Entitlements

- (a) Subject to clause 11.6, clause 16.12 and to any other right to set-off that the Principal may have, the Principal must pay the CN Contractor the Contract Sum and any other amounts expressly payable by the Principal to the CN Contractor under this Contract, in accordance with the procedure in this clause 11.
- (b) Except to the extent expressly provided for in this Contract, the Contract Sum is not subject to rise and fall.



11.2 Payment Claims

The CN 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 CN Contractor under the Contract on or after each Payment Claim Date.

The CN Contractor agrees that each Payment Claim Date is the date on and from which the CN Contractor is entitled to make a Progress Claim for the purposes of the *SOP Act* (including section 13(1B) of the *SOP Act*).

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 (including a breakdown of the amount of work completed and the amounts payable in respect of the Works (excluding the Third Party Works), each category of Third Party Works and any specific assets notified by the Principal to the CN Contractor, including evidence of the relevant

completion date of the category of Third Party Works and any such specific assets (as the case may be));

- (c) for each monthly claim pursuant to clause 11.2 (a "**Progress Claim**"), set out the amount claimed:
 - (i) for work completed in accordance with the Contract and incorporated in the Works or to which clause 11.7 applies, to the end of the previous month and details of how the amount has been calculated, broken down between the Works (excluding the Third Party Works), each category of Third Party Works and any specific assets notified by the Principal to the CN Contractor;
 - (ii) on account of the Milestone Performance Payments, Performance Incentive Payments and/or [REDACTED] (if any) to which the CN Contractor is entitled as at the relevant Payment Claim Date; and
 - (iii) in respect of Post Completion Activities performed during the previous month (if any); and
- (d) include:
 - (i) the Progress Report submitted by the CN Contractor in accordance with section 5.2.2 of the General Specification (including progress information to the 25th day of the preceding calendar month); and
 - (ii) such further information and evidence in respect of the payment claim as is reasonably required by the Principal's Representative.

The CN Contractor may not include in any payment claim under this clause 11 any amount:

- (e) for the provision of Asset Management Information until all of the information has been submitted to the Principal in accordance with the Contract and to the satisfaction of the Principal;
- (f) in respect of a Claim which is barred by clause 17.6 or any other provision of this Contract; or
- (g) in respect of a Milestone Performance Payment unless the relevant part of the CN Contractor's Activities to which the Milestone Performance Payment relates has been completed to the satisfaction of the Principal's Representative (acting reasonably).

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 CN 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 CN 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 CN Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under this Contract, including under clauses 11.6, 11.7, 11.8 and 16.12;
- (d) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the CN Contractor on account of the Contract Sum and which the Principal proposes to pay to the CN Contractor or the amount which the Principal's Representative believes to be then payable by the CN 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 Works or CN 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 CN 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.

Where the Principal has notified the CN Contractor in accordance with clause 18(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the CN Contractor to the Principal, the CN 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 CN Contractor, the Principal must, within 15 Business Days of receipt of the payment claim to which the payment statement relates, pay the CN

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 CN Contractor to the Principal, the CN 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 CN 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

The value of the construction work carried out by the CN Contractor, and the amount of the progress payment to which the CN Contractor is entitled, will be:

- (a) no more than ■■■ of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the CN Contractor has:
 - (i) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.7;
 - (ii) provided the Principal's Representative with:
 - A. a statutory declaration by the CN Contractor, or where the CN Contractor is a corporation, by a representative of the CN Contractor who is in a position to know the facts attested to, in the form of Schedule 12, made out not earlier than the date of the payment claim;
 - B. a CN Contractor's Certificate of Construction Compliance, in the form of Schedule 20, as required by clause 7.1(c);
 - C. a Progress Report (including progress information to the 25th day of the preceding calendar month) as required by section 5.2.2 of the General Specification; and

- D. where clause 11.16(g) applies, the statement and the evidence (if any) required to be provided by the CN Contractor pursuant to that clause;
- (iii) in relation to any unfixed plant and materials which the CN Contractor proposes to claim in a payment claim, provided the evidence and documents required by, and otherwise satisfied the requirements of, clause 11.7;
- (iv) effected or procured to be effected the insurances required to be effected by the CN Contractor by clause 13.6 and (if requested) provided evidence of this to the Principal's Representative; and
- (v) done everything else that it is required to do under this Contract before being entitled to make a payment claim or receive payment; and
- (b) no more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the CN Contractor has provided the updated CN Contractor's Program required by clause 10.2(d).¹

Any amount withheld by the Principal under this clause 11.6 must be paid within 10 Business Days after the CN Contractor has complied with the relevant obligation.

11.7 Unfixed Plant and Materials

The CN Contractor is only entitled to make a claim for payment for plant or materials intended for incorporation in the Works but not yet incorporated, and the Principal is only obliged to make payment for such plant or materials in accordance with clause 11.4(a) if:

- (a) the CN Contractor provides evidence of:
 - (i) ownership of the plant or materials;
 - (ii) identification and labelling of the plant and materials as the property of the Principal; and
 - (iii) adequate and secure storage and protection;
- (b) security acceptable to the Principal in the form of the unconditional undertaking in Schedule 8 issued by an Institution approved by the Principal in an amount equal to the payment claimed for the unfixed plant and materials has been provided by the CN Contractor to the Principal;
- (c) the plant and materials are on the Site or are available for immediate delivery to the Site;
- (d) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative;
- (e) the condition of the unfixed plant and materials has been confirmed in an inspection by the Principal's Representative; and

- (f) if the PPS Law applies, the CN Contractor has registered a Security Interest in the unfixed plant and materials in favour of the Principal in accordance with clause 16.26.

The only such unfixed plant or materials to be allowed for in a payment statement are those that have become or (on payment) will become the property of the Principal. Upon a payment against a payment statement that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest in the Principal.

The security provided in accordance with clause 11.7(b) will be released once the applicable unfixed plant and materials are incorporated into the Works and comply with the requirements of this Contract.

11.8 Payment of Employees and Subcontractors

- (a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the CN Contractor must give the Principal's Representative a statutory declaration in accordance with clause 11.6(a)(ii)A.
- (b) If any moneys are shown as unpaid in the CN Contractor's statutory declaration under clause 11.6(a)(ii)A, the Principal may withhold the moneys so shown until the CN 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 CN 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 CN Contractor to the Principal.
- (d) If the Principal receives notice of any Insolvency Event in relation to the CN 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 CN 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 20 Business Days after the issue of the Notice of Completion for the last Portion to reach Completion, but subject to clause 11.6, the CN 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 CN 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 CN 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 CN 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 CN Contractor's Activities, the Works or this Contract which occurred prior to the date of submission of the Completion Payment Claim.

11.10 Release after Completion Payment Claim

The CN 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 CN Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:

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

11.11 Final Payment Claim

Together with a notice of Final Completion under clause 12.10(a), but subject to clause 11.6, the CN 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 CN 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 CN 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 CN 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 CN Contractor's Activities, the Works or this Contract which occurred in the period between the date of submission of the Completion Payment Claim and the date of submission of the Final Payment Claim.

11.12 Release after Final Payment Claim

The CN 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 CN Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:

- (a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.11; and
- (b) has not been barred under another provision of this Contract.

11.13 Interest

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

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

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

11.14 Correction of Payment Statements

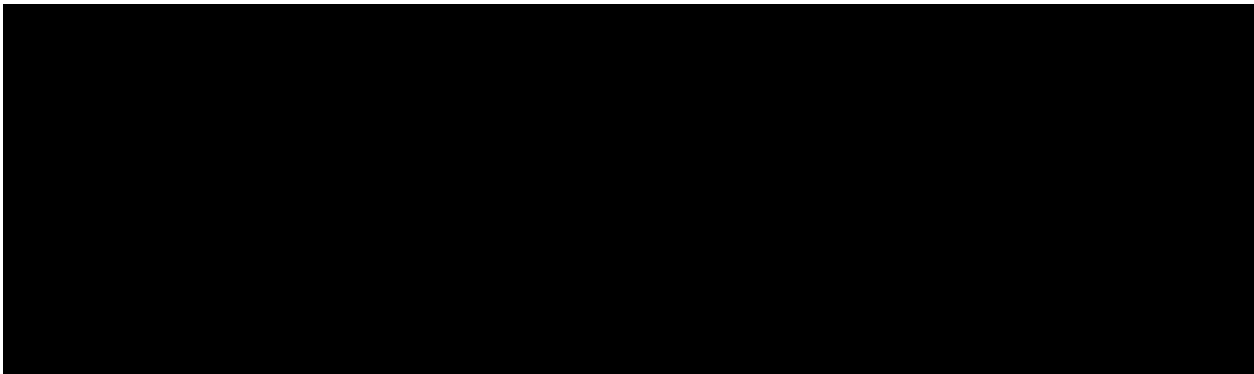
The Principal's Representative may, in any payment statement:

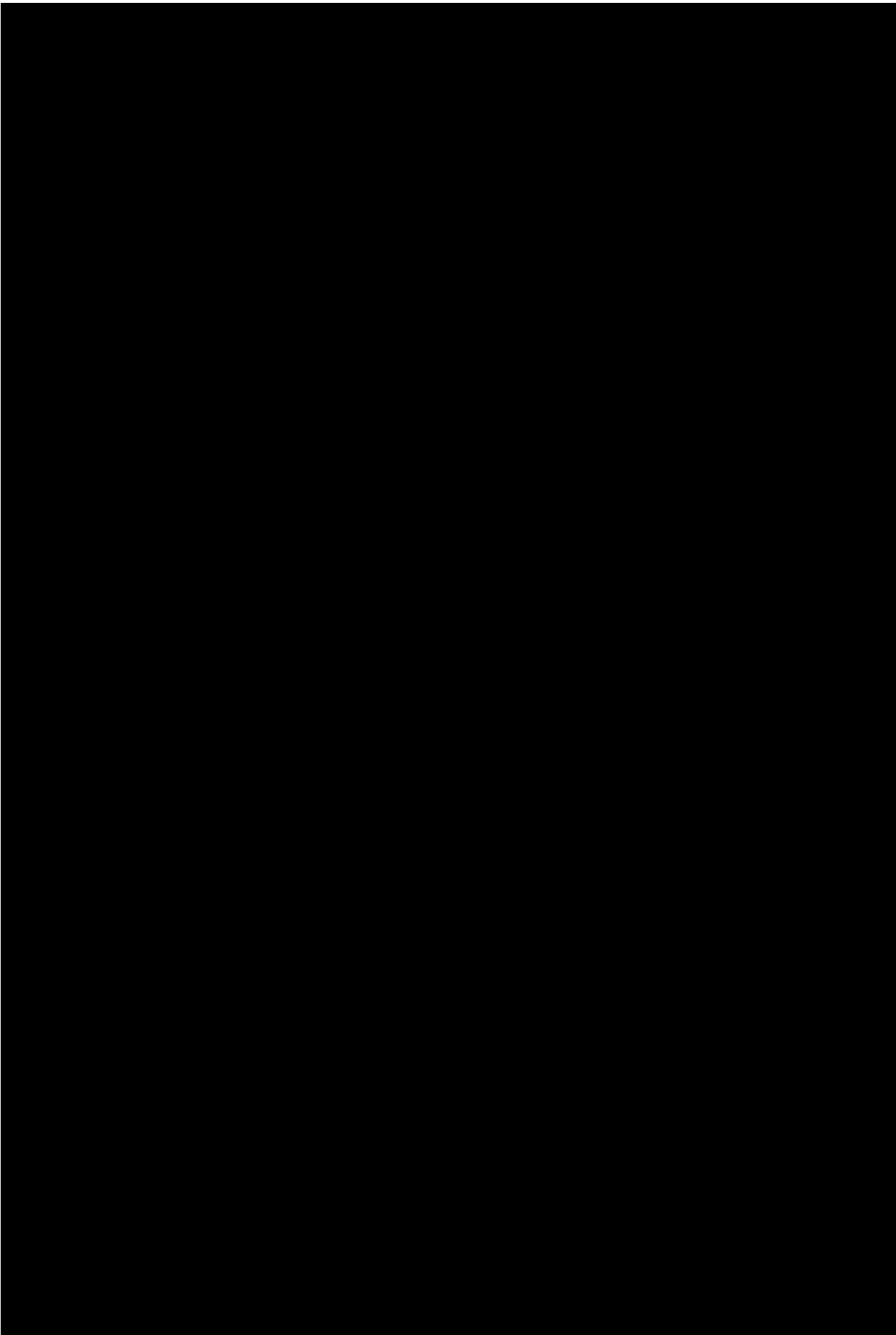
- (a) correct any error; and
- (b) modify any assumptions or allowances made,

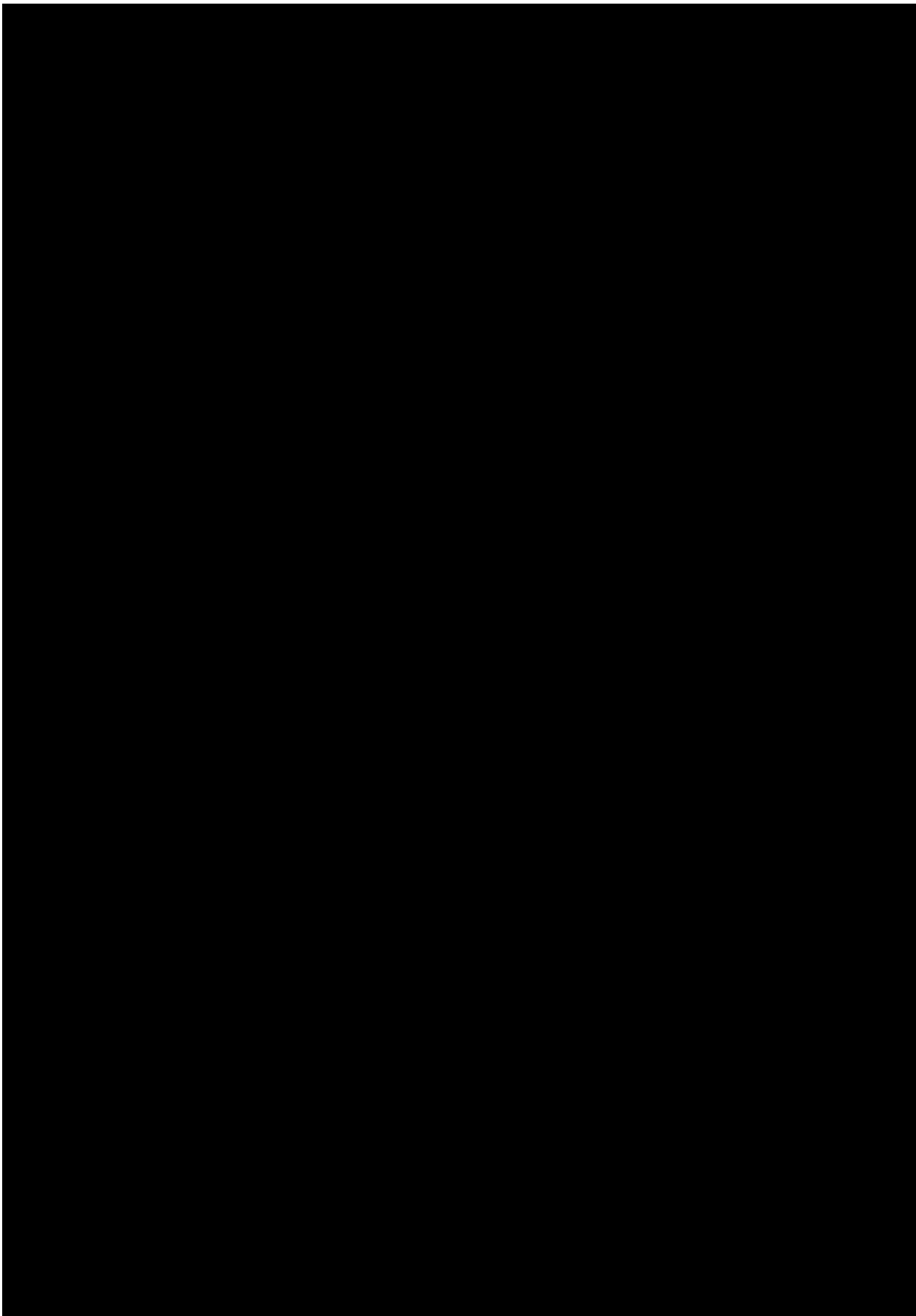
in any previous payment statement issued by the Principal's Representative.

11.14A Performance Incentive Payments

The CN Contractor will be entitled to claim Performance Incentive Payments in accordance with the Performance Incentive Payment Schedule.







11.15 Costs Allowed by CN Contractor

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

- (a) without limiting clause 18, all customs duties, tariffs and similar taxes (other than GST) and charges paid or payable on all items that are:
 - (i) intended to be used for, or that are to be incorporated into, the Works; or
 - (ii) otherwise used for the CN Contractor's Activities;
- (b) any long service leave levy which may be payable in respect of the CN Contractor's Activities or the Works;
- (c) all royalties, licence fees and similar payments for Intellectual Property in respect of:
 - (i) the items that are intended to be used for, or that are to be incorporated into, the Works; and
 - (ii) all Contract Documentation; and
- (d) all fluctuations in the value of the Australian dollar against other currencies.

The CN 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

- (aa) The CN Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the *SOP Act*, including a payment claim under the *SOP Act*, is provided to the Principal's Representative at the same time.

- (ab) In responding to the CN Contractor under the *SOP Act*, the Principal's Representative acts as the agent of the Principal and the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (ac) If, within the time allowed by the *SOP Act* for the service of a payment schedule by the Principal, the Principal does not:
 - (i) serve the payment schedule itself; or
 - (ii) notify the CN Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,

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

- (ad) For the purposes of this Contract and the *SOP Act* (including sections 9 and 10 of the *SOP Act*), the amount of:
 - (i) the progress payment to which the CN Contractor is entitled under this Contract; and
 - (ii) the "progress payment" (as defined in the *SOP Act*) calculated in accordance with this Contract to which the CN Contractor is entitled in respect of this Contract,

will be the amount certified by the Principal's Representative in a payment statement under clause 11.3 less any amount the Principal may elect to retain, deduct, withhold, apply or set off in accordance with this Contract.

- (a) If an adjudication occurs under the *SOP Act* and the Principal has paid an adjudicated amount to the CN 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 CN 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 CN Contractor to the Principal which the CN Contractor must pay to the Principal upon demand and in respect of which the CN Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the CN Contractor to the Principal upon demand and in respect of

which the CN Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.

- (b) For the purposes of section 17(3) of the *SOP Act* the CN 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 16.12, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act*.
- (d) If the Principal withholds from money otherwise due to the CN Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act*, then:
 - (i) the Principal may plead and rely upon Division 2A of Part 3 of the *SOP Act* as a defence to any claim for the money by the CN Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the CN Contractor pursuant to an obligation under Division 2A of Part 3 of the *SOP Act* will not be taken into account for the purpose of determining:
 - A. any period for which money owed by the Principal to the CN Contractor has been unpaid; and
 - B. the date by which payment of money owed by the Principal to the CN Contractor must be made.
- (e) The CN 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 Part 3 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 CN 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 Part 3 of the *SOP Act* and the CN 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 CN Contractor must so notify the Principal within 5 Business Days of the occurrence of the event in clause 11.16(g)(i) or clause 11.16(g)(ii) (as

applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

- (h) If the CN Contractor holds retention monies from any of its Subcontractors, the CN 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 CN Contractor gives to the Secretary (as defined in the *SOP Act*) pursuant to Division 2 of the *SOP Regulation* within 24 hours of providing such notification.
- (i) The CN Contractor indemnifies and must keep indemnified the Principal against all loss suffered or incurred by the Principal arising out of a suspension by a Subcontractor of work which forms part of the CN Contractor's Activities pursuant to the *SOP Act* unless and except to the extent that the suspension is due to non-payment by the Principal of an amount that is due and payable under this Contract.
- (j) Nothing in this Contract will be construed to:
 - (i) make any act or omission of the Principal in contravention of the *SOP Act* (including failure to pay an amount becoming due under the *SOP Act*) a breach of this Contract (unless the Principal would have been in breach of this Contract if the *SOP Act* had no application); or
 - (ii) subject to clause 11.16(j)(i), give to the CN Contractor rights under this Contract which extend or are in addition to rights given to the CN Contractor by the *SOP Act* in respect of any act or omission of the Principal in contravention of the *SOP Act*.

11.17 Title

Title in each item forming part of the Works will pass progressively to the Principal on the earlier of payment for that item or delivery of that item to the Site. Risk in all such items remains with the CN Contractor in accordance with clause 13.

12. Milestone Achievement, Substantial Completion and Completion

12.1 Progressive Inspection and Testing

- (a) At any time prior to Completion of a Portion, the Principal's Representative may direct that any materials or work forming part of the CN Contractor's Activities in respect of that Portion be tested. The CN Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the CN Contractor's Activities or Works as may be required. On completion of any

test the CN Contractor must make good the CN Contractor's Activities or Works so that they fully comply with this Contract.

- (b) The Principal's Representative may direct that any part of the CN Contractor's Activities or the Works 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 CN 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 CN 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 CN 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 CN 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 and incidental to testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the CN Contractor unless:
 - (i) this Contract provides that the CN Contractor must bear the costs or the test is one which the CN 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 CN Contractor's Activities or the Works 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 CN 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 CN Contractor and will be a debt due from the CN

Contractor to the Principal or paid by the CN Contractor to the Principal on demand.

12.1A Milestone Achievement

- (a) The CN Contractor must, in respect of each Milestone, give the Principal's Representative:
 - (i) 6 months;
 - (ii) 3 months;
 - (iii) 1 month; and
 - (iv) 1 week,written notice of the estimated Date of Milestone Achievement of the Milestone.
- (b) Subject to clause 12.1A(g), the Principal's Representative, the CN Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 12.1A(a)(ii) jointly inspect the CN Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 12.1A(b), the Independent Certifier must give the CN Contractor and the Principal a notice either:
 - (i) containing a list of items which it believes must be completed before Milestone Achievement of the Milestone is reached; or
 - (ii) stating that it believes the CN Contractor is so far from reaching Milestone Achievement of the Milestone that it is not practicable to issue a list as contemplated in clause 12.1A(c)(i).
- (d) When the CN Contractor considers it has achieved Milestone Achievement of the Milestone, the CN Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule 20A. Subject to clause 12.1A(g), the Principal's Representative, the CN Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in this clause 12.1A(d), jointly inspect the CN Contractor's Activities at a mutually convenient time.
- (e) Within 5 Business Days after the joint inspection under clause 12.1A(d), the Independent Certifier must:
 - (i) if Milestone Achievement of the Milestone has been reached, provide to the Principal's Representative and the CN Contractor a document signed by the Independent Certifier in the form in Schedule 20B; or
 - (ii) if Milestone Achievement of the Milestone has not been reached, issue a notice to the CN Contractor and the Principal in which it states:

- A. the items which remain to be completed before Milestone Achievement of the Milestone; or
 - B. that the CN Contractor is so far from reaching Milestone Achievement of the Milestone that it is not practicable to notify the CN Contractor of the items which remain to be completed as contemplated by clause 12.1A(e)(ii)A.
- (f) If the Independent Certifier issues a notice under clause 12.1A(e)(ii)B, the CN Contractor must proceed with the CN Contractor's Activities and thereafter when it considers it has reached Milestone Achievement of the Milestone it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 12.1A(d) and 12.1A(e) will reapply.
- (g) The CN Contractor acknowledges and agrees that:
- (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 12.1A, including representatives of the Operator; and
 - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the CN Contractor) in relation to any non-compliance of the CN Contractor's Activities with this Contract.

12.2 Substantial Completion

- (a) The CN Contractor must, in respect of each Portion, give the Principal's Representative:
- (i) 6 months;
 - (ii) 3 months;
 - (iii) 1 month; and
 - (iv) 1 week,
- written notice of the estimated Date of Substantial Completion of the Portion.
- (b) Subject to clause 12.2(g), the Principal's Representative, the CN Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 12.2(a)(ii) jointly inspect the CN Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 12.2(b), the Independent Certifier must give the CN Contractor and the Principal a notice either:
- (i) containing a list of items which it believes must be completed before Substantial Completion of the Portion is achieved; or

- (ii) stating that it believes the CN Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to issue a list as contemplated in clause 12.2(c)(i).
- (d) When the CN Contractor considers it has achieved Substantial Completion of the Portion, the CN Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule 21. Subject to clause 12.2(g), the Principal's Representative, the CN Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in this clause 12.2(d), jointly inspect the CN Contractor's Activities at a mutually convenient time.
- (e) Within 5 Business Days after the joint inspection under clause 12.2(d), the Independent Certifier must:
 - (i) if Substantial Completion of the Portion has been achieved, provide to the Principal's Representative and the CN Contractor a document signed by the Independent Certifier in the form in Schedule 21A; or
 - (ii) if Substantial Completion of the Portion has not been achieved, issue a notice to the CN Contractor and the Principal in which it states:
 - A. the items which remain to be completed before Substantial Completion of the Portion can be achieved; or
 - B. that the CN Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to notify the CN Contractor of the items which remain to be completed as contemplated by clause 12.2(e)(ii)A.
- (f) If the Independent Certifier issues a notice under clause 12.2(e)(ii) the CN Contractor must proceed with the CN Contractor's Activities and thereafter when it considers it has achieved Substantial Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 12.2(d) and 12.2(e) will reapply.
- (g) The CN Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 12.2, including representatives of the Operator; and
 - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the CN Contractor) in relation to any non-compliance of the CN Contractor's Activities with this Contract.
- (h) Without affecting the CN Contractor's obligation to achieve Substantial Completion of each Portion by the relevant Date for Substantial Completion, the parties acknowledge that:

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

12.3 Completion

- (a) The CN Contractor must, in respect of each Portion, give the Principal's Representative:
 - (i) 3 months; and
 - (ii) 1 month,written notice of the estimated Date of Completion of the Portion.
- (b) Subject to clause 12.3(g), the Principal's Representative, the CN Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 12.3(a)(i) jointly inspect the CN Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 12.3(b), the Independent Certifier must give the CN Contractor and the Principal a notice either:
 - (i) containing a list of items which it believes must be completed before Completion of the Portion is achieved; or
 - (ii) stating that it believes the CN Contractor is so far from achieving Completion of the Portion that it is not practicable to issue a list as contemplated in clause 12.3(c)(i).
- (d) When the CN Contractor considers that it has achieved Completion of a Portion, the CN Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule 22. Subject to clause 12.3(g), the Principal's Representative, the CN Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in this clause 12.3(d), jointly inspect the CN Contractor's Activities at a mutually convenient time.
- (e) Within 5 Business Days after the joint inspection under clause 12.3(d), the Independent Certifier must:

- (i) if Completion of the Portion has been achieved, provide to the Principal's Representative and the CN Contractor a document signed by the Independent Certifier in the form in Schedule 22A; or
- (ii) if Completion of the Portion has not been achieved, issue a notice to the CN Contractor and the Principal in which it states:
 - A. the items which remain to be completed before Completion of the Portion can be achieved; or
 - B. that the CN Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the CN Contractor of the items which remain to be completed as contemplated by clause 12.3(e)(ii)A.
- (f) If the Independent Certifier issues a notice under clause 12.3(e)(ii), the CN Contractor must proceed with the CN Contractor's Activities and thereafter, when it considers that it has achieved Completion of the Portion, it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 12.3(d) and 12.3(e) will reapply.
- (g) The CN Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 12.3, including representatives of the Operator; and
 - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the CN Contractor) in relation to any non-compliance of the CN Contractor's Activities with this Contract.
- (h) Without affecting the CN Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion, the parties acknowledge that:
 - (i) no separate Date for Completion of the Works is specified in this Contract;
 - (ii) Completion of the Works is achieved by achieving Completion of all Portions;
 - (iii) Completion of the Works will be taken to have occurred once Completion of all Portions has occurred; and
 - (iv) the Date of Completion of the Works will be taken to be the Date of Completion of the last Portion to reach Completion.

12.4 Unilateral Issue of Notice of Milestone Achievement, Notice of Substantial Completion or Notice of Completion

If at any time a notice required to be given by the CN Contractor to the Principal's

Representative under clauses 12.1A(d), 12.1A(f), 12.2(d), 12.2(f), 12.3(d) or 12.3(f) is not given by the CN Contractor yet the Principal's Representative is of the opinion that Milestone Achievement of a Milestone or Substantial Completion or Completion of any Portion (as applicable) has been achieved, the Principal's Representative may direct the Independent Certifier to issue (as applicable):

- (a) a Notice of Milestone Achievement under clause 12.1A(e)(i) for that Milestone;
- (b) a Notice of Substantial Completion under clause 12.2(e)(i) for the Portion; or
- (c) a Notice of Completion under clause 12.3(e)(i) for the Portion.

12.5 Hand Over upon Portion Handover Date

The CN Contractor acknowledges that the Principal will require a progressive handover of the Works. On each Portion Handover Date, the CN Contractor must:

- (a) hand control of the relevant Works to the Principal; and
- (b) provide the Principal with all spare parts, consumables and special tools as required by the Station Specification.

12.6 Part of the Works 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 CN Contractor which clearly identifies for each Portion:
 - (i) the Works and the Temporary Works;
 - (ii) the Date for Substantial Completion;
 - (iii) the Date for Completion; and
 - (iv) the respective amounts of liquidated damages,all as determined by the Principal's Representative (acting reasonably).
- (b) If part of a Portion has reached a stage equivalent to Substantial Completion but another part of the Portion has not reached Substantial Completion and the parties cannot agree upon the creation of new Portions, the Principal's Representative may, by written notice to the CN Contractor, determine that the respective parts will be Portions.
- (c) Without limiting clause 12.6(a) or 12.6(b), the Principal may, after the CN Contractor is given written notice by the Principal's Representative, occupy or use any part of a Portion although the whole of the Portion has not reached Substantial Completion.

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

12.7 Liquidated Damages for Delay in Reaching Milestone Achievement, Substantial Completion and Completion

- (aa) The Principal and the CN Contractor agree and acknowledge that:
 - (i) the Principal is pursuing a policy of building Sydney Metro City & Southwest and the Works for purposes that include achieving the objectives set out in clause 1.7; and
 - (ii) the CN Contractor's Activities represent a most important element of the building of Sydney Metro City & Southwest, as a major new public transport link which, together with Sydney Metro Northwest (and their integration), will service the needs of Sydney, including the needs of its workforce and its economy, and will provide frequent rapid transit services to handle projected population increases, create employment both during and after the CN Contractor's Activities, improve the efficiency of the Sydney public transport network and improve the local environment.
- (ab) The CN Contractor acknowledges and agrees that its failure to achieve:
 - (i) Milestone Achievement of the Milestones by the required Dates for Milestone Achievement;
 - (ii) Substantial Completion of the Portions by the required Dates for Substantial Completion; and
 - (iii) Completion of the Portions by the required Dates for Completion,

will not only result in direct losses to the Principal, but may also contribute to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.
- (a) Subject to clause 12.7(e), if Milestone Achievement of a Milestone or Substantial Completion or Completion of a Portion has not occurred by the relevant Date for Milestone Achievement, Date for Substantial Completion or

Date for Completion (as applicable), the CN Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1A for every day after the relevant Date for Milestone Achievement, Date for Substantial Completion or Date for Completion (as applicable) up to and including:

(i) the Date of Milestone Achievement of the relevant Milestone or Date of Substantial Completion or Date of Completion of the Portion (as applicable); or

(ii) the date that this Contract is terminated under clause 14,

whichever is first.

(b) The parties agree that the liquidated damages provided for in Schedule 1A:

(i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the CN Contractor to achieve (as applicable):

A. Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement;

B. Substantial Completion of a Portion by the relevant Date for Substantial Completion; or

C. Completion of a Portion by the relevant Date for Completion,

and do not constitute, nor are they intended to be, a penalty and have been freely agreed to by the CN Contractor; and

(ii) will be recoverable from the CN Contractor as a debt immediately due and payable to the Principal.

(c) Not used.

(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 (including loss of revenue and loss of profits from the loss of use of the Works) as a result of the CN Contractor failing to achieve Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement or Substantial Completion or Completion of a Portion by the relevant Date for Substantial Completion or Date for Completion (as applicable), but the CN Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the CN Contractor would have had if clause 12.7(a) had not been void, invalid or otherwise inoperative.

(e) The CN Contractor's aggregate liability under clauses 12.7(a) and 12.7(d) is limited to the amount set out in clause 13A.2(b).

(f) Without limiting clause 12.7(e), where, on any day, the CN Contractor is liable for liquidated damages under clauses 12.7(a) and 12.7(d) in respect of

more than one Portion or Milestone, the CN Contractor's liability to the Principal on that day will not exceed [REDACTED]

(g) The Principal and the CN Contractor agree that the aggregate of the amount payable under this clause 12.7 is:

- (i) limited as referred to in clause 12.7(e) and clause 12.7(f); and
- (ii) a limitation on the CN Contractor's liability to the Principal for a failure to achieve:
 - A. Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement;
 - B. Substantial Completion of a Portion by the relevant Date for Substantial Completion; or
 - C. Completion of a Portion by the relevant Date for Completion,

and the Principal will not be entitled to make, nor will the CN Contractor be liable upon, any Claim in these circumstances other than for the amount for which the CN Contractor is liable under this clause 12.7 (whether liquidated damages or, under clause 12.7(d), general damages).

(h) Nothing in clause 12.7(g) in any way limits the CN Contractor's liability where this Contract is terminated by the Principal under clause 14.3 or clause 14.4 or otherwise at Law.

(i) Notwithstanding this clause 12.7, the payment or recovery of (or the CN Contractor's obligation to pay) liquidated damages under clause 12.7(a) or general damages under 12.7(d):

- (i) does not relieve the CN Contractor from:
 - A. its obligation to complete the Works or any other of its other obligations under this Contract; or
 - B. any of its other liabilities under or in connection with this Contract; and
- (ii) subject to clause 12.7(g), is without prejudice to any other right or remedy of the Principal under this Contract, at law or otherwise.

12.8 Not used

12.9 Effect of Notice of Milestone Achievement, Notice of Substantial Completion or Notice of Completion

(a) A notice issued under clause 12.1A(e)(i), 12.2(e)(i) or clause 12.3(e)(i) will not:

- (i) constitute approval by the Principal, the Principal's Representative or the Independent Certifier of the CN Contractor's performance of its obligations under this Contract;
 - (ii) be taken as an admission or evidence that the relevant Milestone or Portion (as applicable) complies with the requirements of this Contract; or
 - (iii) prejudice any rights or powers of the Principal, the Principal's Representative or the Independent Certifier.
- (b) Without limiting clause 12.9(a), the parties agree that, in the absence of manifest error on the face of the certification, the Independent Certifier's certification as set out in a Notice of Milestone Achievement, Notice of Substantial Completion or Notice of Completion (as applicable) is final and binding on the parties for the purposes only of establishing that Milestone Achievement of the relevant Milestone or Substantial Completion or Completion of the relevant Portion (as applicable) has occurred.

12.10 Final Completion

- (a) When the CN Contractor considers that Final Completion has been reached, it must give the Principal's Representative notice in writing and deliver a Final Payment Claim in accordance with clause 11.11.
- (b) If the Principal's Representative considers that Final Completion has been reached, it will issue a Final Certificate with the payment schedule issued pursuant to clause 11.11.
- (c) The Final Certificate is without prejudice to any of the Principal's rights under this Contract and is not evidence of accord and satisfaction of the CN Contractor's Activities or the Works.

12.11 Post Completion Activities

- (a) The Principal's Representative may give written notice to the CN Contractor at least 5 Business Days before the CN Contractor's estimated Date of Completion of the last Portion to reach Completion (which has been notified in accordance with clause 12.3(a)) that Post Completion Activities must be carried out after Completion of that Portion.
- (b) If the Principal's Representative gives the CN Contractor a notice under clause 12.11(a):
 - (i) the CN Contractor must continue to carry out the Post Completion Activities until the date specified in a notice given by the Principal pursuant to clause 12.11(c); and
 - (ii) the CN Contractor is entitled to be paid for the Post Completion Activities carried out by the CN Contractor in accordance with clause 7.3(aa)(ii).

- (c) At any time after issuing a notice under clause 12.11(a), the Principal's Representative may give further written notice to the CN Contractor that the CN Contractor is to cease performance of the Post Completion Activities on the date specified in the further notice, which date must be at least 3 Business Days after the date on which the CN Contractor receives the notice under this clause 12.11(c).

13. Care of the Works, Risks and Insurance

13.1 Care of the Works

- (a) Except where it arises from an Excepted Risk, and without limiting the generality of the CN Contractor's obligations, the CN Contractor is responsible for the care of and bears the risk of, and indemnifies the Principal against:
- (i) any destruction, loss of, or damage to:
 - A. the CN Contractor's Activities;
 - B. the Works;
 - C. Temporary Works;
 - D. Construction Plant;
 - E. unfixed plant and materials (whether on or off the Site) the value of which has been included in a payment statement under clause 11.3;
 - F. things entrusted to the CN Contractor by the Principal or brought onto the Site by a Subcontractor for the purpose of carrying out the CN Contractor's Activities; and
 - G. any Extra Land,from the date of this Contract; and
 - (ii) any destruction, loss of, or damage to the relevant parts of the Site (including any improvements on the Site), from the relevant Construction Licence Commencement Date,
- in each case up to and including:
- (iii) to the extent the relevant CN Contractor's Activities, the Works, the Temporary Works, the Site, any Extra Land, Construction Plant or unfixed plant and materials relate to the Trackway Portion and not to any Station Portion, the Date of Substantial Completion of the Trackway Portion; and
 - (iv) except to the extent set out in clause 13.1(a)(iii), the Date of Completion of the relevant Portion.

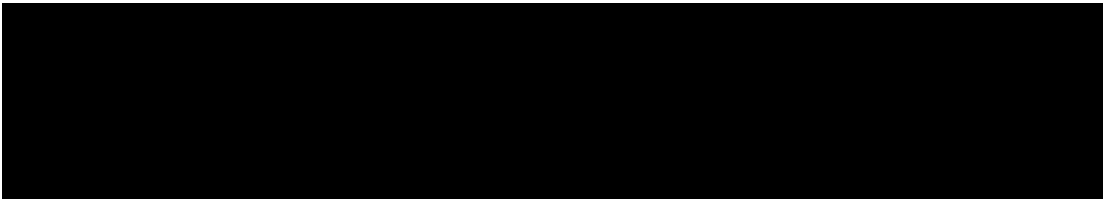
- (b) The CN Contractor must provide the storage and protection necessary to preserve the things referred to in clause 13.1(a)(i).
- (c) After the time referred to in clause 13.1(a), the CN Contractor will bear the risk of, and indemnify the Principal against, any destruction, loss of or damage to that part of the Works or other thing, arising from:
 - (i) any act or omission of the CN Contractor during the Defects Rectification Periods (including any extension under clause 8.6) or any other CN Contractor's Activities; or
 - (ii) any event which occurred while the CN Contractor was responsible for the care of the relevant part of the Works or other thing under clause 13.1(a) in connection with the CN Contractor's Activities.

13.2 Indemnity

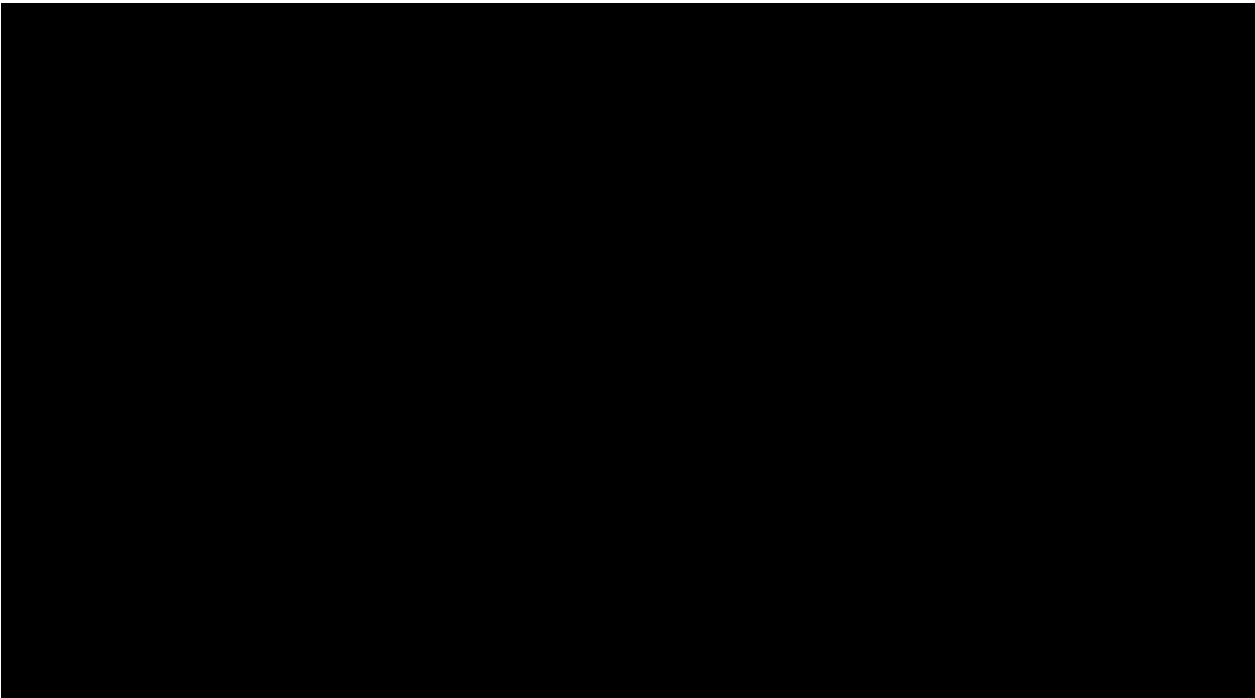
- (a) The CN Contractor must indemnify each State Indemnified Party from and against:
 - (i) any cost, expense, loss, damage, liability, fine, penalty or other amount incurred or suffered by a State Indemnified Party in respect of:
 - A. loss or destruction of or damage to, or loss of use of or access to (whether total or partial), any State Indemnified Party's real or personal property; or
 - B. any Claim against a State Indemnified Party (including by another State Indemnified Party) or liability a State Indemnified Party may have to a third party in respect of, arising out of or in connection with:
 - 1) loss or destruction of or damage to any real or personal property;
 - 2) the loss of use of or access to (whether total or partial) any real or personal property; or
 - 3) any illness, personal injury to or death of persons, caused by, or arising out of, or in any way in connection with, the CN Contractor's Activities, the Works or the Temporary Works;
 - (ii) any:
 - A. liability to or Claim by any other person; or
 - B. costs, expenses, losses, damages, fines and penalties suffered or incurred by a State Indemnified Party,

arising out of, or in any way in connection with:

- C. the CN Contractor's breach of a term of this Contract or any other CN Station Contract Document or failure of the CN Contractor to otherwise comply with any of its obligations under this Contract or any other CN Station Contract Document;
- D. any fraudulent act or omission by the CN Contractor or any of its Associates; or
- E. any Environmental Liabilities arising out of or in connection with any:
 - 1) a breach of this Contract by the CN Contractor; or
 - 2) wrongful or reckless act or omission of the CN Contractor or its Associates.



- (c) The indemnity in clause 13.2(a) will not:
 - (i) exclude any other right of the Principal to be indemnified by the CN Contractor; or
 - (ii) apply to the extent to which the CN Contractor must indemnify the Principal under clause 13.1.



13.3 Reinstatement

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

- (a) subject to clause 13.3(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 CN Contractor, only comply with clause 13.3(a) to the extent directed by the Principal's Representative.

The CN 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 Variation the subject of a direction by the Principal's Representative and clause 6.4 applied.

13.4 Contract Works (Material Damage) Insurance

The Principal will effect and maintain contract works (material damage) insurance on the terms of the policy which is included in Exhibit B. This insurance will cover the CN Contractor, the Principal, the Principal's Representative and all subcontractors employed by the CN Contractor in respect of the CN Contractor's Activities.

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

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance included in Exhibit B do not cover every risk to which the CN Contractor or its Associates might be exposed and are subject to deductibles and limits and the CN Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit B; and
- (c) where it bears the risk of the relevant loss or damage under clause 13.1, or is required to indemnify the Principal under clause 13.2, agrees to bear the cost of any excesses in the insurance policies included in Exhibit B or any insurance taken out under this clause 13.4.

13.5 Public and Products Liability Insurance

The Principal will effect and maintain public and products liability insurance on the terms of the policy which is included in Exhibit B. The insurance will cover the CN

Contractor, the Principal, the Principal's Representative and all subcontractors employed by the CN Contractor in respect of the CN 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 CN Contractor acknowledges and agrees prior to the date of this Contract it reviewed and examined Exhibit B and:

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

13.6 CN Contractor's Insurance Obligations

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

The CN Contractor must, or in the case of asbestos liability insurance, either the CN Contractor or its specialist asbestos removal Subcontractor must (if required by clause 13.6(a)(iii) below), before the CN Contractor commences the CN 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 CN Contractor's Activities are being performed;
 - (ii) an insurance policy covering loss or damage to Construction Plant in connection with the CN Contractor's Activities;
 - (iii) if the CN Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, asbestos liability insurance;
 - (iv) professional indemnity insurance [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

for amounts not less than the amounts (if any) referred to in item 37 of Schedule 1;
- (b) ensure the Construction Plant insurance, motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the law), asbestos liability insurance and any insurance required by sub-paragraph (a)(vii):
 - (i) are policies in the joint names of the Principal and the CN Contractor, and cover the Principal, the Principal's Representative (including any appointee under clauses 9.2 or 9.3), the CN 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 CN Contractor's Activities; and
 - (iii) is for an amount in respect of any occurrence not less than the amount referred to in item 37 of Schedule 1;
- (c) ensure the professional indemnity insurance:
 - (i) covers the CN Contractor for liability to the Principal arising from errors or omissions in:
 - A. Shop Drawings and design or documentation of the Temporary Works; and
 - B. other professional services,

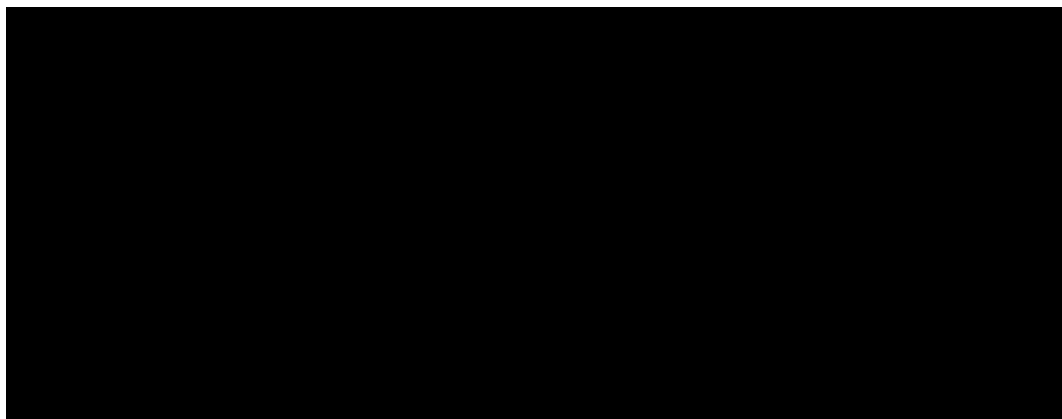
carried out by the CN Contractor or any of its Subcontractors; and

- (ii) provide:
 - A. cover for any amount in respect of any one claim of not less than;
and
 - B. cover for an amount in the aggregate of not less than,
the amount stated in item 37 of Schedule 1; and
- (d) 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 CN 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 CN Contractor as required by any Law for an amount not less than the amount stated in item 37 of Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law.

13.7 General Insurance Requirements

The CN Contractor must:

- (a) in respect of any insurance policy (including an insurance policy which this Contract requires the CN 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 Business Days of a request with:



- (b) ensure that (except for professional indemnity or 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 13.6;

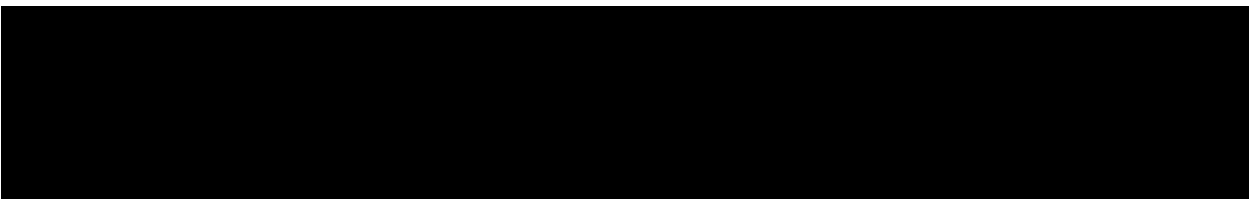
- (ii) a notice of claim given to the insurer by the Principal, the CN Contractor or a Subcontractor will be accepted by the insurer as a notice of claim by all insured parties; and
 - (iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice 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.

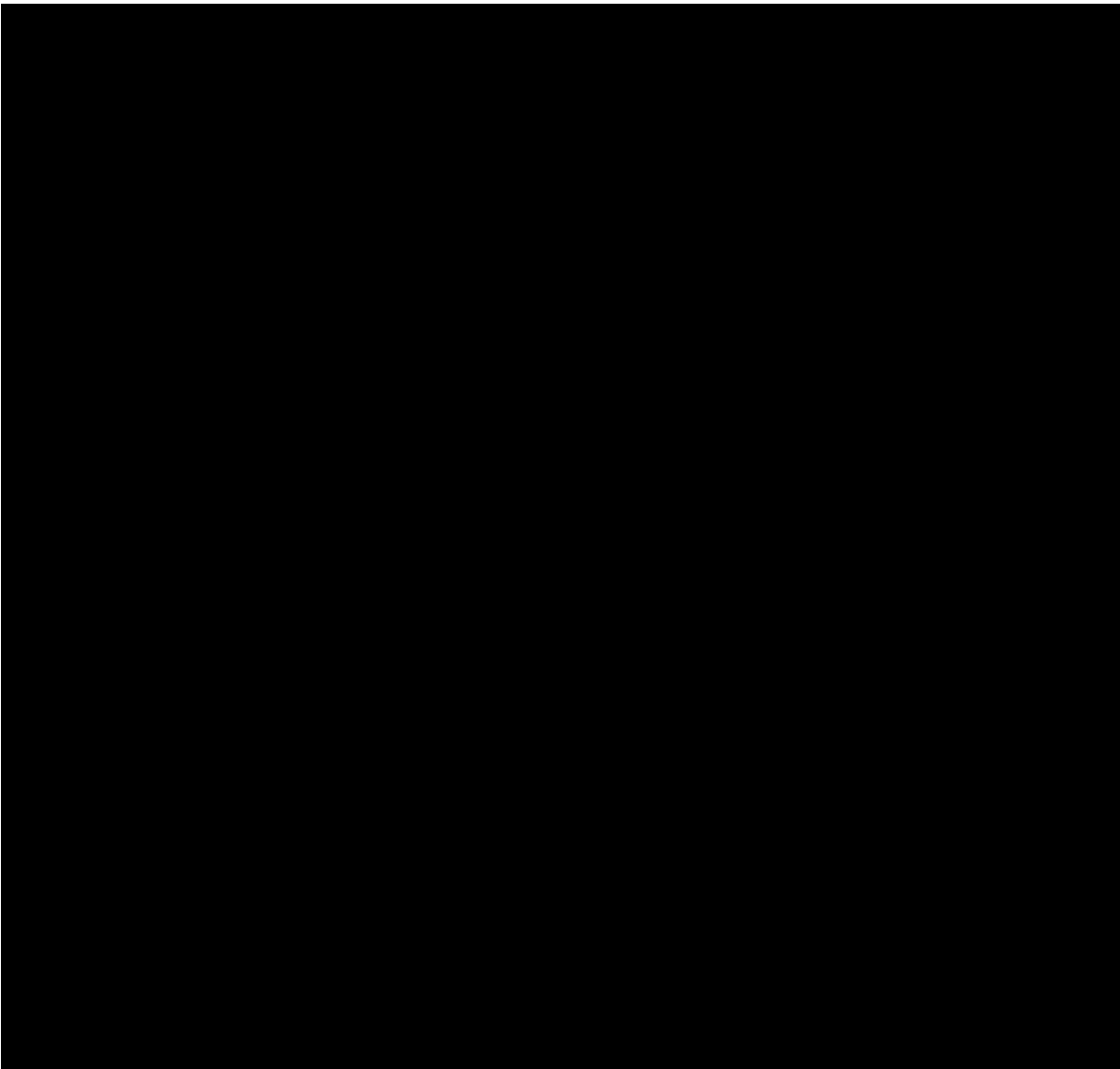
If the CN Contractor fails to:

- (d) provide copies of any insurance policy (including an insurance policy which this Contract requires the CN Contractor to procure a Subcontractor to effect) which the CN 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,

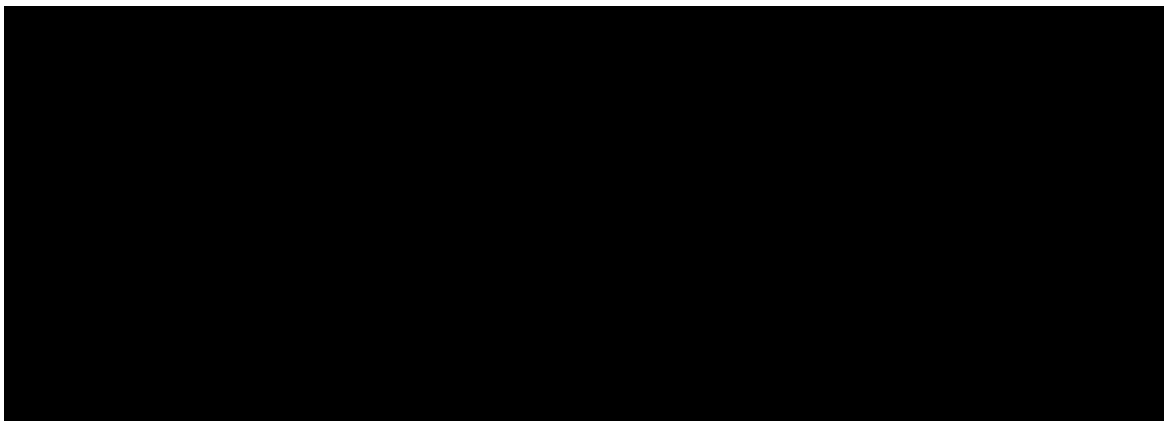
as required by clauses 2.2(c), 13.6 or this clause 13.7, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the CN Contractor to the Principal.

13.8 Period of Insurance

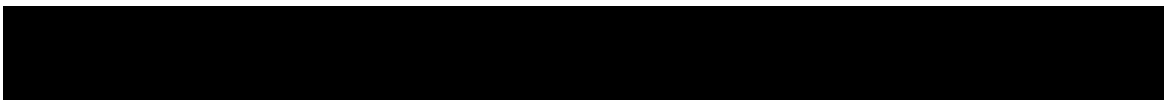


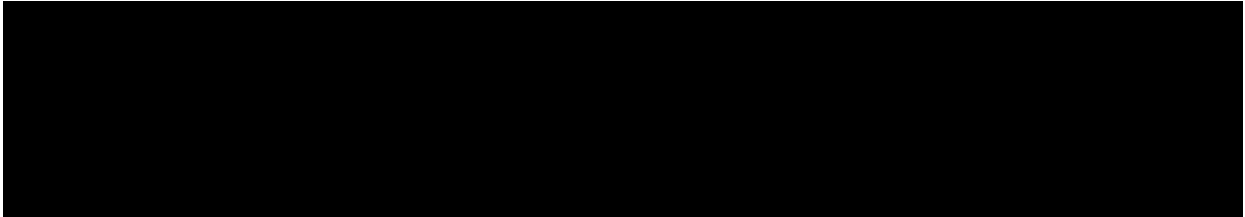
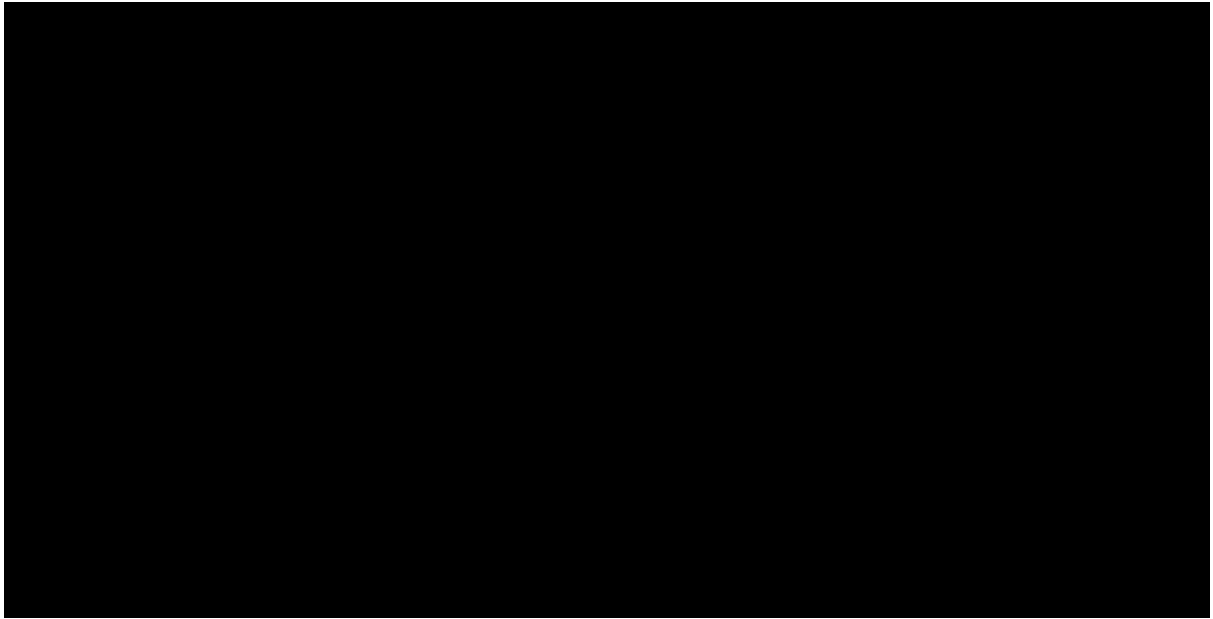


13.9 Notice of Potential Claim

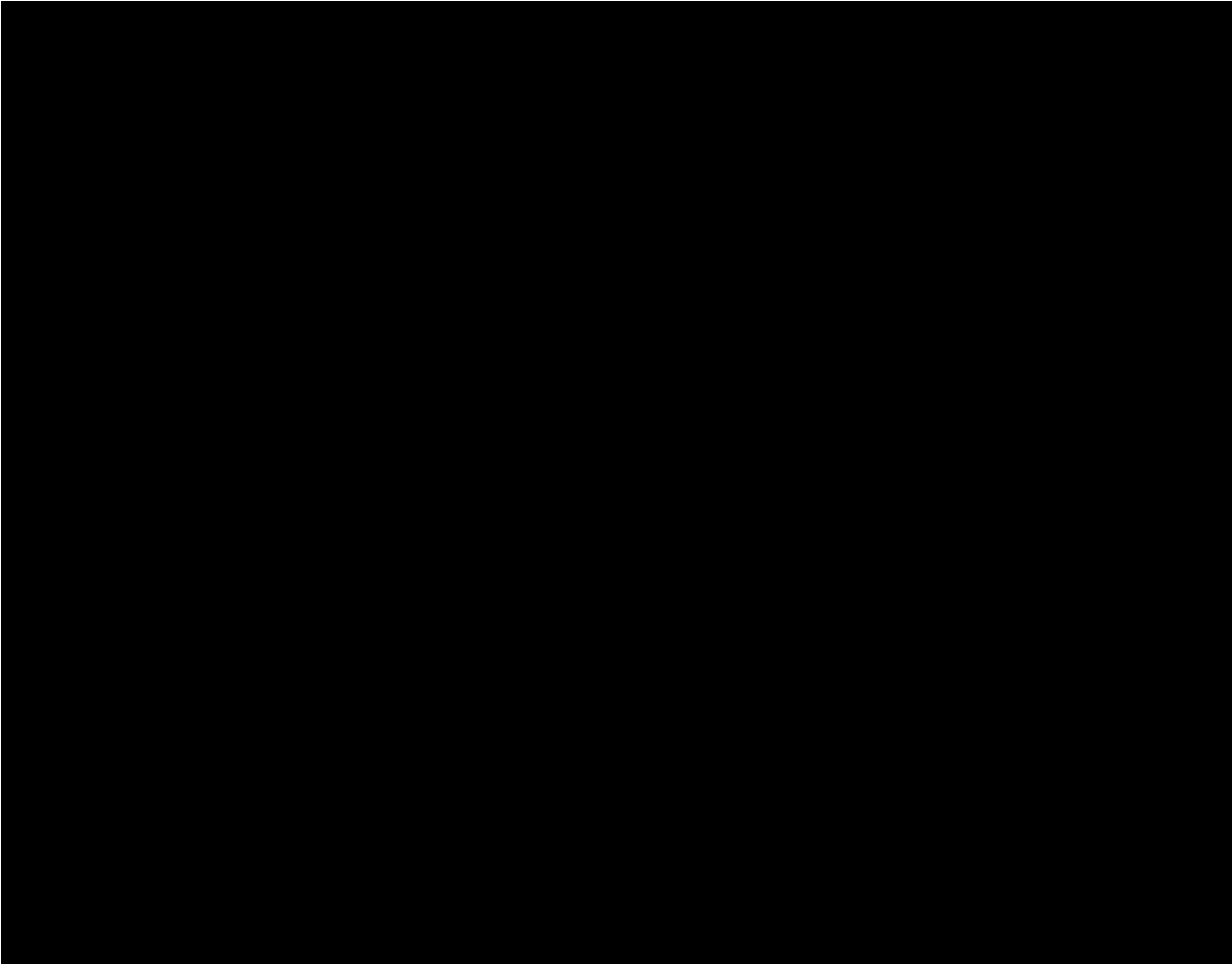


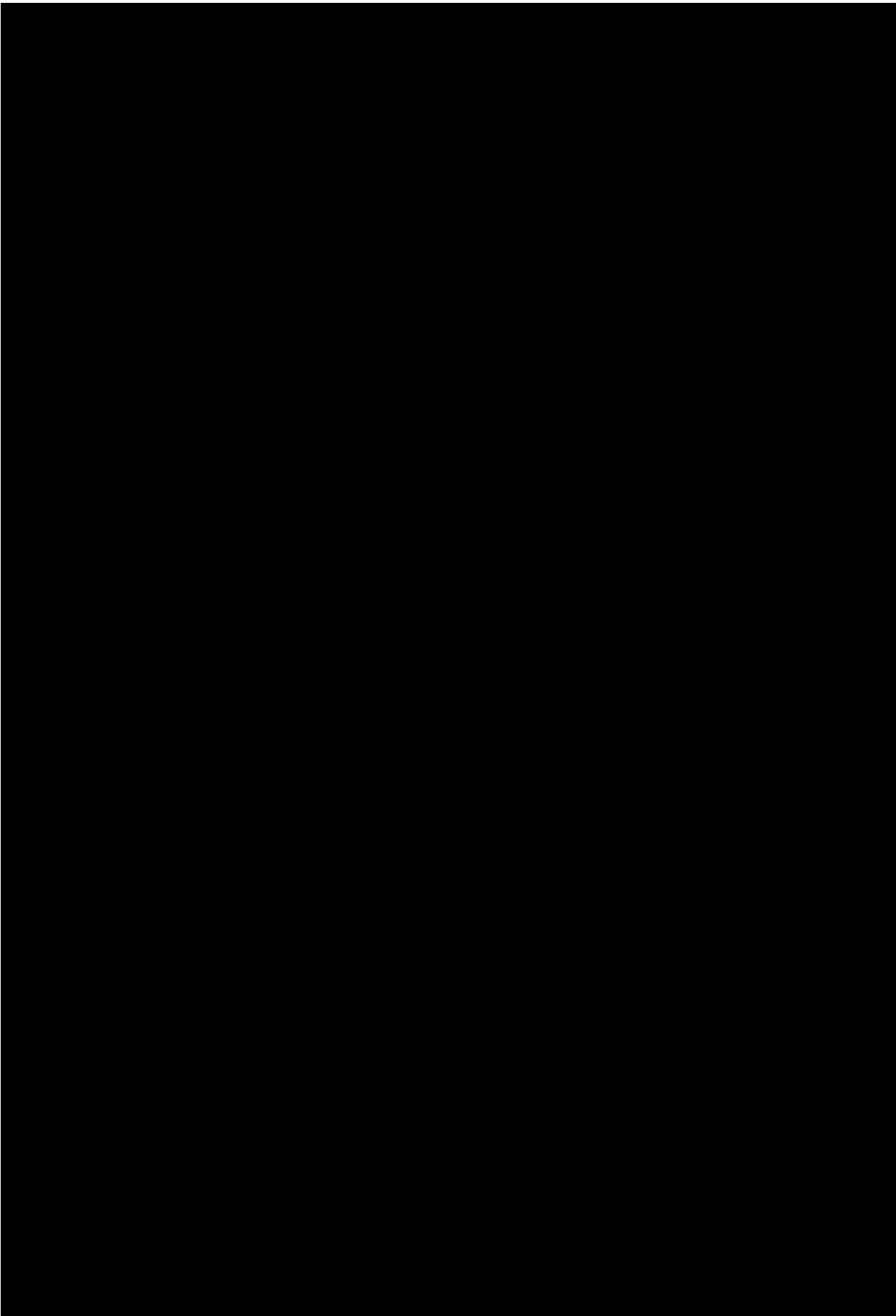
13.10 Cross Liability

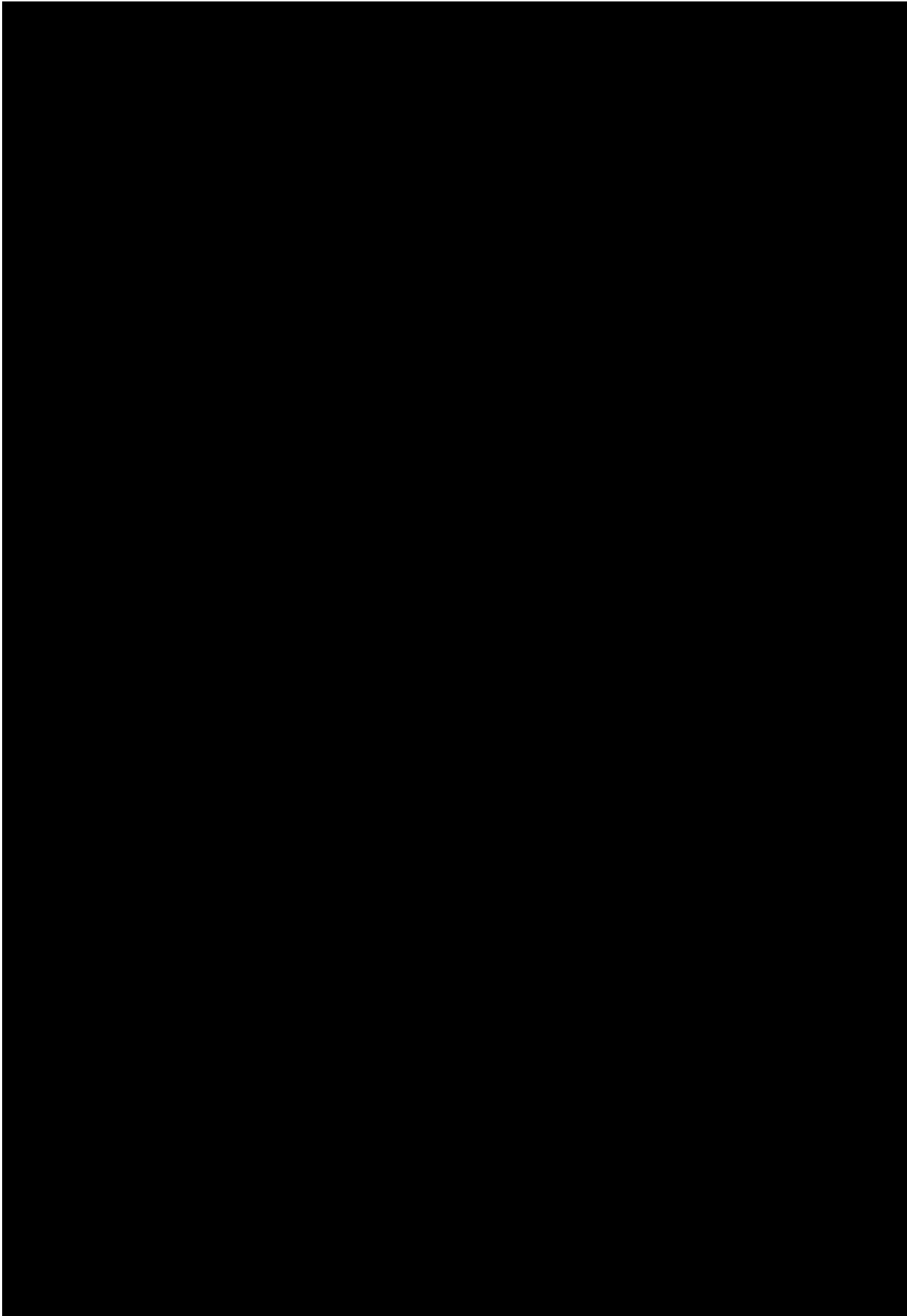


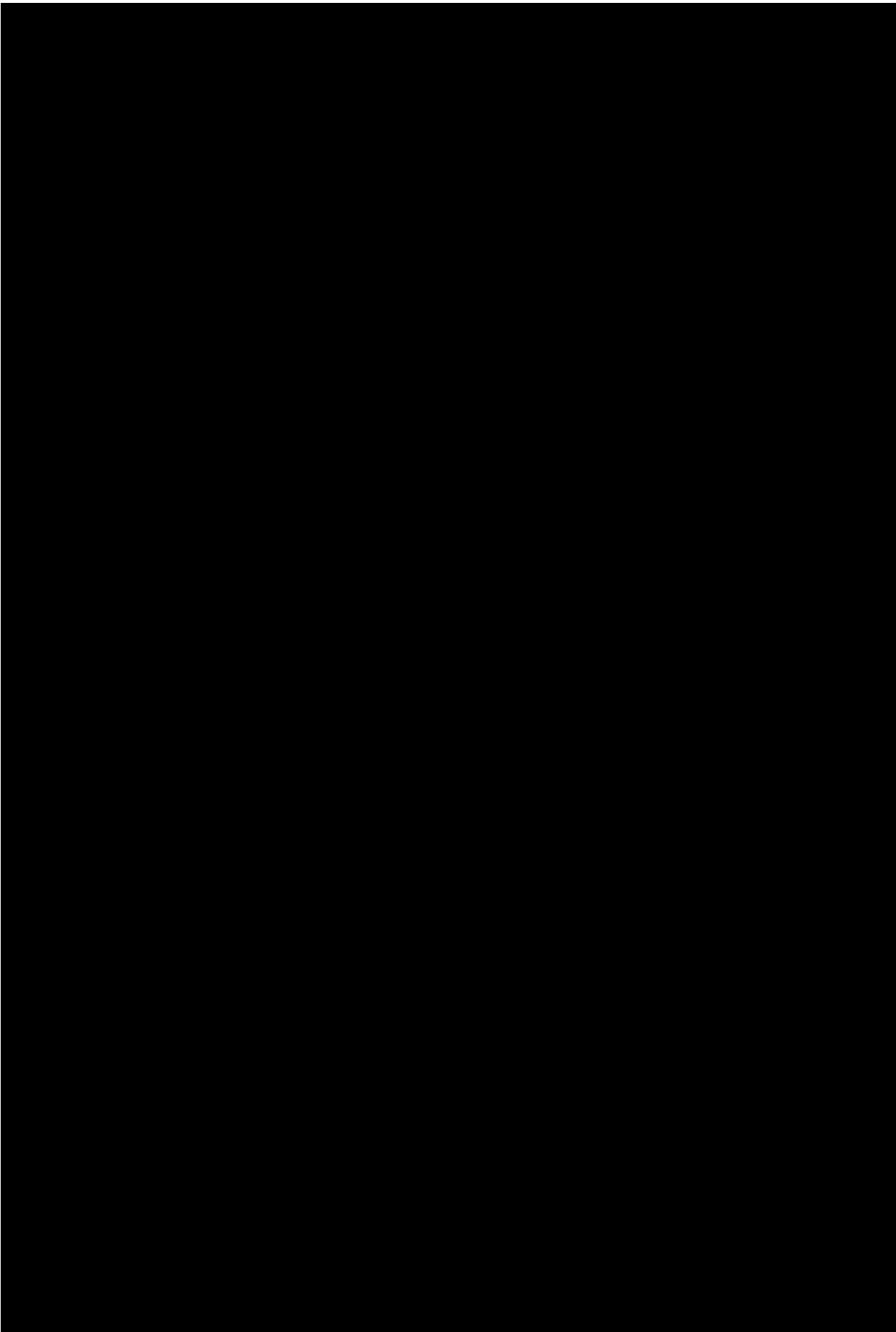


13A Liability











13A.5 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.
- (b) Without limiting the above, the rights, obligations and liabilities of the Principal and the CN 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.
- (c) To the extent permitted by Law:
 - (i) the CN 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 CN 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 CN Contractor (whether in contract, tort or otherwise), the CN Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part

of a claim by the Principal against the CN Contractor which the Principal is not able to recover from the CN Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

- (d) The CN 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 [REDACTED] 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.
- (e) The CN Contractor must ensure that all policies of insurance covering third party liability it is required by this Contract to effect or maintain (including the professional indemnity policy referred to in clause 13.7):
 - (i) cover the CN 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 CN Contractor may have to the Principal under or by reason of this Contract.
- (f) 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.
- (g) 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.

14. Default or Insolvency

14.1 CN Contractor's Default

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

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

- (a) not commencing or not progressing the CN 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 CN 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;
- (ca) failing to provide legal opinions, in breach of clause 2.7(g)(i)B;
- (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 Project Plans in a material respect;
- (h) not complying with its obligations under:
 - (i) the Station Specification with regard to the Project Plans; or
 - (ii) the Station Specification 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;

- (b) specify the alleged breach;
- (c) require the CN 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 CN 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

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

- (a) take out of the hands of the CN 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 CN Contractor is then in breach of this Contract:
 - (i) an Insolvency Event occurs:
 - A. to the CN Contractor;
 - B. where the CN Contractor comprises more than one person, any one of those persons; or
 - C. to a person specified in item 39 of Schedule 1; or
 - (ii) the CN 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;
- (b) the CN Contractor fails to comply with any of its obligations under clause 4.6 or 4.7;
- (c) the aggregate liability of the CN Contractor under or in connection with this Contract, the other CN Station Contract Documents, the Third Party Agreements and any Adjoining Property Easements is equal to or exceeds of the Contract Sum;
- (d) the aggregate liability of the CN Contractor to the Principal under or in connection with clauses 12.7(a) and 12.7(d) is equal to or exceeds:

- (i) if the Principal and the CN Contractor have agreed in writing to increase the LD Cap to above █████ of the Contract Sum, such increased LD Cap; or
- (ii) in any other event, █████ of the Contract Sum;
- (e) a Change in Control occurs in respect of an entity that comprises the CN Contractor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 16.4(a)(iii)); or
- (f) a Change in Control occurs in respect of a Parent Company Guarantor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 16.4(b)(iii)),

then, whether or not the CN 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 CN Contractor repudiates this Contract and the Principal otherwise terminates this Contract; or
- (c) this Contract is frustrated under the Law,

then:

- (d) the CN Contractor:
 - (i) must novate to the Principal or the Principal's nominee those Subcontracts between the CN 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 CN Contractor's attorney to:
 - A. execute, sign, seal and deliver all notices, deeds and documents; and
 - B. undertake actions in the name of the CN 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 CN Contractor;
 - B. all Contract Documentation prepared by the CN 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 CN Contractor to remove from the Site or any area affected by the Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Works;
 - (ii) may complete that work itself or by engaging others (including but not limited to the CN 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 or Extra Land as are owned by the CN 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 CN 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 CN Contractor the Construction Plant, Temporary Works and any things taken under clause 14.5(e)(iii) which are surplus;
 - (v) may direct the CN Contractor to store or transport any component of the 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 CN Contractor its reasonable costs incurred in storing or transporting the relevant component of the Works.

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 CN Contractor will not be entitled to any further payment in respect of the work taken out of

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

- (b) When work taken out of the hands of the CN 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 CN Contractor if the CN Contractor had completed the work, the difference will be a debt due from the CN Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the CN Contractor if the CN Contractor had completed the work, the difference will be a debt due to the CN 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 CN 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 CN Contractor is indebted to the Principal, the CN 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 CN 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 CN 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 CN Contractor repudiates this Contract and the Principal otherwise terminates this Contract the Principal will:

- (a) be absolutely entitled to call upon, convert and have recourse to and retain the proceeds of any unconditional undertaking held under clause 2.7 or clause 11.7(b); and
- (b) be entitled to recover from the CN 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 CN Contractor's Rights after Repudiation or Wrongful Termination

- (a) If the Principal:
 - (i) repudiates this Contract and the CN 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 CN Contractor's sole rights in such circumstances will be those set out in clause 14.10; and
- (iv) CN 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 CN 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 CN Contractor; and
- (b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the CN Contractor's Activities or the Works 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 CN 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 CN 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 CN Contractor for the Works and for which it is legally bound to pay provided that:
 - A. the value of the plant or materials have not been previously paid or included in the amount payable under clause 14.10(a)(i); and
 - B. title in the plant and materials vests in the Principal upon payment;
 - (iii) the reasonable costs of removing from the Site or Extra Land all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the CN Contractor's Activities that are not part of, or to be part of, the Works;
 - (iv) the costs reasonably incurred by the CN Contractor in the expectation of completing the whole of the CN Contractor's Activities and not included in any other payment by the Principal; and
 - (v) the amount specified in item 40 of Schedule 1, for all Overhead Costs and profit associated with, and to the extent not included in, the work and costs determined under clauses 14.10(a)(ii), 14.10(a)(iii) and 14.10(a)(iv); 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 or 11.7(b) when the CN Contractor has complied with all its obligations under this clause.

The amount to which the CN Contractor is entitled under this clause 14.10 will be a limitation upon the Principal's liability to the CN 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 CN 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 16.12) which it may have where the CN 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 CN Contractor the following amounts as determined by the Principal's Representative:
 - (i) an amount calculated in accordance with clause 14.10(a)(i) for work carried out prior to the date of frustration;
 - (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 14.10(a)(ii); and
 - (iii) the costs calculated in accordance with the terms of clauses 14.10(a)(iii) and 14.10(a)(iv); and
- (b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 2.7 when the CN Contractor has complied with its obligations under this clause.

The amount to which the CN Contractor is entitled under this clause 14.12 will be a limitation upon the Principal's liability to the CN 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 CN 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 Not used

15. Disputes

15.1 Disputes generally

Any dispute, difference, controversy or Claim ("**Dispute**") directly or indirectly based upon, arising out of, relating to or in connection with this Contract or the Works, the Temporary Works or the CN Contractor's Activities, including any questions relating to the existence, validity or termination of this Contract, but excluding a failure by a party to comply with a final and binding decision of the Expert, must be resolved in accordance with this clause 15.

15.2 Independent Dispute Avoidance and Resolution Panel

- (a) The IDAR Panel has been constituted under the IDAR Panel Agreement.

- (b) The CN Contractor must, within 5 Business Days of receipt of a request from the Principal, execute the IDAR Panel Agreement Accession Deed Poll.
- (c) Each party must:
 - (i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;
 - (ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this Contract; and
 - (iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of the CN Contractor's Activities, including providing all information it reasonably requests.

15.3 Consultation

- (a) Where a Dispute arises, the Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute ("**Notice of Issue**") from the dissatisfied party ("**Party A**") to the IDAR Panel and the other party ("**Party B**"). The Notice of Issue must:
 - (i) provide brief particulars of the issues in Dispute; and
 - (ii) be issued within 10 Business Days after Party A first became aware of the fact, matter or thing on which the Dispute is based.
- (b) Within 2 Business Days of the Notice of Issue, the parties must agree upon a member of the IDAR Panel ("**Nominated Member**") to review the Dispute. If:
 - (i) the parties fail to reach such agreement within 2 Business Days; or
 - (ii) the Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the chairperson of the IDAR Panel, as appointed under the IDAR Panel Agreement from time to time ("**Chair**") must nominate a replacement Nominated Member within a further 2 Business Days.
- (c) If a replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further replacement Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.
- (d) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 15.3(c) will be reapplied until there are no IDAR Panel members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.

- (e) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting ("**Consultation**") to facilitate genuine and good faith negotiations with a view to:
 - (i) resolving the Dispute; and
 - (ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.
- (f) Each Consultation will be attended by:
 - (i) the Nominated Member;
 - (ii) the Principal's Representative;
 - (iii) the CN Contractor's Representative; and
 - (iv) other persons as agreed between the Principal's Representative and the CN Contractor's Representative.
- (g) The Consultation process must conclude within 15 Business Days of the first Consultation, or such other period as the parties may agree. The Nominated Member will advise the parties in writing when the Consultation process has concluded.
- (h) A failure to comply with clause 15.3(a) will be treated as a breach of this Contract by the relevant party.

15.4 Recommendation

- (a) Within 5 Business Days of the conclusion of Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:
 - (i) the formulation of the issues in Dispute;
 - (ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 15.5; and
 - (iii) whether the Dispute is not suitable for expert determination and should be determined by litigation pursuant to court proceedings,

("Recommendation").
- (b) Subject to clause 15.4(d), if the Dispute is not resolved within the later of:
 - (i) 5 Business Days of the Recommendation; and
 - (ii) 15 Business Days of the Notice of Issue,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) within 20 Business Days after the later of (i) and (ii) above or such other period of time as agreed between the parties ("**Notice of Dispute**").

- (c) The Notice of Dispute must:
 - (i) be in writing;
 - (ii) state that it is a Notice of Dispute under this clause 15.4(c);
 - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute including:
 - A. references to any:
 - 1) provisions of this Contract;
 - 2) acts or omissions of any person, relevant to the Dispute;
 - B. the relief sought and the basis for claiming the relief sought; and
 - C. copies of, or relevant extracts from, any documents in support of the claim.
- (d) If the Nominated Member makes a Recommendation:
 - (i) under clause 15.4(a)(ii), the parties may accept the recommendation or clause 15.5(a) will apply; or
 - (ii) under clause 15.4(a)(iii) that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined by litigation pursuant to court proceedings, however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 15.5 will apply.

15.5 Expert determination

- (a) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule 26.
- (b) Both parties must promptly make available to the Expert all such additional information, access to the Site and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.
- (c) The parties agree that, to the extent permitted by law:
 - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and
 - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act (2002) NSW* (and any equivalent statutory provisions in any other state or territory)

which might, in the absence of this provision, have applied to any Dispute referred to expert determination.

- (d) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 15.5. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment pursuant to this clause 15.

15.6 Notice of dissatisfaction

- (a) If:
 - (i) either party is dissatisfied with a determination made by an Expert under clause 15.5, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
 - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties) then either party may, within 10 Business Days after this period has expired, give a notice to the other party of its dissatisfaction, ("Notice of Dissatisfaction").
- (b) A Notice of Dissatisfaction issued under clause 15.6 must:
 - (i) state that it is given under clause 15.6; and
 - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 15.4(d), neither party will be entitled to commence court proceedings in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 15.6.

15.7 Final and binding decision

- (a) If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 15.6, within 10 Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.
- (b) Once a determination of an Expert has become final and binding under clause 15.7(a), neither party will be entitled to challenge the determination on any basis.

15.8 Not used

15.9 Not used

15.10 Not used

15.11 Payments

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

15.12 CN Contractor to continue performing obligations

Despite the existence of any Dispute the CN Contractor must:

- (a) continue to perform the CN Contractor's Activities; and
- (b) perform its other obligations under this Contract.

15.13 Urgent relief

Nothing in this clause 15 will prejudice:

- (a) the right of a party to seek urgent injunctive or declaratory relief from a court; or
- (b) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, when enacted, or an equivalent provision under any Law.

15.14 Dispute under related contracts

The parties acknowledge and agree that:

- (a) the provisions of this clause 15 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under:
 - (i) prior to execution of the Independent Certifier Deed, the provisions of the IC Letter of Intent (if applicable); or
 - (ii) the provisions of the Independent Certifier Deed;
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the IC Letter of Intent (if applicable) or the Independent Certifier Deed;
- (c) the provisions of this clause 15 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under a Project Cooperation and Integration Deed; and
- (d) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to a Project Cooperation and Integration Deed; and

- (e) where the Dispute is a Common Dispute, as that term is defined in clause 5 of Schedule 4B, then this clause 15 will apply subject to the provisions of clause 5 of Schedule 4B.

15.15 Survive termination

This clause 15 will survive termination of this Contract.

16. General

16.1 Notices

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request, claim and demand) under or in connection with this Contract.
- (b) A PDCS will be used for giving Notices under or in connection with this Contract. Within 5 Business Days of the date of this Contract, the Principal's Representative must give notice to the CN Contractor setting out:
 - (i) the name of the relevant PDCS;
 - (ii) any password, login details or similar information required for the CN Contractor to use the PDCS;
 - (iii) any requirements for specific notices (eg notices of Claims);
 - (iv) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this Contract; and
 - (v) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) At any time and from time to time, the Principal's Representative may notify the CN Contractor that a PDCS will not be used for giving certain Notices under or in connection with this Contract. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 16.1(d)(i).
- (d) Each Notice must:
 - (i) where clause 16.1(c) applies:
 - A. be in writing;
 - B. be addressed:
 - 1) in the case of a Notice from the CN Contractor, to the Principal's Representative and any additional person notified by the Principal in writing; or

- 2) in the case of a Notice from the Principal, to the CN Contractor's Representative; or
 - C. comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
 - D. be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
 - E. be delivered or posted to the relevant address or sent to the email address shown in item 41 of Schedule 1 (or to any new address or email address notified by the intended recipient); and
- (ii) other than where clause 16.1(c) applies:
- A. be sent through the PDCS in accordance with the requirements set out in clause 16.1(f) and:
 - 1) in the case of a Notice from the CN Contractor, be addressed to the Principal's Representative and any additional person notified in accordance with clause 16.1(b)(iv) and comply with any requirements notified in accordance with clause 16.1(b)(iii); or
 - 2) in the case of a Notice from the Principal, be addressed to the CN Contractor's Representative; or
 - B. in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 16.1(d)(i).
- (e) A communication is taken to be received by the addressee:
- (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
 - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (iii) (in the case of international post) 7 Business Days after the date of posting;
 - (iv) (in the case of delivery by hand) on delivery; and
 - (v) (in the case of email):
 - A. if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or
 - B. if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day,

provided that if the communication is received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.

- (f) With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any Notice, or subject to paragraph 16.1(f)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - A. .pdf format;
 - B. a format compatible with Microsoft Office; or
 - C. such other format as may be agreed between the parties in writing from time to time.
- (g) The CN Contractor must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
 - (iv) advise the Principal's Representative of which personnel require access to the PDCS;
 - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 16.1(d)(ii)B to the Principal's Representative through the PDCS.
- (h) The Principal has no liability for any losses the CN Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the CN Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal

arising out of or in connection with the CN Contractor's access to or use of the PDCS or any failure of the PDCS.

16.2 Governing Law and jurisdiction

- (a) This Contract is governed by and will be construed according to the Laws of New South Wales.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Contract; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 16.2(b)(i).

16.3 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this 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 CN 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.

16.4 Assignment and Change in Control

- (a) (Change in Control of an entity that comprises the CN Contractor)
 - (i) Subject to the terms of this clause 16.4(a), the CN Contractor must ensure that there is no Change in Control of any entity that comprises

the CN Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).

- (ii) The CN Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the CN Contractor, and provide:
 - A. full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - B. all other information necessary for the Principal to determine whether to exercise its rights under clause 16.4(a)(iv), in relation to the Change in Control of the relevant entity that comprises the CN Contractor.
- (iii) The Principal's approval is not required for a Change in Control arising from:
 - A. a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - B. any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the CN Contractor gives the Principal prior written notice of the transfer.
- (iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the CN Contractor where the Principal is of the reasonable opinion that:
 - A. the person or entity which will exercise Control of the CN Contractor or the relevant entity that comprises the CN Contractor:
 - 1) is not solvent and reputable;
 - 2) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - 3) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
 - B. as a result of the Change in Control, the CN Contractor will no longer:
 - 1) have sufficient expertise and ability; or
 - 2) be of sufficiently high financial and commercial standing, to properly carry out the obligations of the CN Contractor under this Contract.

- (v) If a Change in Control of any entity that comprises the CN Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 16.4(a)(iii)), the CN Contractor acknowledges that the Principal may terminate this Contract by notice in writing to the CN Contractor.
 - (vi) The Principal's approval of a Change in Control of any entity that comprises the CN Contractor will not relieve the CN Contractor of any of its obligations under this Contract.
- (b) (Change in Control of a Parent Company Guarantor)
- (i) Subject to the terms of this clause 16.4(b), the CN Contractor must ensure that there is no Change in Control of a Parent Company Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
 - (ii) The CN Contractor must notify the Principal in writing of any Change in Control of a Parent Company Guarantor, and provide:
 - A. full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - B. all other information necessary for the Principal to determine whether to exercise its rights under clause 16.4(b)(iv), in relation to the Change in Control of that Parent Company Guarantor.
 - (iii) The Principal's approval is not required for a Change in Control arising from:
 - A. a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - B. any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the CN Contractor gives the Principal prior written notice of the transfer.
 - (iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of a Parent Company Guarantor where the Principal is of the reasonable opinion that:
 - A. the person or entity which will exercise Control of the relevant Parent Company Guarantor:
 - 1) is not solvent and reputable;
 - 2) has an interest or duty which conflicts in a material way with the interests of the Principal; or

- 3) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
- B. as a result of the Change in Control, the relevant Parent Company Guarantor will no longer:
- 1) have sufficient expertise and ability; or
 - 2) be of sufficiently high financial and commercial standing, to properly carry out the obligations of the Parent Company Guarantor under the relevant Parent Company Guarantee.
- (v) If a Change in Control of a Parent Company Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 16.4(b)(iii)), the CN Contractor acknowledges that the Principal may terminate this Contract by notice in writing to the CN Contractor.
- (c) The Principal's approval of a Change in Control of a Parent Company Guarantor will not relieve the CN Contractor of any of its obligations under this Contract.
- (d) The CN 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.
- (e) (Assignment and Novation by the Principal)
- (i) Without limiting clause 16.31, the Principal may:
 - A. assign, novate or otherwise transfer all or any part of its rights under this Contract without the CN Contractor's prior approval, provided that the assignee, novatee or transferee (as applicable) is an authority of the State, a minister or a government entity including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State; and
 - B. not otherwise assign, novate or otherwise transfer all or any part of its rights under this Contract without the CN Contractor's prior written consent (which must not be unreasonably withheld or delayed),and may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the CN Contractor.
 - (ii) The CN Contractor agrees to such assignment, novation or transfer as contemplated in clause 16.4(e)(i) such that no further consent is required.

- (iii) In the case of a novation by the Principal under this clause:
 - A. the Principal will be released from its obligations under this Contract and the respective rights of the Principal and the CN Contractor against one another under this Contract will cease;
 - B. the novated agreement will be on the same terms as this Contract, such that the incoming party and the CN Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 16.4(e)(iii)A, except that the incoming party replaces the Principal for all purposes under the agreement; and
 - C. the CN Contractor consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
- (iv) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.
- (f) If there is a Change in Control of the CN Contractor:
 - (i) the CN 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 16.4(f)(i) to the Principal within 10 Business Days of the date of the Change in Control of the CN Contractor.

16.5 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.

16.6 Joint and Several Liability

The rights and obligations of the Principal and the CN Contractor, if more than one person, under this Contract, are joint and several. Each person constituting the CN 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.

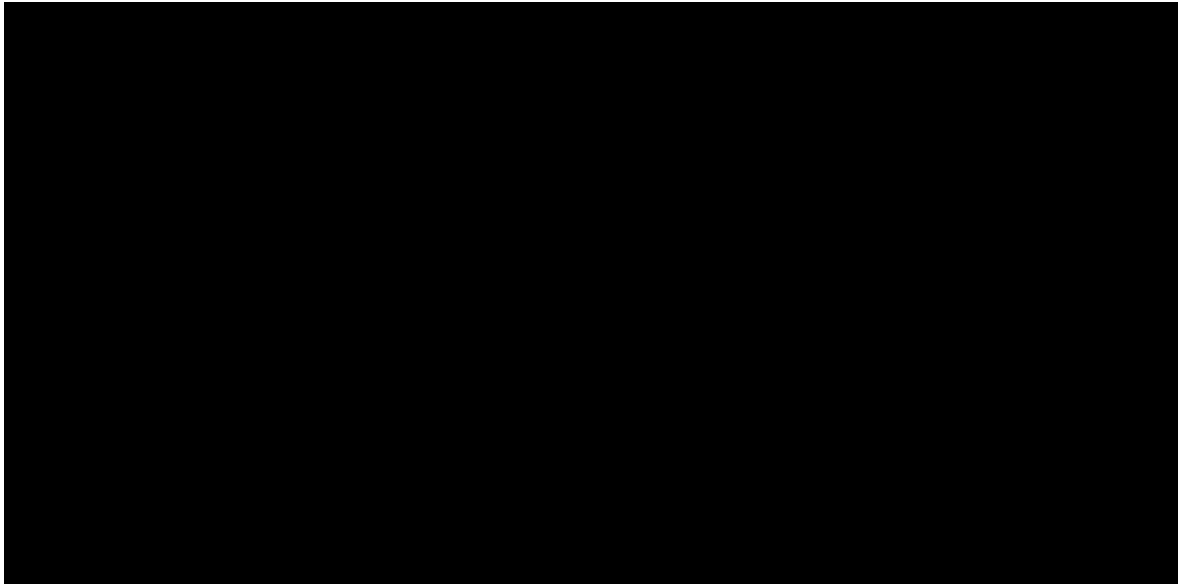
16.7 Severability

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.

16.8 Indemnities to Survive

- (a) 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.
- (b) Nothing in this clause 16.8 prevents any other provision of this Contract, as a matter of interpretation also surviving the termination of this Contract.
- (c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract.



16.9 Stamp Duty and Other Fees

The CN 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.

16.10 Taxes

Without limiting clause 2.3 but subject to clause 18, the CN Contractor must pay all Taxes that may be payable in respect of the CN Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the CN Contractor's Activities.

16.11 Confidentiality

- (a) Subject to clause 16.11(b), the CN Contractor must:
 - (i) keep confidential this Contract and any information relating to the CN Contractor's Activities and any discussions concerning this Contract;
 - (ii) not use the information referred to in clause 16.11(a)(i) except as necessary for the performance of the CN Contractor's Activities; and
 - (iii) ensure that each of its Associates complies with the terms of clause 16.11(a)(i) and clause 16.11(a)(ii).
- (b) The CN Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the CN 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 CN Contractor is a party.
- (c) The CN Contractor must:
 - (i) execute and submit to the Principal within 10 Business Days of this Contract a Confidentiality Undertaking in the form in Schedule 3;
 - (ii) ensure that all employees of the CN 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 CN Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) The CN 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 CN 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 16.11(d).
- (f) Subject to clause 16.11(a)(iii), the CN Contractor may provide this Contract and any information referred to in clause 16.11(a)(i) to its Subcontractors, employees, agents, advisors, equity investors and each of these parties' advisors as is necessary to enable the CN Contractor to perform its obligations under this Contract or any other CN Station Contract Document, provided that the CN Contractor ensures that the relevant recipient is subject to the same obligations of confidentiality as those contained in this Contract.

16.12 Right of Set-Off

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

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

whether under this Contract or otherwise at Law arising out of or in connection with this Contract or the CN Contractor's Activities.

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

16.13 Not used

16.14 Principal May Act

- (a) The Principal may, either itself or by a third party, perform an obligation under this Contract that the CN 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 CN 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 CN 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 CN Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Works.

16.15 Process Agent

If the CN Contractor is a foreign company (as defined in the Corporations Act), the CN 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.

16.16 Not used

16.17 Variation of Contract

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

16.18 Not used

16.19 Not used

16.20 Not used

16.21 Not used

16.22 Not used

16.23 Prior Work

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

16.24 Not used

16.25 Counterparts

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

16.26 Personal Property Securities Act

- (a) By signing this Contract, the CN 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 CN 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 CN 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 CN 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 CN Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the *PPS Act* to authorise the disclosure of the above information.

16.27 Vienna Convention

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

16.28 Australian Government Requirements

- (a) The CN Contractor:
- (i) declares as at the date of this Contract; and
 - (ii) must ensure during the term of this Contract,
that, in relation to the Works, it and its Subcontractors, consultants and each related entity:
 - (iii) complies with, and acts consistently with, the Building Code;
 - (iv) meets the requirements of section 11 of the Building Code;
 - (v) is not subject to an Exclusion Sanction or a formal warning that any further failure to comply with the Building Code may result in the imposition of an Exclusion Sanction;
 - (vi) has not been the subject of an adverse decision, direction or order, or failed to comply with a decision, direction or order, made by a court or tribunal for a breach of the BCIIIP Act, a designated building law, work health and safety law, competition and consumer law or the *Migration Act 1958* (Cth) (other than a decision, direction or order that is stayed or has been revoked);
 - (vii) has not been required to pay any amount under an adjudication certificate or owed any unsatisfied judgement debts to a building contractor or building industry participant (as those terms are defined in the BCIIIP Act);
 - (viii) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (ix) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
 - (x) will comply with any Workplace Relations Management Plan which has been approved by the ABCC in accordance with Part 6 of the Building Code.
- (b) The CN Contractor acknowledges and agrees that compliance with the Building Code does not relieve the CN Contractor from any responsibility or obligation under this Contract, or from liability for any Defect in the Works arising from compliance with the Building Code.
- (c) The CN Contractor must promptly:
- (i) notify the ABCC of:
 - A. any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC

of the steps proposed to be taken by the CN Contractor to rectify the breach; and

- B. the steps taken to rectify any breach of the Building Code within 14 days of providing a notification under clause 16.28(c)(i)A; and
- (ii) give the Principal a copy of any notification given by the CN Contractor to the ABCC under clause 16.28(c)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (d) The CN Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIIP Act and the Building Code and must ensure that it (and must procure that its Subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
 - (i) for entry under section 72 of the BCIIIP Act;
 - (ii) to interview any person under section 74 of the BCIIIP Act;
 - (iii) to produce records or documents under sections 74 and 77 of the BCIIIP Act; and
 - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (e) The CN Contractor must not enter into a Subcontract for any aspect of the Works unless:
 - (i) the Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the CN Contractor agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 16.28.
- (f) The CN Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 16.28(e) promptly upon request.
- (g) The CN Contractor must maintain adequate records of the compliance with the Building Code by:
 - (i) the CN Contractor;
 - (ii) the Subcontractors;
 - (iii) the CN Contractor's consultants; and

- (iv) any related entity of the CN Contractor.
- (h) For the purposes of this clause 16.28, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

16.29 Chain of responsibility legislation

- (a) To the extent heavy vehicles are used in the performance of the CN Contractor's Activities, the CN Contractor:
 - (i) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
 - (ii) must ensure that:
 - A. any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits and are appropriately secured;
 - B. operators carrying freight containers have a valid Container Weight Declaration; and
 - C. drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
 - (iii) must proactively provide reasonable assistance to the Principal's Representative to enable the Principal (and any of the Principal's personnel) to satisfy its duties and responsibilities under the COR Laws;
 - (iv) must obtain and maintain, and ensure that each of its personnel or Subcontractors obtains and maintains, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
 - (v) must undertake any audits or monitoring as requested by the Principal's Representative to demonstrate compliance with this clause; and
 - (vi) warrants that it is familiar with and has the capability and resources to comply with the COR Laws and ensure that its personnel and Subcontractors comply with all COR Laws.
- (b) Where used in this clause 16.29:
 - (i) **"COR Laws"** means any section of the Heavy Vehicle Law under which the CN Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle Law);
 - (ii) **"COR Systems"** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with the COR Laws;

- (iii) **"Heavy Vehicle Law"** means the:
 - A. Heavy Vehicle National Law (NSW) within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW); and
 - B. regulations in force under the Heavy Vehicle National Law (NSW) as applied (with modifications) under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) as amended, reproduced or updated from time to time; and
- (iv) terms which are defined in the Heavy Vehicle Law have the meaning given in the Heavy Vehicle Law.

16.30 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.

16.31 Survival of certain provisions

Without limiting clause 16.8(a) or the schedules to this Contract:

- (a) clause 1 (Definitions and interpretation), clause 2.7 (Unconditional Undertakings and Parent Company Guarantee), clause 3.6 (Information Documents and Materials), clause 5.5 (Assignment and ownership of Intellectual Property), clause 11.13 (Interest), clause 13A (Liability), clause 14.5 (Principal's common rights after take out or termination), clause 14.7 (Principal's rights after termination), clause 14.8 (CN Contractor's rights after repudiation or wrongful termination), clause 14.9(b), clause 14.10 (Payment for termination for convenience), clause 14.12 (Termination by frustration), clause 15 (Disputes), clause 16 (General), clause 17 (Notification of Claims) and clause 18 (General Provisions Relating to GST), the representations, warranties and indemnities given by the CN Contractor under this Contract and any other provisions which are expressed to survive termination or by implication from their nature are intended to survive termination (together, the **"Surviving Clauses"**) and any rights arising on termination will survive rescission, termination or expiration of this Contract; and
- (b) if this Contract is rescinded or terminated, no party will be liable to any other party except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this Contract occurring before such rescission or termination.

16.32 Transfer of Functions or NSW Rail Assets

- (a) The parties acknowledge that:
 - (i) a Rail Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Rail Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Rail Transport Agency is reconstituted, renamed, dissolved, replaced or restructured or if some or all of a Rail Transport Agency's powers, functions, rights or responsibilities are transferred to another entity, then other than as notified by the Rail Transport Agency, references in this Contract to that party (as the case may be) must, subject to any facilitative legislation, be deemed to refer, as applicable, to that reconstituted, renamed, restructured or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Rail Transport Agency may, or may be required to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets forming part of a Rail Transport Agency's assets at its absolute discretion.
- (b) The CN Contractor acknowledges and agrees that it must, to the extent required by a Rail Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this Contract, or any replacement agreement or agreements for this Contract to give effect to a Rail Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The CN Contractor will be taken for all purposes to have consented to, and will not have, and no Rail Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by clause 16.31.
- (d) For the purposes of this clause 'another entity' means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

16A. Representations and warranties

16A.1 Principal representations and warranties

The Principal represents and warrants for the benefit of the CN Contractor that:

- (a) it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this

Contract (or will have them in full force and effect at the time the obligation is to be performed);

- (c) this Contract constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) the execution, delivery and performance of this Contract does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

16A.2 CN Contractor Representations and Warranties

The CN Contractor represents and warrants for the benefit of the Principal that:

- (a) is duly registered and remains in existence;
- (b) the execution, delivery and performance of this Contract does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it has taken all action required to enter into this Contract and to authorise the execution and delivery of this Contract and the satisfaction of its obligations under it;
- (d) this Contract constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) it subsists and is properly constituted;
- (f) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (g) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (h) there has been no material change in the financial condition of the CN Contractor (since the date of its last audited accounts) which would prejudice the ability of the CN Contractor to perform its obligations under this Contract;
- (i) the most recently published financial statements of the CN Contractor has been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the CN Contractor;
- (j) the CN Contractor is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Contract with the CN Contractor; and
- (k) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if

adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under this Contract.

16A.3 Repetition of representation and warranties

The representations and warranties contained in clauses 16A.2(h), 16A.2(i), 16A.2(j) and 16A.2(k) are made on the date of this Contract. Each other representation and warranty contained in this clause 16A.2:

- (a) is made on the date of this Contract; and
- (b) will be deemed to be repeated on each anniversary of the date of this Contract,

with reference to the facts and circumstances then subsisting.

17. Notification of Claims

17.1 Notice of Variation

If a direction by the Principal's Representative, other than a "Variation Order" under clause 6.2, constitutes or involves a Variation, the CN 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 item 42 of Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, as required under clause 17.3(a), that it considers the direction constitutes or involves a Variation;
- (b) within the time specified in item 43 of Schedule 1 of giving the notice under clause 17.1(a), submit a written Claim to the Principal's Representative, which includes the details required by clause 17.3(b); and
- (c) continue to carry out the CN 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 17.1.

17.2 Notice of Other Claims

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

- (a) it is otherwise given an express entitlement under this Contract; or
- (b) this Contract expressly provides that:
 - (i) specified costs are to be added to the Contract Sum; or

- (ii) the Contract Sum will be otherwise increased or adjusted,
as determined by the Principal's Representative,

the CN Contractor must give the Principal's Representative:

- (c) the notice required by clause 17.3(a); and
- (d) a Claim in accordance with clause 17.3(c).

17.3 Prescribed Notices

- (a) Any written notice referred to in clauses 17.1(a) and 17.2(c) must:
 - (i) be provided not later than the time specified in item 42 of Schedule 1 after the CN Contractor:
 - A. receives the direction (in respect of a notice under clause 17.1(a)); or
 - B. first becoming aware (or when it ought reasonably to have first become aware) of alleged entitlement arising as a result of an event, circumstance, act, omission, fact, matter or thing (in respect of a notice under clause 17.2(c)); and
 - (ii) expressly specify:
 - A. that the CN Contractor proposes to make a Claim; and
 - B. the direction, event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 17.1(b) must include:
 - (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (ii) the provisions of this Contract or other legal basis upon which the Claim is based; and
 - (iii) details of the amount claimed and how it has been calculated.
- (c) Any written Claim referred to in clause 17.2(d) must:
 - (i) be provided not later than the time specified in item 43 of Schedule 1; 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.

17.4 Submission of Claims

- (a) Claims submitted by the CN Contractor under clauses 17.1(b) and 17.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full or request further information from the CN Contractor in order to assess the Claim.
- (b) Subject to clause 17.4(c), if within 20 Business 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 20th Business Day.
- (c) The Principal's Representative may, upon written notice to the CN Contractor, reasonably extend the time within which it will make a decision on the Claim.

17.5 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the CN Contractor must continue to give the information required by clause 17.3(b) or 17.3(c) every 20 Business Days after the written Claim under clause 17.1(b) or 17.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

17.6 Bar

If the CN Contractor fails to comply with clauses 2.3(d), 17.1, 17.2, 17.3 or 17.5:

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

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

17.7 Other Provisions Unaffected

Nothing in clauses 17.1 to 17.6 will limit the operation or effect of any other provision of this Contract that requires the CN Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

18. General Provisions Relating to GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party ("**Supplier**") under or in connection with this Contract, including the CN Contractor's Activities or the Works, the party providing consideration for the supply ("**Recipient**") must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 18(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
- (d) If any party is required under this Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of this Contract, a party will not be obliged to pay any amount in respect of GST to the other party (whether under this clause 18 or otherwise) unless and until a tax invoice that complies with the GST Legislation has been issued by the Supplier in respect of that taxable supply.
- (f) The parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by the CN Contractor to the Principal under or in connection with this Contract:
 - (i) the Principal will issue to the CN Contractor a recipient created tax invoice ("**RCTI**") for each taxable supply made by the CN Contractor to the Principal under this Contract;
 - (ii) the Principal will issue to the CN Contractor an adjustment note for any adjustment event;
 - (iii) the CN Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the CN Contractor that it will no longer issue a RCTI for each taxable supply made by the CN Contractor under this Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the CN Contractor will be required to issue tax invoices to the Principal (including under clause 11.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the CN Contractor in respect of any such taxable supply.

- (g) Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to:
 - (i) enable or assist the other party to claim input tax credits to the maximum extent possible; or
 - (ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Contract.
- (h) If the GST payable in relation to a supply made by the Supplier under this Contract varies from the additional amount paid by the other party under this clause 18 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

19. TfNSW's Statement of Business Ethics

- (a) The CN 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 CN Contractor, the CN 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.

20. NSW Code of Practice

20.1 NSW Guidelines

In addition to terms defined in this document, terms used in this clause 20 have the same meaning as is attributed to them in the New South Wales Industrial Relations Guidelines: Building and Construction Procurement ("**NSW Guidelines**") (as published by the NSW Treasury July 2013, Updated: September 2017). The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

20.2 Primary Obligation

- (a) The CN Contractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (b) The CN Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the CN Contractor engages a Subcontractor, the CN Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 20, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.

- (d) The CN Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

20.3 Access and information

- (a) The CN Contractor must maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors and related entities.
- (b) The CN Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the CN Contractor, including but not limited to the Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Works;
 - (v) have access to personnel; and
 - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines, by the CN Contractor, its Subcontractors and related entities.
- (c) The CN 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.

20.4 Sanctions

- (a) The CN 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 Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (b) If the CN Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:

- A. record and disclose details of non-compliance with the NSW Guidelines and the sanction; and
- B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the CN Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.

20.5 Compliance

- (a) The CN Contractor bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The CN Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- (b) Compliance with the NSW Guidelines does not relieve the CN Contractor from responsibility to perform the Works and any other obligation under the Contract, or from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (c) Where a change in the Contract or the Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the CN Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the CN 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 CN Contractor as to the course it must adopt within 10 Business Days of receiving notice.

CONTRACT EXECUTION PAGE

DATED16TH..... day of ..OCTOBER 2020.....

Executed and delivered as a deed in Sydney

EXECUTED by SYDNEY METRO

(ABN 12 354 063 515) by its authorised
delegate, in the presence of:



**EXECUTED by A.W. EDWARDS
PTY LTD (ABN 76 000 045 849)** in
accordance with section 127 of the
Corporations Act 2001 (Cth):

