

Western Harbour Tunnel and Beaches Link

Warringah Freeway Upgrade

Incentivised Target Cost Contract

Contract No: TfNSW 20.0000301755.1100

Transport for NSW
(ABN 18 804 239 602)

and

CPB Contractors Pty Limited
(ABN 98 000 893 667)

and

Downer EDI Works Pty Ltd
(ABN 66 008 709 608)

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THIS DEED is made on

10 September

2021

BETWEEN:

- (1) **Transport for NSW (ABN 18 804 239 602)** a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 20 – 44 Ennis Road, Milsons Point NSW 2061 (the **Principal**); and
- (2) the CPB Downer JV, being an unincorporated joint venture comprising **CPB Contractors Pty Limited (ABN 98 000 893 667)** of Level 18, 177 Pacific Highway, North Sydney, New South Wales 2060 and **Downer EDI Works Pty Ltd (ABN 66 008 709 608)** of Level 2, Triniti 3, Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113 (together, the **Contractor**).

RECITALS:

- (A) The Principal is a statutory body representing the Crown in the right of the State of New South Wales.
- (B) The Principal is procuring the Western Harbour Tunnel and Beaches Link Program (**WHTBL Program**) on behalf of the NSW government and the people of New South Wales.
- (C) The Project Works are a critical component of the WHTBL Program.
- (D) The successful completion of the Project Works will require a high level of co-operation and collaboration between the Contractor and the Principal.
- (E) Following the completion of a request for tender process, the Principal selected the Contractor as the successful tenderer for the delivery of the Project Works.
- (F) The Principal and the Contractor now wish to enter into this deed to record the terms on which the Project Works will be designed, constructed, supplied, delivered, installed, integrated, tested, commissioned and handed over by the Contractor to the Principal.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed, 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 BCIIP Act.

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

Aboriginal Participation Plan means a plan that satisfies the requirements for an "Aboriginal Participation Plan" described in the AP Policy.

Aboriginal Participation Report means a report that satisfies the reporting requirements in the AP Policy.

Accepted Defect means a Defect in relation to which the Principal's Representative has issued a direction under clauses 12.2(a)(iii) or 12.2(a)(iv) prior to the Date of Completion of any Portion.

Accessible means, in relation to a part of the Construction Site, an Interface Contractor's access to that part of the Construction Site is capable of safe, clean and clear use to the

exclusion of the Contractor's access to that part of the Construction Site to perform the Contractor's Activities (except to the extent such access is required in order for the Appointed Principal Contractor to discharge its obligations under the WHS Legislation).

Acoustics Advisor means the person identified in Schedule A1 (*Contract Particulars*) as the acoustics advisor for the Project Works appointed by the Principal, or any replacement notified to the Contractor by the Principal's Representative.

Act of Prevention means any act or omission (including breach of contract) by the Principal or Principal's Representative, not being:

- (a) an act or omission expressly permitted or allowed by the Project Documents;
- (b) an act or omission which is carried out within the timeframe expressly permitted or allowed by the Project Documents;
- (c) an act or omission to the extent the act or omission is caused or contributed to by:
 - (i) a breach of any Project Document by the Contractor or its Associates; or
 - (ii) any negligent or unlawful act or omission of or by the Contractor or its Associates (including its Subcontractors (of any tier)); or
- (d) the exercise by the Principal or any Associate of the Principal of any of its functions and powers pursuant to any Law.

Additional ROL Conditions has the meaning given to that term in clause 7.2(j).

Additional Third Party Agreement means any agreement which the Principal enters into with a Third Party after the date of this deed in relation to the Works and with which the Principal intends the Contractor comply (in whole or in part) on behalf of the Principal, but does not include an Interface Works Contract.

Agreed Exception has the meaning given to it in section 5.31 of the SWTC.

AIP Plan means the Australian Industry Participation Plan contained in Schedule D3 (*AIP Plan*).

Amended Third Party Agreement has the meaning given to that term in clause 3.6(a)(v)(C).

AP Policy means the NSW Government Aboriginal Procurement Policy (January 2021) as amended or updated from time to time.

Appointed Principal Contractor means CPB Contractors Pty Limited (ABN 98 000 893 667).

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 applicable):

- (a) to carry out the Contractor's Activities;
- (b) to deal with, transport or dispose of Contamination or Waste;
- (c) in connection with the Construction Site and any Extra Land (but only to the extent required for the performance of the Contractor's Activities);

- (d) for the use and occupation of:
- (i) any Portion (both individually and in combination with any earlier completed Portions) after Completion of the Portion; or
 - (ii) the Project Works after Completion of every Portion; or
- (e) otherwise to comply with Law,
- and includes:
- (f) the Planning Approval; and
 - (g) any EPL issued in relation to the Contractor's Activities,
- but does not include:
- (h) any direction given by the Principal or the Principal's Representative pursuant to this deed;
 - (i) the exercise by the Principal of its rights under this deed; or
 - (j) any approvals for the use and occupation of the Project Works as an operational tunnel after Completion of all Portions.

Approved ROL means an ROL that was the subject of an ROL Application that has been approved by the CJM and the relevant ROL has been issued.

Approved ROL Change means, subject to clause 7.2(b)(iii)(B), the occurrence of any of the following:

- (a) the CJM cancels an Approved ROL (or cancels a Road Occupancy forming part of an Approved ROL) less than three (3) days prior to the date of the relevant Road Occupancy;
- (b) the Principal gives a direction under clause 7.2(e)(i); or
- (c) the Contractor is directed by any Emergency Services provider to suspend any part of the Contractor's Activities which are being carried out pursuant to an Approved ROL.

Approved Subcontract means:

- (a) an agreement which is entered into by the Contractor with a Subcontractor on the terms which have been approved in writing by the Principal's Representative under clause 11.7(b); and
- (b) a Pre-Approved Subcontract.

Artefact has the meaning given to that term in clause 7.13(a).

Asset Management Information means the information required to be delivered by the Contractor as set out in the SWTC and includes the O&M Manuals (as defined in the SWTC) and as built drawings.

Associates means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative, but excludes:
 - (i) the Independent Certifier;
 - (ii) the Environmental Representative;
 - (iii) the Acoustics Advisor;
 - (iv) the Contractor, each entity that comprises the Contractor and its Subcontractors;
 - (v) any Interface Contractors and their respective subcontractors; and
 - (vi) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (v) above; and
- (b) in respect of the Contractor, its Subcontractors, each entity that comprises the Contractor, the Parent Company Guarantors and any of the respective employees, agents, contractors or officers of the Contractor, its Subcontractors or the Parent Company Guarantors (but excludes the Independent Certifier, the Environmental Representative, the Acoustics Advisor and their respective employees, agents, consultants and officers).

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;
- (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 Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of, Utility Services, the Utility Service Works, the Local Areas or the Local Area Works.

Base Interest Rate means the cash rate last published by the Reserve Bank of Australia.

Baseline ROL Change means, subject to clause 7.2(b)(iii)(B), the occurrence of any of the following:

- (a) the CJM rejects a Valid Baseline ROL Application;
- (b) the CJM approves a Valid Baseline ROL Application but with conditions that are inconsistent with the Baseline ROL Schedule;
- (c) the CJM fails to:
 - (i) reject or provide comments on a Valid Baseline ROL Application within the timeframe set out in section 3.1 of Appendix C.4 of the SWTC; and

- (ii) approve that Valid Baseline ROL Application before the date of the proposed Road Occupancy set out in the ROL Application;
- (d) the CJM changes the conditions of:
 - (i) any Approved ROL, less than three (3) days prior to the date of the relevant Road Occupancy; or
 - (ii) an Approved ROL that was the subject of a Valid Baseline ROL Application in a manner that is inconsistent with the Baseline ROL Schedule, at any time; or
- (e) an Approved ROL Change, other than an Approved ROL Change which impacts a Major ROL.

Baseline ROL Schedule means the roads and associated lanes, direction, days, and time slots set out in table C.5-4A and C.5-4B of Appendix C.5 of the SWTC, as updated from time to time in accordance with clause 7.2(j)(i).

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

BL Contractor means the Interface Contractor or Interface Contractors carrying out the BL Works.

BL Works means the works and activities with respect to the design and construction of the Beaches Link, as described in the SWTC.

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

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

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

Carriageway Portion means the Portion of the Project Works described as the Carriageway Portion in Schedule A2 (*Portions*).

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 Guideline means the document contained in Attachment C.1-1 of Appendix C.1 of the SWTC.

Chain of Responsibility Management Plan means the Project Plan of that name which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with, the SWTC.

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

Change in Codes and Standards means a change in the Codes and Standards (or any new Codes and Standards) taking effect after the date that is twenty (20) Business Days

prior to the date of this deed, excluding a change in the Codes and Standards which, as at the date that is twenty (20) Business Days prior to the date of this deed:

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

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

Change in Law means any of the following if it takes effect after the date of this deed:

- (a) the amendment, repeal or change in an existing Law (other than a change in an Approval or a [REDACTED]); or
- (b) a new Law (other than a new Approval or [REDACTED]),
compliance with which:
- (c) has a direct effect on the Contractor carrying out the Contractor's Activities; and
- (d) directly results in an increase or decrease in the Contractor's costs of carrying out the Contractor's Activities, or a delay to the Contractor achieving Completion of a Portion,

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

- (e) in respect of Tax;
- (f) which was caused or contributed to by any act or omission of the Contractor; or
- (g) which, as at the date of this deed:
 - (i) was published or of which public notice had been given, including:
 - (A) as a possible amendment, repeal or change in an existing Law or a possible new Law; or
 - (B) where such Law does not come into force until after the date of this deed (including the *Design and Building Practitioners Act 2020 (NSW)*); or
 - (ii) a person experienced and competent in the delivery of the works and services similar to the Project Works or the Contractor's Activities (as applicable) would have reasonably foreseen or anticipated.

Change in Planning Approval means a change in a Planning Approval which has been obtained by the Principal which:

- (a) is not caused or contributed to by an act or omission of the Contractor;
- (b) occurs after the date of this deed; and
- (c) has a direct effect on the Contractor carrying out the Contractor's Activities.

CJM means Customer Journey Management.

CJP means Customer Journey Planning.

Claim includes any claim, demand, action, proceeding or suit of any kind whatsoever for an increase in any component of the Target Cost, for payment of money (including costs, expenses, Losses, disruption or damages), for an extension of time to a Date for Completion or for any other form of relief:

- (a) under, arising out of, or in any way in connection with, this deed, including any direction of the Principal's Representative;
- (b) arising out of, or in any way in connection with, the Contractor's Activities or the Project Works or either party's conduct prior to the date of this deed; 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, on a quantum meruit or in quasi-contract.

Codes and Standards means:

- (a) the codes, standards and specifications specified in the SWTC;
- (b) AP Policy, NSW Guidelines, NSW Government Environmental Management Guidelines (fourth edition) (December 2019), NSW Government Supplier Code of Conduct (February 2020), WHS Guidelines, Training Management Guidelines (July 2020), Quality Management System Guidelines for Construction (December 2019), GREP; and
- (c) any other codes, standards, NSW Government policies, guidelines and requirements applicable to the Contractor's Activities or specified or required by this deed,

each as current at the date that is twenty (20) Business Days prior to the date of this deed.

Commercially Sensitive Information means:

- (a) any information relating to the Contractor's cost structure or profit margins; or
- (b) any information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to the Contractor,

which, in respect of the information contained in the Project Documents, is the information described in Schedule A8 (*Commercially Sensitive Information*).

Commissioning has the meaning given to that term in the SWTC.

Commonwealth means the Commonwealth of Australia.

Communications Strategy means the Project Plan of that name which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with the SWTC.

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

- (a) completed the Works comprising the relevant Portion in accordance with this deed;

- (b) given to the Principal's Representative all Asset Management Information (including as-built drawings) relating to that Portion and such Asset Management Information has not been rejected by the Principal's Representative under clause 8.12(c) within the period referred to in that clause;
- (c) rectified:
 - (i) all Mandatory Defects;
 - (ii) in respect of a Handover Portion, all Defects that are listed in the Independent Certifier's Pre-Completion Notice; and
 - (iii) in respect of the Carriageway Portion, all Defects that are listed in the Independent Certifier's Pre-Completion Notice, other than Minor Defects, other than any such Defects that are Accepted Defects;
- (d) carried out and passed all tests which are required under this deed to be carried out and passed prior to Completion being achieved;
- (e) obtained all Approvals that are required under this deed to be obtained prior to Completion being achieved and provided those Approvals to the Principal's Representative;
- (f) obtained from the Independent Certifier a certificate in the form of Part K (Independent Certifier Design Certificate) of Schedule B7 (*Form of Certificates*) for all Design Documentation in relation to the Final Design Documentation Stage for that Portion;
- (g) given to the Principal's Representative all documents and information in respect of the design, construction, testing, Commissioning, completion, occupation, use and maintenance of the Portion which:
 - (i) is required by this deed to be given to the Principal's Representative before Completion of the Portion; or
 - (ii) must necessarily be handed over before the Portion can be used for its intended purpose,including copies of all documentation in accordance with the requirements of Appendix B.14 of the SWTC;
- (h) executed a certificate in the form of Schedule B4 (*Contractor's Certificate of Completion*) for the Portion and provided it to the Principal's Representative and the Independent Certifier;
- (i) provided the training required by the SWTC to the reasonable satisfaction of the Principal's Representative;
- (j) removed all Construction Plant from the parts of the Construction Site that relate to the Portion, other than any Construction Plant necessary to facilitate the handover of the Portion to the Principal or which is required to be retained on the Construction Site in accordance with clause 3.10(c) (where approved by the Principal's Representative in accordance with clause 3.10(d));

- (k) in respect of any Extra Land occupied or used in connection with the Portion, provided the Principal's Representative with:
 - (i) properly executed certificates in the form of Schedule B2 (*Property Owner's Certificate*) or releases on terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or
 - (ii) statements under clause 7.7(a)(iii)(B)(bb);
- (l) submitted to the Principal's Representative the Survey Plan and Survey Certificate referred to in clause 7.22 with respect to the relevant Portion;
- (m) removed all rubbish, surplus Materials (including construction materials), Construction Plant and Temporary Works from the relevant parts of the Construction Site and Extra Land relevant to that Portion in accordance with clause 3.10 that is required under this deed to be removed before Completion;
- (n) provided the Principal with all spare parts, consumables and special tools as required by the SWTC;
- (o) in respect of the Carriageway Portion, the Project Works comprising the Carriageway Portion are capable of being opened to the public for the safe passage of vehicles;
- (p) in respect of the last Portion to achieve Completion, given the Principal the Aboriginal Participation Report required by clause 13.17(c); and
- (q) the Contractor has done everything else which is stated to be a condition precedent to Completion of the Portion in this deed or which the Contractor is otherwise expressly required by this deed to do before Completion of the Portion.

Completion Steering Committee means the group referred to in clause 13.27.

Completion Working Group means the group referred to in clause 13.28.

Compression Request has the meaning given to that term in clause 14.15(a).

Concept Design means the Design Documentation prepared by the Contractor prior to the date of this deed which is included in Appendix E.3 and Appendix E.4 of the SWTC.

Confidentiality Undertaking means a confidentiality undertaking in the form set out in Schedule B3 (*Form of Confidentiality Undertaking*).

Consequential Loss means any:

- (a) loss of income, loss of revenue (including loss of toll revenue), loss of profit, 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.

Construction Cost Element means that part of the Reimbursable Cost Element set out in Schedule F1 (*Payment*) in respect of the Construction Work.

Construction Environmental Management Plan means the Project Plan of that name which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with, the SWTC and the Planning Approval.

Construction Management Plan means the Project Plan of that name which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with, the SWTC and the Planning Approval.

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

Construction Site means:

- (a) the land and other places described in the Site Access Schedule, including the Works Site, Temporary Areas and those Local Areas shown in the Site Access Schedule as forming part of the Construction Site; and
- (b) any other land and places made available to the Contractor by the Principal for the purpose of this deed.

Construction Traffic Management Plan means the traffic management plan required to be submitted to the CJM with each ROL Application, as described in Appendix C.4 of the SWTC (which includes the Site Specific CTTMPs as described in Appendix C.5 of the SWTC).

Construction Work means the Reimbursable Work but excluding Design Work, Preliminaries and Delivery Phase Maintenance.

Contamination means:

- (a) any Pollution, hazardous substance, toxic substance (including asbestos and per- and poly-fluoroalkyl substances (**PFAS**))), dangerous goods, hazardous waste or special waste, or any constituent of any such substance in any water, soil or in the air including acid sulphate soils; and
- (b) without limiting paragraph (a), any "contamination" as defined in the *Contaminated Land Management Act 1997 (NSW)*.

Contract Documentation and Materials has the meaning given to that term in clause 9.12(b).

Contract Processes has the meaning given to that term in clause 9.12(b).

Contract Year means:

- (a) the 12 month period commencing on the date of this deed; and
- (b) each subsequent 12 month period commencing on the anniversary of the date of this deed.

Contractor Contamination has the meaning given to that term in clause 7.10(a).

Contractor Cost to Complete has the meaning given to that term in clause 18.6(c).

Contractor Documentation Schedule means Appendix C2 of the SWTC.

Contractor Entity has the meaning given to that term in the relevant Parent Company Guarantee.

Contractor Insurance Policy means a policy of insurance required to be effected and maintained under clause 17.4.

Contractor Variations Manager means the individual listed in Schedule A6 (*Contractor's Personnel*) as the Contractor Variations Manager or, subject to clause 13.5(c)(ii), any replacement appointed by the Contractor from time to time to replace that person.

Contractor's Activities means all things or tasks which the Contractor is, or may be, required to provide, carry out or do to comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by the Contractor to another person, including:

- (a) the Reimbursable Work, the Provisional Sum Work and the Post Completion Activities;
- (b) the activities covered by the Management Fee; and
- (c) without limiting paragraphs (a) or (b):
 - (i) the correction of Defects;
 - (ii) the provision of Construction Plant and Material;
 - (iii) the design, construction, testing, Commissioning and hand-over of the Project Works;
 - (iv) the provision of Temporary Works; and
 - (v) anything incidental or ancillary to the obligations in paragraphs (a) or (b).

Contractor's Employee means any employee or officer of the Contractor or its Related Body Corporate, whether permanent, part time or casual, who is engaged pursuant to a contract of employment.

Contractor's Program means:

- (a) until such time that paragraph (b) below applies, the program set out in Schedule E5 (*Contractor's Program*); and
- (b) the latest version of the program prepared and provided by the Contractor on an Open Book Basis in accordance with clause 14.2, and which has not been rejected by the Principal's Representative in accordance with clause 13.13(h)(ii)(C).

Contractor's Representative means:

- (a) the person nominated in Schedule A1 (*Contract Particulars*); or
- (b) any other person notified to the Principal by the Contractor from time to time under clause 13.5(b).

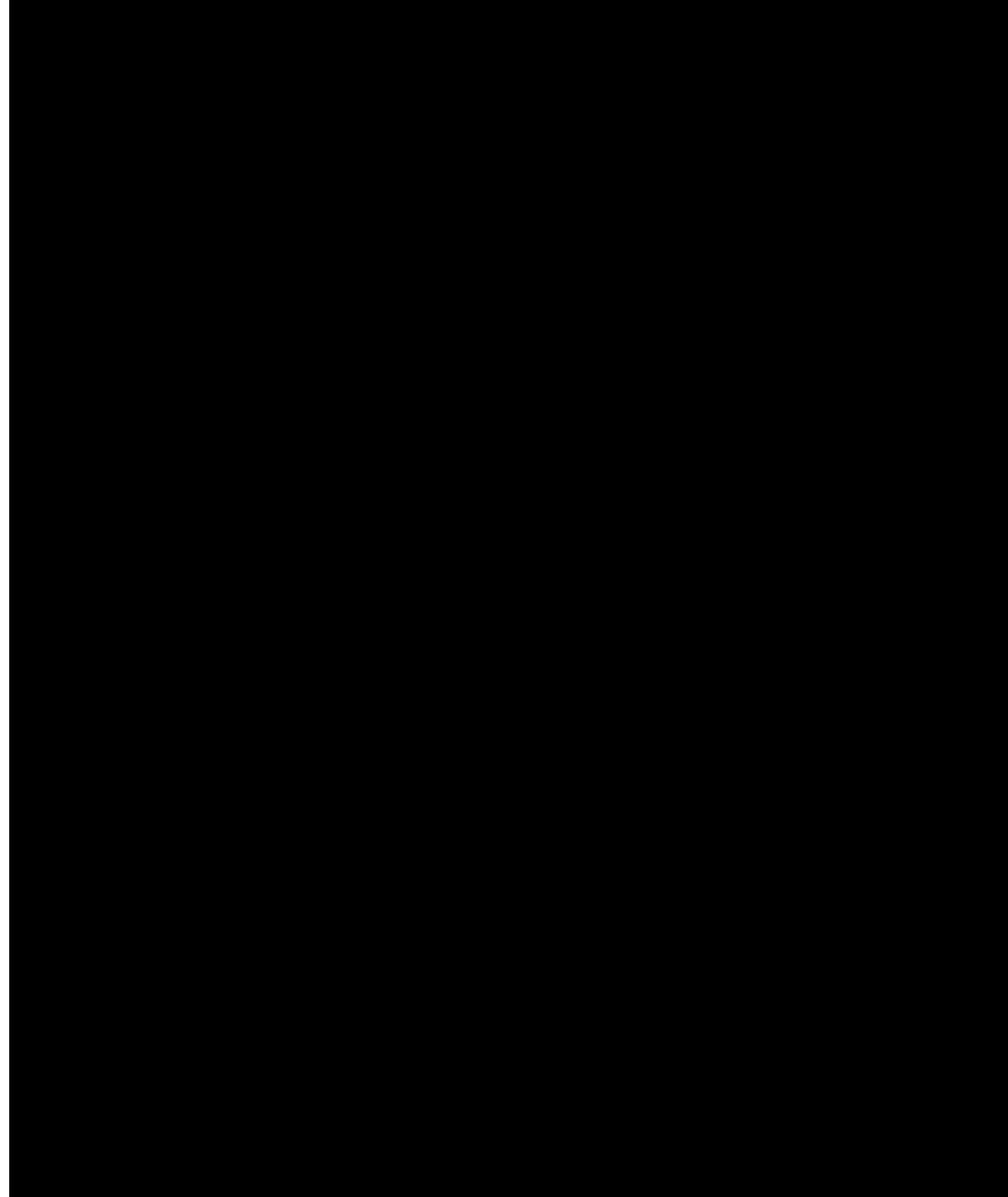
Control has the meaning given to that term in the *Corporations Act 2001* (Cth).

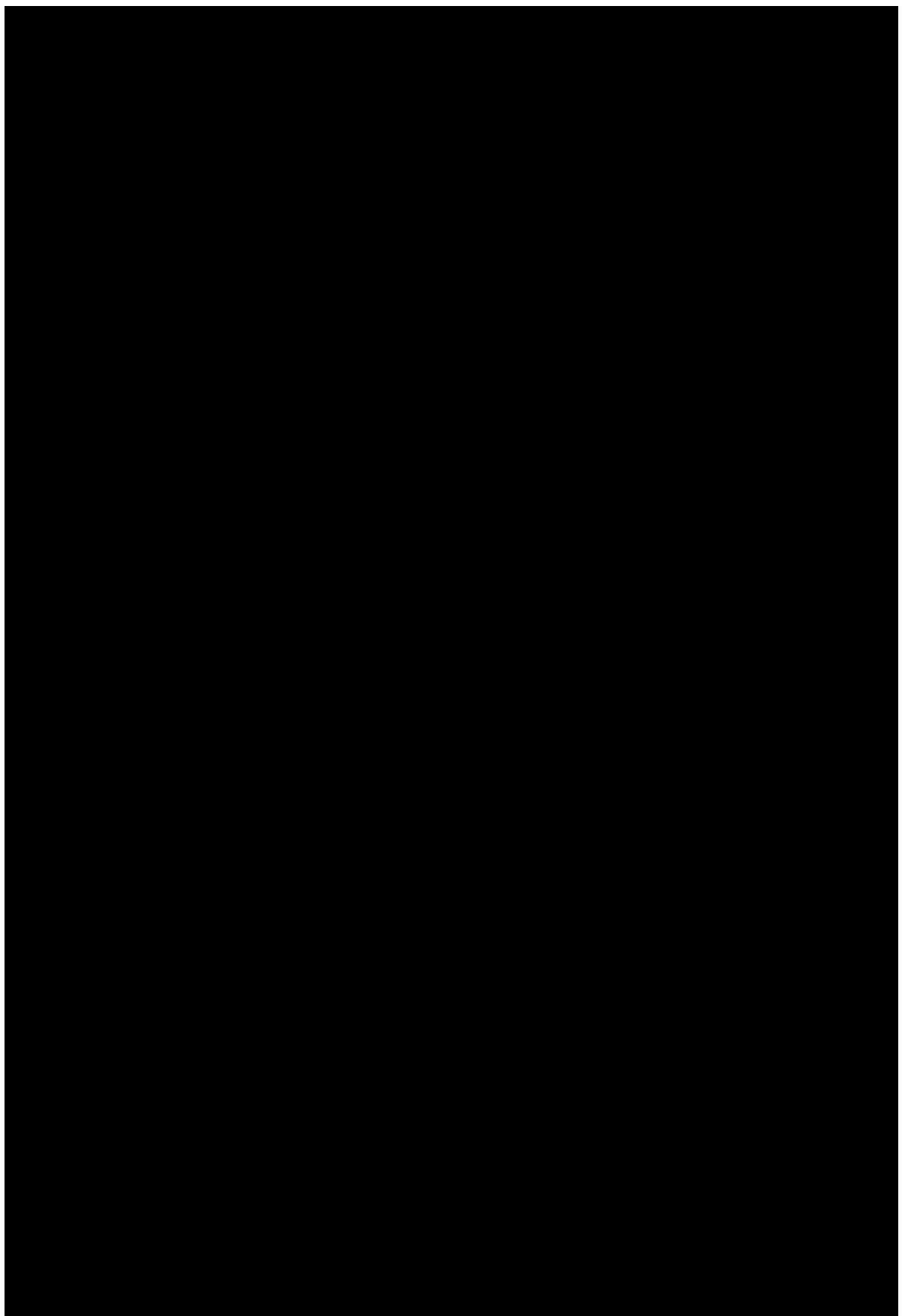
Cost Incentive means the aggregate of:

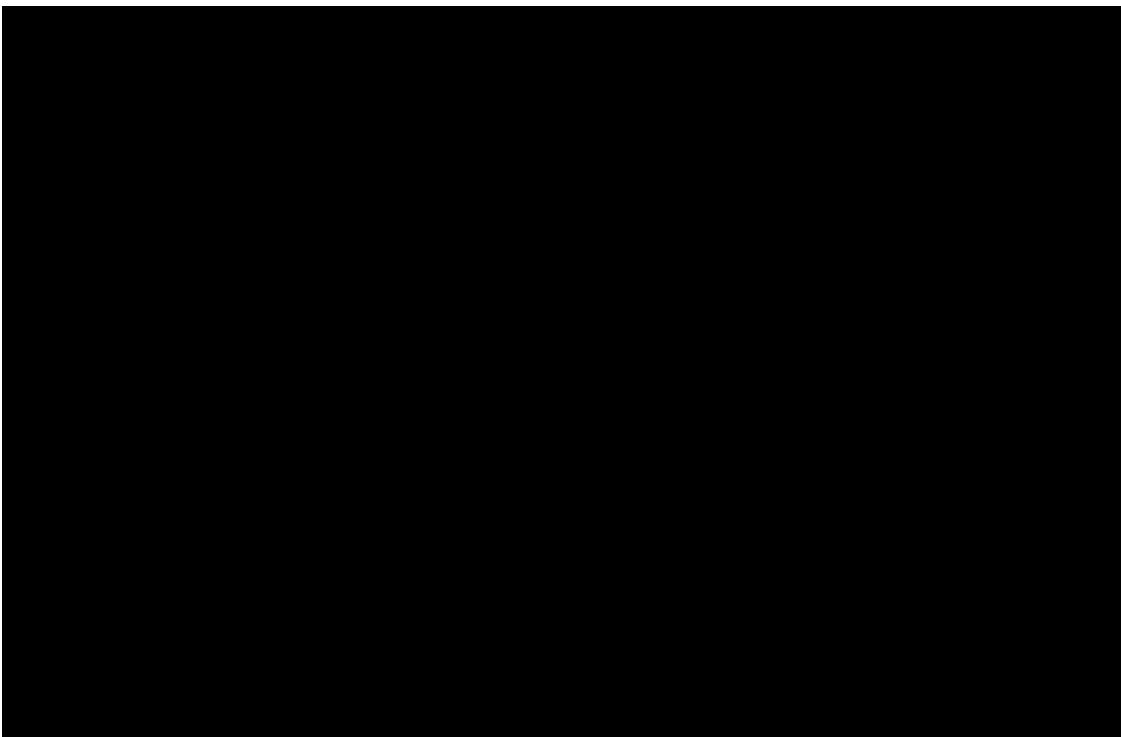
- (a) [REDACTED] per cent of the Share of Savings; and
- (b) an amount calculated by multiplying:
 - (i) [REDACTED] per cent of the Share of Savings; by

- (ii) the amount of the KRA Incentive paid to the Contractor as at the Date of Completion of the last Portion to achieve Completion, divided by the maximum KRA Incentive specified in clause 3.1(b) of Schedule F6 (*KRA Incentive Payment Schedule*).

Cost Plan has the meaning given to that term in clause 9.16(c), the initial version being the Initial Cost Plan.







Critical Non-Contestable Utilities Works means the Non-Contestable Utilities Works specified in Schedule A1 (*Contract Particulars*) as critical non-contestable works.

Critical Traffic Incident [REDACTED]

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

Customer Journey Management means the branch of Transport for NSW, which monitors and manages the NSW transport network and forms part of the infrastructure and services division of Transport for NSW.

Customer Journey Planning means the branch of Transport for NSW, which oversees the planning and coordination of traffic and transport in response to major construction or events around the Sydney CBD and is a delivery office of Transport for NSW.

Date for Completion means, in respect of a Portion:

- (a) the "Date for Completion" specified in Schedule A2 (*Portions*) for that Portion; or
- (b) where an extension of time is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, such extended date.

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

Deed of Disclaimer means the deed of disclaimer signed by the Contractor in favour of the Principal on or around the date of this deed, substantially in the form of Schedule A10 (*Deed of Disclaimer*).

Defect means any:

- (a) defect, deficiency, fault, error or omission in the Project Works or Temporary Works; or
- (b) any:
 - (i) cracking, shrinkage, movement or subsidence in the Project Works or Temporary Works; or
 - (ii) other aspect of the Project Works, Temporary Works or Contractor's Activities, which is not in accordance with the requirements of this deed,

but does not include any damage caused to the Project Works after the Date of Completion of the relevant Portion to the extent that damage was not caused or contributed to by the Contractor or its Associates.

Defects Correction Period means the periods referred to in clauses 12.6, 12.7(a), 12.8(a), 12.9 or 12.10 (as applicable).

Delivery Phase Maintenance means the maintenance to be carried out by the Contractor in accordance with clause 3.16.

Delivery Phase Maintenance Cost Element means that part of the Reimbursable Cost Element set out in Schedule F1 (*Payment*) in respect of the Delivery Phase Maintenance.

Design Documentation means all design documentation (including design standards, concrete mix designs, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, shop drawings, drawings, digital records, business rules, system processes, computer software and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means required by this deed or necessary to be produced by or on behalf of the Contractor to design and construct the Works and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this deed.

Design Cost Element means that part of the Reimbursable Cost Element set out in Schedule F1 (*Payment*) in respect of the Design Work.

Design Management Plan means the Project Plan of that name, which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with, the SWTC.

Design Stage has the meaning given to that term in Appendix C.2 of the SWTC.

Design Work means the design work to be carried out by the Contractor in designing the Works and technical support during construction.

Designer means all designers identified in Schedule A1 (*Contract Particulars*) or otherwise engaged by the Contractor in relation to performing the Design Work.

Direct Base Salary has the meaning given to that term in Part A of Schedule F2 (*Schedule of Rates and Labour Costs*).

Dispute means any dispute, difference, controversy or claim directly or indirectly based upon, arising out of, relating to or in connection with this deed, the Works, or the Contractor's Activities, including any question regarding the validity, existence or termination of this deed.

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

Draft Third Party Agreement has the meaning given to that term in clause 3.6(a)(iii)(A).

Early Completion Payment means, in respect of a Portion, the amount (if any) calculated in accordance with section 2 of Schedule A2 (*Portions*) for that Portion.

Early Utilities Works means the work specified in Schedule C4 (*Early Utilities Works*), which includes the relocation, removal, or making redundant of existing Utility Services and the temporary restoration of the relevant affected area.

Early Utilities Works Delay means, in respect of an area of the Construction Site identified in the Site Access Schedule, the Early Utilities Works located within that part of the Construction Site has not been completed by the relevant Site Access Date for that part of the Construction Site.

Election Date means, in respect of a Pre-Agreed Variation, the relevant date specified as the "Latest date that the Principal can direct this Pre-Agreed Variation" in Schedule A3 (*Pre-Agreed Variations*).

Emergency Services has the meaning given to that term in Appendix C.4 of the SWTC.

Environment means components of the earth, including:

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

Environmental Representative means the person identified in Schedule A1 (*Contract Particulars*) as the environmental representative, or any replacement notified to the Contractor by the Principal.

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).

Error means a discrepancy, omission, mistake, lack of co-ordination, ambiguity or inconsistency between documents or between different parts of the same document.

Excepted Risk means:

- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage, in each case occurring within Australia;
- (b) an act of terrorism occurring within Australia; 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 or contributed to by the Contractor or its Associates.

Excluded Costs has the meaning given to that term in Schedule F1 (*Payment*).

Exclusion Sanction has the meaning given to that term in subsection 3(1) of the Building Code.

Existing Asset means an asset or item of infrastructure within the Construction Site existing at the date of this deed that will overlay, cross, intersect, connect, tie in or be adjacent to the Project Works, but does not include pavements.

Existing Asset Fault means any part of an Existing Asset that:

- (a) does not comply with Law or Codes and Standards; or
- (b) differs materially in condition from what could have been reasonably anticipated or foreseen at the date of this deed by a prudent and competent contractor in the position of the Contractor, who had done those things that the Contractor warrants under clause 7.8(d) that it has done.

Existing Operations means:

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

on or in the vicinity of the Construction Site.

Existing Operator means:

- (a) Ausgrid, the statutory state owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW);
- (b) Sydney Water Corporation (ABN 49 776 225 038);
- (c) Telstra Corporation Limited (ABN 33 051 775 556);
- (d) Jemena Limited (ABN 95 052 167 405);
- (e) Cammeray Golf Club Ltd (ABN 80 000 966 870);
- (f) Sydney Harbour Tunnel Company Ltd (ABN 72 003 315 375);
- (g) LCT-MRE Pty Limited (ACN 143 401 870);
- (h) Sydney Trains (ABN 38 284 779 682);
- (i) Kapsch Trafficom Australia Pty Ltd (ABN 84 081 653 429);
- (j) public and private bus operators;
- (k) local councils; and

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

and any of their Related Bodies Corporate (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) and contractors.

Expert means the person appointed to determine a Dispute pursuant to clause 19.4.

Extension Event means the occurrence of any of the following:

- (a) an Act of Prevention;
- (b) an act or omission of an Other Contractor (excluding an Interface Contractor);
- (c) a Baseline ROL Change;
- (d) a Major ROL Change;

(g) a legal challenge to the assessment, determination or modification of a Planning Approval in the circumstances described in clause 6.6(b);

(h) the Revised Allocation or the terms of a final version of any Draft Third Party Agreement or any Additional Third Party Agreement or any Amended Third Party Agreement imposes greater or different obligations on the Contractor as described in clause 3.6(c);

(i) a failure by the Principal to provide access to the Construction Site in accordance with clause 7.1(b);

(j) a Non-Contestable Utilities Works Delay;

(k) any Variation directed or approved under clause 10;

(l) suspension of the Project Works directed by the Principal in the circumstances described in clause 14.14(b)(ii);

(m) any testing directed in accordance with clause 16.1(a), except to the extent provided for in clause 16.1(j);

(n) a Force Majeure Event;

(o) a Native Title Claim;

(p) an Early Utilities Works Delay;

(q) compliance with a Make Accessible Direction in the circumstances set out in clause 14.17(d);

(r) the direction of a new Portion by the Principal under clause 16.4(a), but only in the circumstances described in clause 16.4(b)(i);

(s) the instruction of a Pre-Agreed Variation under clause 10.10, but only in the circumstances described in clause 10.10(d)(ii);

Extra Land means the land referred to in clause 7.7(a)(i).

Final Design Documentation Stage has the meaning given to that term in Appendix C.2 of the SWTC.

Final Inspection has the meaning given to that term in clause 12.14(a).

Final Third Party Works Inspection has the meaning given to that term in clause 12.15.

Financial Auditor means the financial auditor appointed under clause 8.11(b).

Financial Assessment has the meaning given to that term in clause 21.22(a).

Financial Capacity Event means any factual matter which, in the opinion of the Principal (acting reasonably), has a material adverse effect upon the financial standing of the Contractor (or any entity that comprises the Contractor) and which will adversely affect the Contractor's ability to perform the Contractor's Activities or comply with its obligations under the Project Documents.

Financial Mitigation Plan means a plan which satisfies the requirements of clause 21.23 for the mitigation of a Financial Capacity Event.

Force Majeure Event means any of the following:

- (a) an Excepted Risk;
- (b) an earthquake cyclone, fire, explosion, flood (caused by the overflow of a river, lake or other inland or tidal water body) occurring within Australia;
- (c) a flood which might at the date of this deed be expected to occur less frequently than once in every 100 years (based on the 1:100 year average recurrence interval flood event) occurring within Australia;
- (d) a fire or explosion resulting from an event referred to in paragraphs (a) to (c) (inclusive) of this definition occurring within Australia;
- (e) war, invasion, hostility between nations, civil insurrection, military coup or act of a foreign enemy taking place in Australia;
- (f) confiscation, nationalisation, requisition or property damage under the order of any government taking place in Australia,

which:

- (g) is beyond the reasonable control of the Contractor and its Associates; and
- (h) prevents or delays the Contractor from performing an obligation under this deed,

where that event or the consequence of that event does not arise from any act or omission of the Contractor (including from any breach by the Contractor of a term of this deed).

General Conditions means the provisions of this deed, excluding the schedules.

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

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

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

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

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

GREP means the NSW Government Resource Efficiency Policy (February 2019) (as amended from time to time).

GST Legislation has the meaning given to that term in clause 15.14(i)(ii).

Handover Area means an area of the Construction Site identified as a "Handover Area" in the drawings included in section 3 of Schedule A2 (*Portions*).

Handover Contract means a contract between the Principal and a Handover Contractor.

Handover Contractor means either the WHT Contractor or the BL Contractor.

Handover Portion means a portion of the Project Works described as a "Handover Portion" in Schedule A2 (*Portions*).

Hazardous Chemical has the meaning given to that term in the WHS Legislation.

Heavy Vehicle National Law means:

- (a) the Heavy Vehicle National Law set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as it applies through being adopted in other States and Territories, including through the *Heavy Vehicle National Law (NSW)* as amended, reproduced or updated from time to time; and
- (b) regulations in force under the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as they apply through being adopted in other States and Territories, including through the *Heavy Vehicle National Law (NSW)*, as amended, reproduced or updated from time to time.

Higher Sensitivity Deed Poll means a confidentiality undertaking in the form set out in Schedule B8 (*Higher Sensitivity Deed Poll*).

Hold Point means a point beyond which a work process must not proceed without the authorisation or release of the relevant Nominated Authority, and includes an Unknown Pavement Fault Hold Point.

IFC Design Documentation has the meaning given to that term in Appendix C.2 of the SWTC.

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

- (a) any work health and safety or environmental or security incident, including:
 - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW or other work health and safety regulator;
 - (ii) an occurrence or set of circumstances as a consequence of which pollution (air, water, noise or land) or an adverse environmental impact has occurred or is likely to occur;
 - (iii) any fire or dangerous event on the Construction Site or Extra Land;
 - (iv) a security breach;
 - (v) any unauthorised removal of trees;
 - (vi) any incident involving the community;
 - (vii) any accidents involving damage to persons or property occurring upon or in the vicinity of the Construction Site or any Extra Land or in the supply chain where the Chain of Responsibility Provisions apply;
 - (viii) a non-compliance with an Approval;
 - (ix) any public complaint;
 - (x) any "Traffic Incident" as defined in the SWTC; or
- (b) any unplanned or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property or existing infrastructure, interruption to operations or environmental impairment,

and includes:

- (c) a near miss, breach of procedure, quality failure and injuries to contractors and members of the public; and
- (d) a "notifiable incident" as defined under the WHS Legislation.

Independent Certifier means the person(s) appointed from time to time by the Principal and the Contractor to perform the role ascribed to the Independent Certifier under the Independent Certifier Deed.

Independent Certifier Deed means the deed so titled entered into after the date of this deed between the Principal, the Contractor and the Independent Certifier substantially in the form set out in Schedule A15 (*Independent Certifier Deed*).

Independent Certifier's Representative has the meaning given to that term in the Independent Certifier Deed.

Independent Checking Engineer means the person or persons as may be engaged from time to time by the Contractor to perform the role of "independent checking engineer" as required by the SWTC, and approved by the Principal.

Independent Estimator means any independent estimator appointed in accordance with clause 8.11(a).

Independent Property Impact Assessment Panel means the panel of that name established by the Principal for the WHTBL Program.

Information Documents means:

- (a) the items specified in Schedule G2 (*Information Documents*); and
- (b) all other documents, core and other samples, schedules and materials in any format or medium including any electronic form provided to the Contractor (whether before or after the date of this Deed) unless expressly identified as forming part of this deed,

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

Initial Cost Plan means the initial cost plan set out in Part 2 of Schedule F7 (*Cost Plan*).

Initial Project Plans means the initial Project Plans set out in Appendix E of the SWTC.

Initial Payment means the initial payment to be made to the Contractor in accordance with clause 15.15 as set out in Schedule F1 (*Payment*).

Insolvency Event means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this deed for financial reasons;
- (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;
- (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 fifteen (15) Business 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; or
- (e) any act which is done or event which is analogous or similar effect to any of the events in paragraphs (a) to (d).

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

Institution means:

- (a) an authorised deposit taking institution that has the Required Rating and holds an authority to carry on banking business in Australia under the terms of the *Banking Act 1959* (Cth); or
- (b) any other institution that has the Required Rating and is subject to prudential oversight by the Australian Prudential Regulatory Authority.

Insured Liability means a Liability in respect of which the Contractor:

- (a) recovers that Liability under a Principal Insurance Policy; or
- (b) is indemnified or entitled to be indemnified for that Liability under a Contractor Insurance Policy,

or would have recovered or been indemnified or entitled to be indemnified (as applicable) for that Liability but for:

- (c) the operation of any policy retention, deductible or excess that the Contractor is required to bear under the terms of this deed; or
- (d) any act or omission of the Contractor or its Associates including any failure by the Contractor to:
 - (i) diligently pursue a claim under the relevant policy of insurance;
 - (ii) comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
 - (iii) comply with its insurance obligations under this deed.

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

Interface Contractor means an Other Contractor listed in Schedule A1 (*Contract Particulars*) or otherwise engaged by the Principal and identified by the Principal's Representative as an Interface Contractor that is carrying out, or that will carry out, Interface Works.

Interface Deed means each deed to be entered into between the Principal, the Contractor and an Interface Contractor substantially in the form of Part A or Part B of Schedule A12 (*Interface Deeds*) (as applicable).

Interface Works means the work, operations, maintenance or other activities to be executed by Interface Contractors (including the design and construction of any physical works), which will interface with or affect or be affected by the Contractor's Activities and the Project Works, including that described in the SWTC.

Interface Works Contract means a contract between the Principal and an Interface Contractor.

ISLP Targets means the "Infrastructure Skills Legacy Program" targets as set out in the NSW Procurement Board Direction PBD: 2020-03: Skills, training and diversity in construction.

KRA Incentive means the amounts (if any) calculated in accordance with clause 3.2 of Schedule F6 (*KRA Incentive Payment Schedule*).

Landscaping Lump Sum means the lump sum amount specified in Schedule F1 (*Payment*) for the Landscaping Maintenance.

Landscaping Maintenance means, in respect of the Carriageway Portion, the Post Completion Activities set out in Part A of Schedule C3 (*Post Completion Activities*).

Landscaping Maintenance Period means, in respect of the Carriageway Portion, the period commencing on:

- (a) subject to paragraph (b), the Date of Completion of the Carriageway Portion; and
- (b) in relation to any Third Party Works involving landscaping, the commencement of the Defects Correction Period for those works,

and ending on the date that is 12 months after the Date of Completion of the Carriageway Portion.

Lane Occupancy Fees means lane occupancy fees payable by the Contractor to the Principal as calculated in accordance with Schedule E6 (*Lane Occupancy Fees*).

Latent Conditions means adverse geotechnical conditions (including adverse ground water and geological conditions) on, in or under the Construction Site which differ materially from the geotechnical conditions which could have been reasonably anticipated or foreseen at the date of this deed by a prudent and competent contractor in the position of the Contractor, who had done those things that the Contractor warrants under clause 7.8(d) that it has done.

Law means:

- (a) Commonwealth, New South Wales or local government legislation, including regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts in Australia;
- (c) Approvals (including any condition or requirement under them); and

LDs Step-up Date means, in respect of each Portion, the date specified as such in Schedule A2 (*Portions*), which will not be adjusted for any reason.

Legal Opinion means a legal opinion:

- (a) from lawyers acceptable to the Principal, authorised to practice in the jurisdiction of incorporation of the Parent Company Guarantor, stating that the Parent Company Guarantee provided under clause 5.10 is legal, valid, binding and enforceable against that Parent Company Guarantor;
- (b) in favour of the Principal; and
- (c) which is in a form reasonably satisfactory to the Principal.

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

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Liquidated Damages Cap means [REDACTED] per cent of the original Target Cost specified in this deed, as increased pursuant to the exercise of the Refresh Right (if applicable).

Local Area Works means the modification, reinstatement and improvement of Local Areas which the Contractor must design and construct as part of the Project Works and are necessary for the due and proper performance of the Project Works, which are handed over to the Principal or the relevant Authority in accordance with this deed and the SWTC and including, to the extent relevant to such works, Variations directed in accordance with this deed.

Local Areas means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which:

- (a) are adjacent to;
- (b) connect to;
- (c) intersect;
- (d) cross; or
- (e) are in any way affected by,

the Project Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network, including the areas designated as Local Areas in the Site Access Schedule, but excluding any other areas within the Construction Site.

Loss means:

- (a) any cost (including reasonable legal costs), expense, fee, loss, damage, Liability, or other amount; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and includes Consequential Loss.

Maintenance Contractor means the contractor engaged by the Principal to carry out maintenance of the roads within the Construction Site immediately prior to the commencement of this deed.

Maintenance Pavement Intervention means an intervention required under Appendix C.6 of the SWTC to correct a "Fault" (as that term is defined in Appendix C.6 of the SWTC) within the Construction Site.

Major ROL means an ROL covered by the Major ROL Schedule.

Major ROL Change means, subject to clause 7.2(b)(iii)(C) and 7.2A(c), the occurrence of any of the following:

- (a) the CJM rejects a Valid Major ROL Application;
- (b) the CJM approves a Valid Major ROL Application but with conditions that are inconsistent with the Major ROL Schedule Item applicable to that ROL;
- (c) the CJM fails to:
 - (i) reject or provide comments on a Valid Major ROL Application within the timeframe set out in section 3.1 of Appendix C.4 of the SWTC; and
 - (ii) approve that Valid Major ROL Application before the date of the proposed Road Occupancy set out in the ROL Application;
- (d) the CJM changes the conditions of an Approved ROL that was the subject of a Valid Major ROL Application in a manner that is inconsistent with the Major ROL Schedule Item applicable to that Approved ROL; or
- (e) an Approved ROL Change which impacts an Approved ROL that was the subject of a Valid Major ROL Application.

Major ROL Schedule means the roads, associated lanes and directions and associated durations, times of the year, days of the week and times of the day (as applicable) for such roads, associated lanes and directions set out in table C.5-4D, table C.5-4E and table C.5-4F of Appendix C.5 of the SWTC.

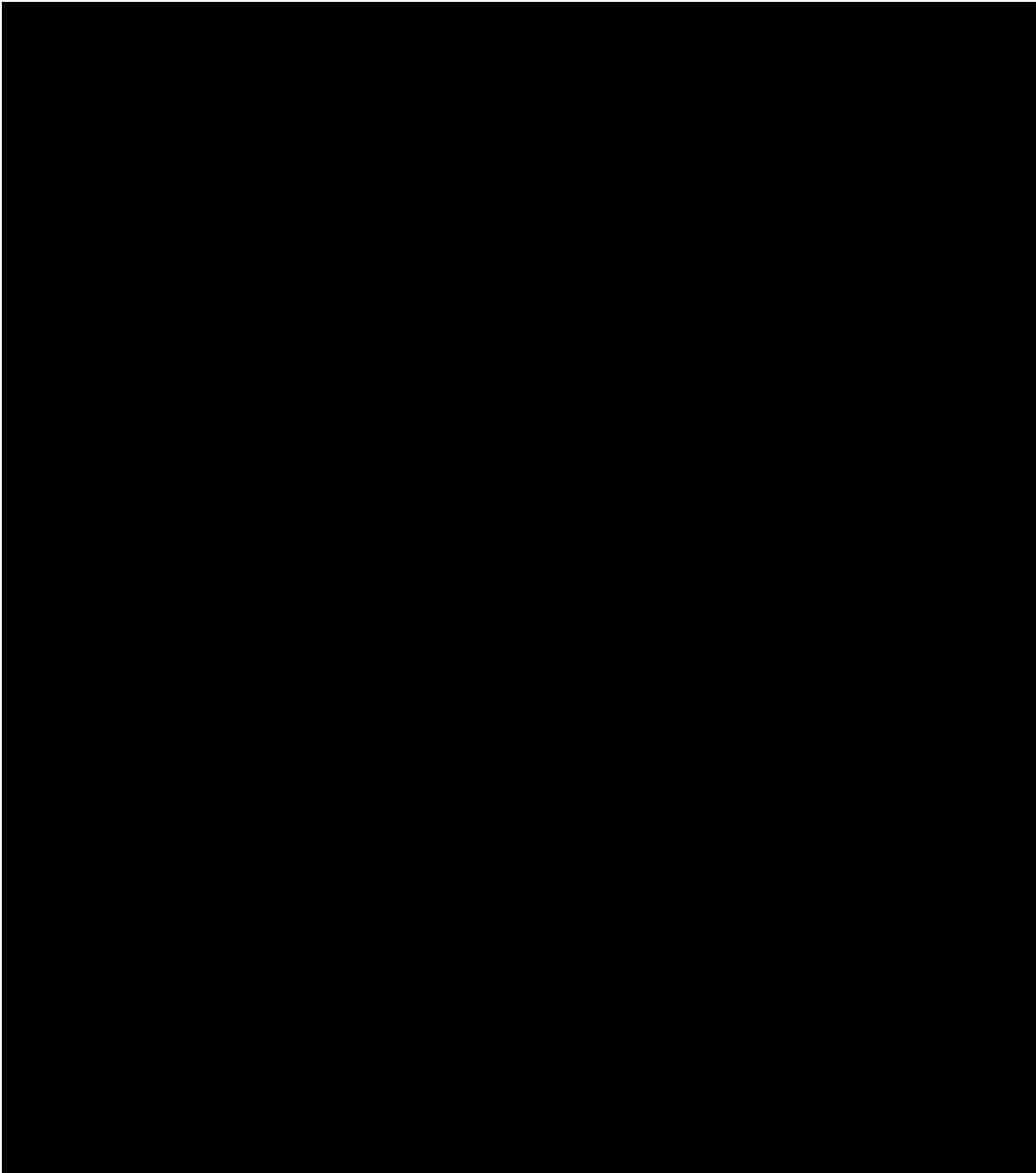
Major ROL Schedule Item means a row in any of the tables forming part of the Major ROL Schedule.

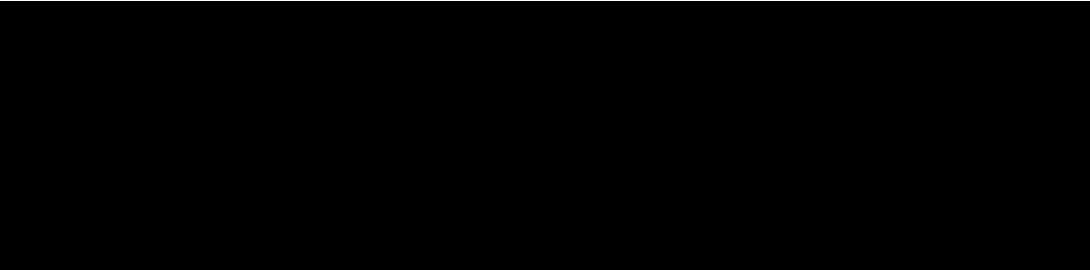
Make Accessible Direction has the meaning given to that term in clause 14.17(a).

Management Fee means the lump sum amount set out in Schedule F1 (*Payment*), which is on account of those items listed in Schedule F1 (*Payment*), as adjusted by any Management Fee Adjustment for any Management Fee Adjustment Events in accordance with clause 4.4 or pursuant to Schedule A3 (*Pre-Agreed Variations*) for any Pre-Agreed Variation directed accordance with clause 10.10.

Management Fee Adjustment means an adjustment to the Management Fee in respect of a Management Fee Adjustment Event, as determined in accordance with clause 4.4, which may be a positive or negative amount.

Management Fee Adjustment Event [REDACTED]





Management Fee Percentage means the percentage set out in Schedule F1 (*Payment*).

Management Review Group means the group comprising the persons specified in clause 13.24 who must perform the functions specified in clause 13.25.

Mandatory Defect means a Defect which has been notified by the Principal's Representative under clause 12.2(a) at any time before the date that is twenty (20) Business Days prior to the Date of Completion of any relevant Portion.

Master Access Deed means the Third Party Agreement titled "Master Access Deed" between the Principal and Transport Asset Holding Entity of New South Wales dated 5 March 2012.

Materials means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods parts and other items incorporated or to be incorporated into the Works, the Delivery Phase Maintenance or the Post Completion Activities.

Minimum Aboriginal Participation Requirements means one or a combination of the following:

- (a) at least [REDACTED] per cent of the value of the Target Cost as at the date of the deed is subcontracted to Aboriginal businesses;
- (b) at least [REDACTED] per cent of the Contractor's Australian based workforce (full time equivalent) directly contribute to the Contractor's Activities are Aboriginal employees; or
- (c) at least [REDACTED] per cent of the value of the Target Cost as at the date of the deed is applied to the cost of education, training or capability building for Aboriginal staff or businesses directly contributing to the contract.

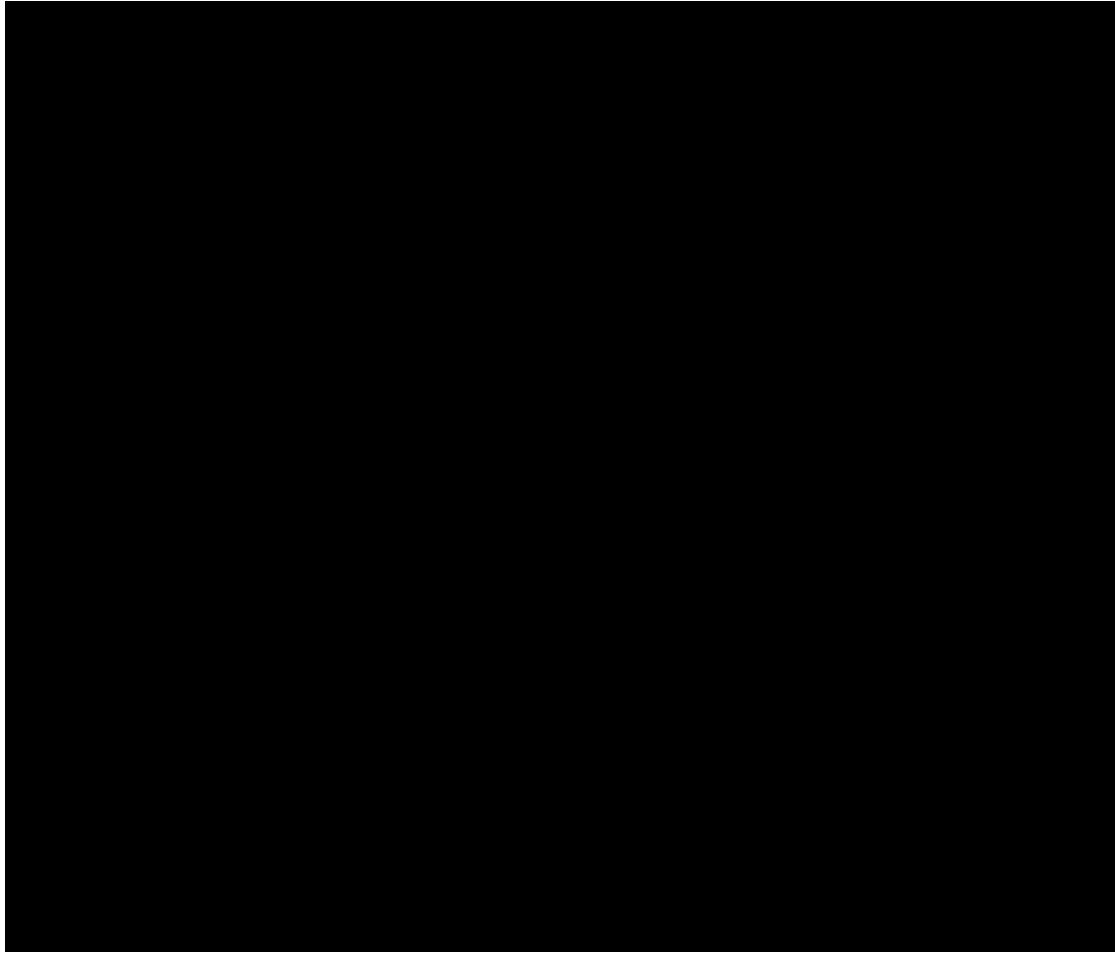
Minor Defect means, in respect of the Carriageway Portion only, a Defect which:

- (a) is capable of being corrected after the Carriageway Portion has been handed over to the Principal; and
- (b) the Independent Certifier determines the Contractor has reasonable grounds for not promptly correcting prior to handover of the Carriageway Portion to the Principal,

or the Principal otherwise agrees does not need to be rectified prior to handover of the Carriageway Portion to the Principal, but does not include a Mandatory Defect or an Accepted Defect.

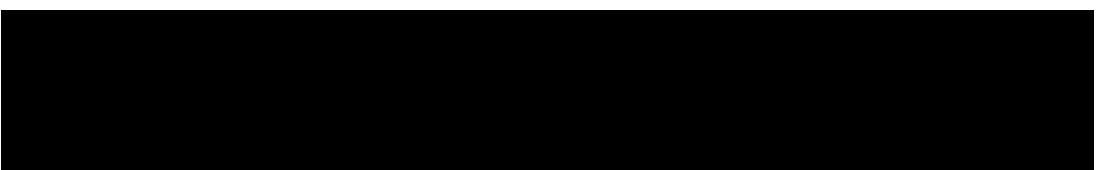
Monument has the meaning given to that term in the *Surveying and Spatial Information Regulation 2006* (NSW).

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



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

Nominated Authority means, in respect of a Hold Point or Witness Point, the Principal, the Independent Certifier or other entity identified in the SWTC as the entity entitled to release the Hold Point or witness the Witness Point (as applicable).



Nominated Project Plans means the following Project Plans:

- (a) the Quality Management Plan;
- (b) the Project Management Plan;
- (c) the Design Management Plan;
- (d) the Work Health and Safety Management Plan; and
- (e) the Construction Management Plan.

Non-Contestable Work means, in respect of a Utility Service, work or activities in connection with that Utility Service that are designated as non-contestable by the owner, operator or controller of that Utility Service.

Non-Contestable Utilities Works means the Non-Contestable Work required in respect of the Utility Services listed in Appendix B.40 of the SWTC.

Non-Contestable Utilities Works Delay means a failure by the owner, operator or controller of the relevant Utility Service to complete any Critical Non-Contestable Utilities Works by the later of:

- (a) with respect to Critical Non-Contestable Utilities Works only, by the date for completion of that work set out in Schedule A1 (*Contract Particulars*) (or such later date as may be approved in writing by the Principal); or
- (b) within timeframes that could have been reasonably anticipated or foreseen at the date of this deed by a prudent and competent contractor in the position of the Contractor; and
- (c) the time required to avoid any delay to Completion of the relevant Portions,

except to the extent the Contractor fails to take all reasonable steps to avoid or minimise such failure, which will include:

- (d) completing relevant design, contacting the owner, operator or controller of the relevant Utility Service and scheduling times for the work sufficiently in advance;
- (e) providing required information (including any approvals) to the owner, operator or controller of the relevant Utility Service sufficiently in advance;
- (f) complying with the provisions of any agreement entered into with the owner, operator or controller of the relevant Utility Service;
- (g) proactively monitoring, managing, liaising and coordinating with the owner, operator or controller of the relevant Utility Service (or its relevant contractor); and
- (h) to the extent reasonably practicable, scheduling and (where relevant) rescheduling the Contractor's Activities so as to minimise the risk that such failure will delay Completion.

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

Notice of Completion means:

- (a) in respect of a Handover Portion, a notice in the form of Part A of Schedule B5 (*Notice of Completion*); and
- (b) in respect of the Carriageway Portion, a notice in the form of Part B of Schedule B5 (*Notice of Completion*),

issued by the Independent Certifier pursuant to clause 16.2(f)(i) in relation to that Portion.

Notice of Dispute means a notice given under clause 19.2.

Notice of Dissatisfaction means a notice given under clause 19.5.

NSW Guidelines has the meaning given to that term in clause 8.9(a).

Open Book Basis means the provision of:

- (a) pricing, costing and all other relevant information to enable an assessment of actual costs and profit margins;
- (b) programming and sequencing details and all other relevant information to enable an assessment of the programming and sequencing of activities; and
- (c) any documentation or information that is required by this deed, when required to be provided on an Open Book Basis, including documentation or information relating to the Cost Plan and the Contractor's Program,

in native format with full functionality and in a clear, transparent and fully auditable manner.

Optional Post Completion Activities means those Post Completion Activities described in Part B of Schedule C3 (*Post Completion Activities*), which generally comprise maintenance of the Handover Portions after the relevant Dates of Completion, and which may be instructed by the Principal pursuant to clause 16A.2.

Other Contractor means any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work on or about the Construction Site (including the Interface Contractors), other than the Contractor and its subcontractors of any tier involved in the Contractor's Activities.

Other Contractor Work means the works to be undertaken by an Other Contractor on a part of the Construction Site during any period in which the Contractor has been engaged as principal contractor in respect of all "construction work" (as defined in the WHS Legislation) on that part of the Construction Site.

Out of Hours Coordination Group means the group referred to in clause 13.32.

Outturn Cost means the sum of:

- (a) the Management Fee; and
- (b) the aggregate of all Reimbursable Costs,

less, in respect of any Defect which is the subject of an instruction under clauses 12.2(a)(iii) and 12.2(a)(iv), the amount determined by the Principal's Representative pursuant to clause 12.4.

Parent Company Guarantee means a deed of guarantee and indemnity dated on or about the date of this deed given by a Parent Company Guarantor to the Principal in respect of the obligations of the relevant Contractor Entity under the Project Documents, in the form which appears in Schedule F4 (*Parent Company Guarantee*).

Parent Company Guarantor means the entity or entities identified in Schedule A1 (*Contract Particulars*).

Payment Claim has the meaning given to that term in clause 15.2(a).

Payment Schedule has the meaning given to that term in section 14 of the SOP Act.

PDGS means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 21.1(c).

Permitted Subcontract Variation means a variation to the Subcontract or the works under a Subcontract which:

- (a) will not cost, or result in an increase to the cost of the Subcontract works of, more than [REDACTED] (excluding GST) on its own or when combined with all related variations;
- (b) will not cost, or result in an increase to the cost of the Subcontract works of, more than [REDACTED] (excluding GST) when aggregated with the costs of all variations to the Subcontract or Subcontract works made up to that time;
- (c) will not extend the date for practical completion (or equivalent) under the Subcontract by more than five (5) Business Days for any single variation or more than twenty (20) Business Days when aggregated with all variations made up to that time; and
- (d) will not delay the Contractor in achieving Completion of a Portion by the relevant Date for Completion,

but which is not a variation to the Subcontract works:

- (e) as to quality (other than a variation to increase or better the quality);
- (f) which would or might adversely affect the suitability of the Project Works for their intended purpose; or
- (g) which is inconsistent with the requirements of, or would breach or cause the breach of, any Project Document.

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

Planning Approval means:

- (a) the approval granted by the Minister for Planning and Infrastructure under section 5.19 of the EP&A Act dated 21 January 2021 in respect of the Works, a copy of which is located on the NSW Department of Planning, Industry and Environment website <http://www.planning.nsw.gov.au> and includes all conditions to such approval and documents incorporated by reference, as modified from time to time; and
- (b) any other Approvals issued from time to time by either the Principal or the Minister for Planning and Infrastructure (acting in their capacity as determining authority) under the EP&A Act in respect of the Contractor's Activities.

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

Portion means a part of the Contractor's Activities or Project Works, as described in Schedule A2 (*Portions*) or as directed under clause 16.4(a), and includes the Handover Portions and the Carriageway Portion.

Post Completion Activities means, in respect of a Portion, those Contractor's Activities to be performed by the Contractor after the Date of Completion as described in Schedule C3 (*Post Completion Activities*), and includes the Landscaping Maintenance and the Optional Post Completion Activities.

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).

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

Pre-Agreed Variation means any of the pre-agreed variations listed in Schedule A3 (*Pre-Agreed Variations*).

Pre-Approved Subcontract means an agreement which is entered into by the Contractor with a Pre-Approved Subcontractor.

Pre-Approved Subcontractor means a Subcontractor listed in Schedule A1 (*Contract Particulars*) for the corresponding works listed in Schedule A1 (*Contract Particulars*) which has been pre-approved by the Principal.

Pre-Completion Notice means, in respect of a Portion, the notice issued under clause 16.2(f)(ii)(A) in relation to that Portion.

Preliminaries has the meaning given to that term in Schedule F1 (*Payment*).

Preliminaries Cost Element means that part of the Reimbursable Cost Element set out in Schedule F1 (*Payment*) in respect of the Preliminaries.

Principal Insurance Policy means a policy of insurance required under clause 17.3.

Principal's Approvals means those Approvals specified in paragraphs 1.1 and 1.2 of Schedule E2 (*Planning Approval*) that either:

- (a) were obtained by the Principal prior to the date of this deed; or
- (b) will be obtained by the Principal after the date of this deed where required.

Principal's Representative means:

- (a) the person nominated in Schedule A1 (*Contract Particulars*); or
- (b) any other person appointed from time to time by the Principal under clause 13.2,

and includes any appointee under clause 13.3.

Principal's Surveillance Officer has the meaning given to that term in clause 13.4.

Principal's Variations Manager means the person specified in Schedule A1 (*Contract Particulars*), or any person appointed from time to time by the Principal and notified to the Contractor.

Procurement Management Plan means the procurement management plan prepared by the Contractor pursuant to clause 11.15, which must set out in adequate detail all procedures the Contractor will implement to ensure the probity and competitiveness of the tender process for Reimbursable Work is maintained including:

- (a) the matters specified in Schedule A1 (*Contract Particulars*) and Appendix C.1 of the SWTC; and

(b) any other matters required by the Principal's Representative (acting reasonably).

Prohibited Subcontractor means:

(a) any Subcontractor:

(i) who has made an admission to the Independent Commission Against Corruption; or

(ii) in respect of whom the Independent Commission Against Corruption has made a finding,

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

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

Project Bank Account means the bank account as notified in writing by the Contractor to the Principal, held at a branch of the Contractor's bank in Sydney, New South Wales, to which the Contractor and the Principal are each signatories.

Project Design Group means the group referred to in clause 13.30.

Project Documents means:

(a) this deed;

(b) from the date of execution of the Independent Certifier Deed, the Independent Certifier Deed;

(c) from the date of execution of an Interface Deed, that Interface Deed;

(d) the Deeds of Disclaimer;

(e) the Parent Company Guarantees; and

(f) any other document the parties agree is a Project Document.

Project Leadership Group means the group referred to in clause 13.31.

Project Management Plan means the Project Plan of that name which is required to be provided and implemented by the Contractor pursuant to, and in accordance with, the SWTC and the Planning Approval.

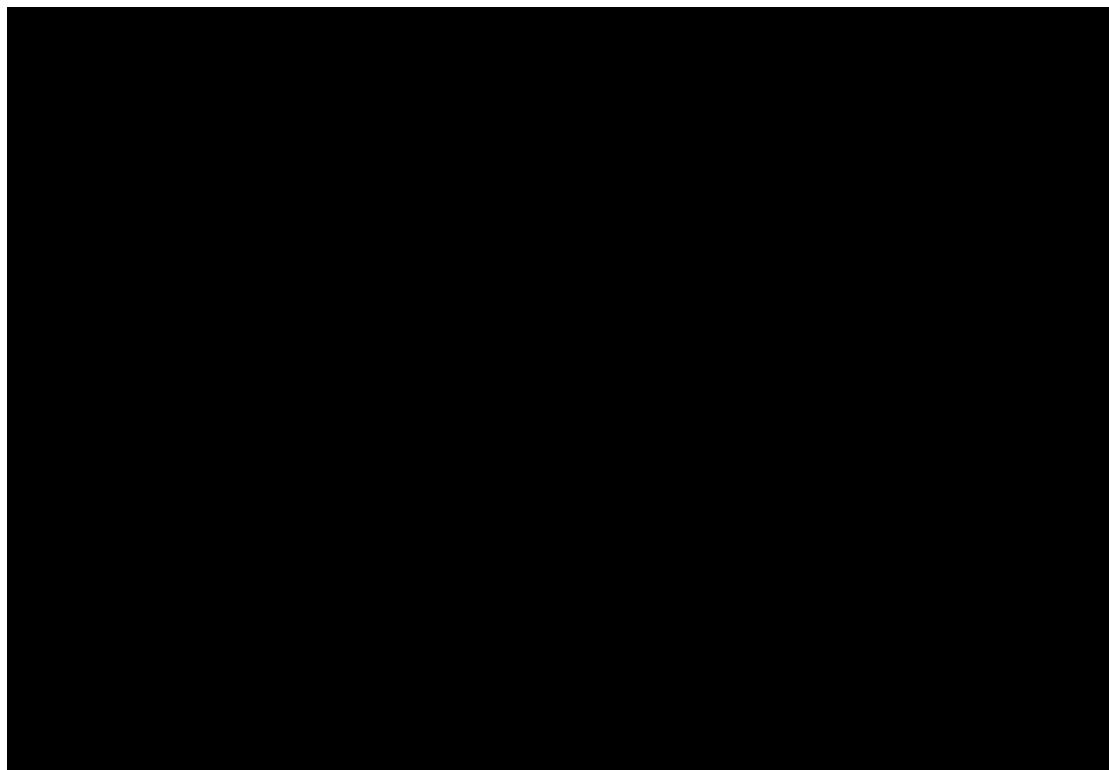
Project Plan means each of the plans required to be provided, implemented and updated by the Contractor pursuant to Appendix C.1 of the SWTC and as developed, amended or updated from time to time in accordance with this deed.

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

Proof Engineer means the person or persons as may be engaged from time to time by the Contractor to perform the role of "proof engineer" as required by the SWTC, and approved by the Principal.

Property Works means all works required to existing buildings and infrastructure or to and within properties arising out of the Contractor's Activities as described or specified in the SWTC, including in Appendix E.2 of the SWTC (and including, to the extent relevant to such works, Variations directed in accordance with this deed).

Provisional Sum Work means the work described in Schedule C2 (*Provisional Sum Work*).



Pure Economic Loss means Consequential Loss other than Consequential Loss arising out of or in connection with:

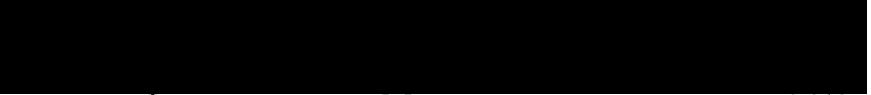
- (a) any illness or personal injury to, or death of, any person;
- (b) the loss or destruction of (whether total or partial) or damage to any real or personal property; or
- (c) loss of use of or access to any real or personal property where such loss of use or access is an Insured Liability and caused by the Contractor's negligent or otherwise wrongful act or omission or breach of this deed.

Quality Management Plan means the Project Plan of that name which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with, the SWTC.

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

Quality Manager means the person specified as such in Schedule A6 (*Contractor's Personnel*) or such other persons engaged by the Contractor as Quality Manager from time to time.

Recovery Plan means a plan that complies with the requirements of clause 14.6.



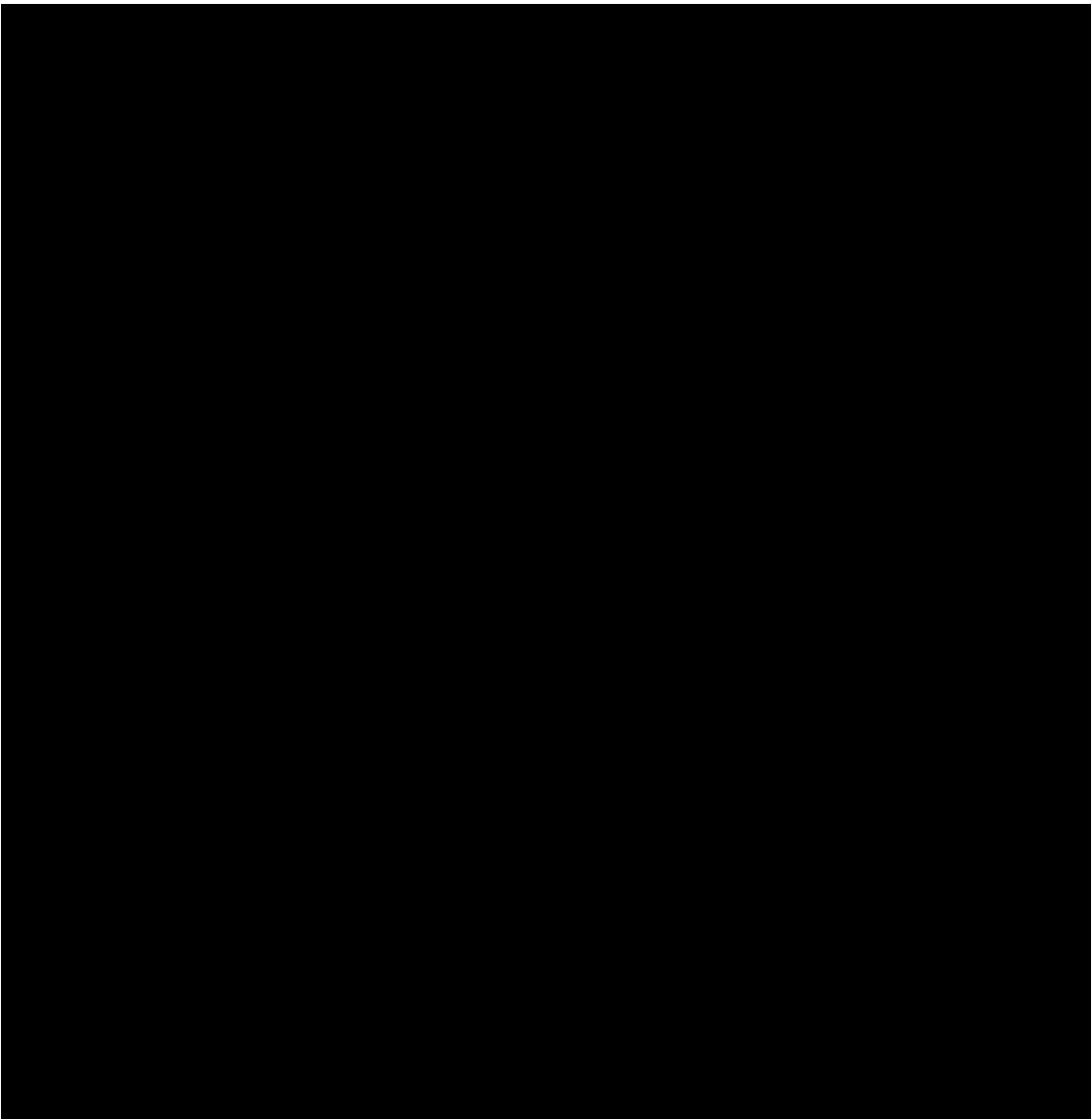
Retained Existing Asset Report has the meaning given to that term in section 5.8.2(d) of the SWTC.

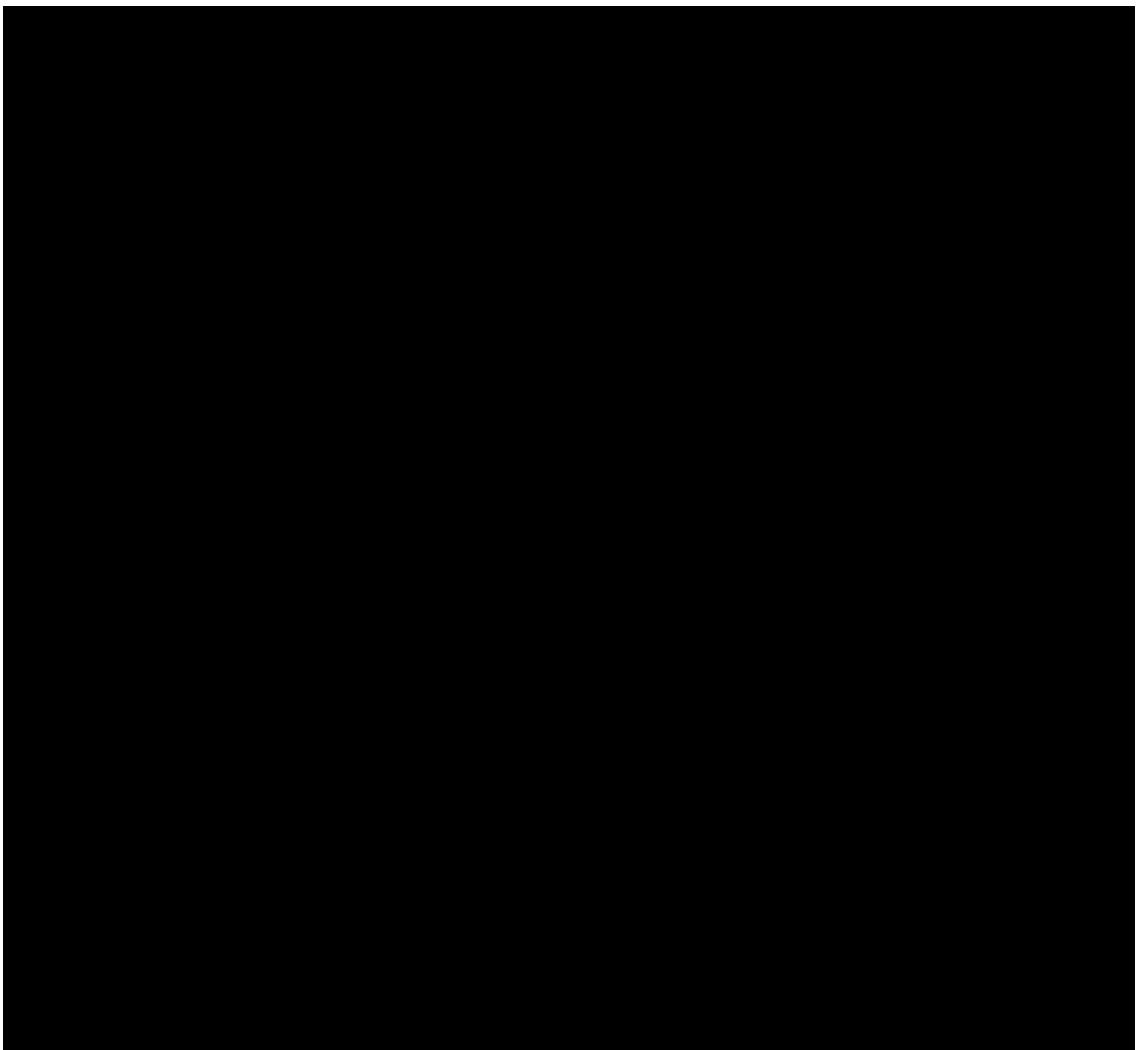
Reimbursable Cost Element means the estimate of Reimbursable Costs set out in Schedule F1 (*Payment*) and included in the Target Cost, comprised of the Design Cost Element, the Preliminaries Cost Element, the Construction Cost Element and the Delivery Phase Maintenance Cost Element (as adjusted by any Reimbursable Cost Element Adjustment Event in accordance with clause 4.3 or pursuant to Schedule A3 (*Pre-Agreed Variations*) for any Pre-Agreed Variation directed in accordance with clause 10.10).

Reimbursable Cost Element Adjustment means an adjustment to the Reimbursable Costs Element in respect of a Reimbursable Cost Element Adjustment Event, as determined in accordance with clause 4.3, which may be a positive or negative amount.

Reimbursable Cost Element Adjustment Event [REDACTED]

[REDACTED]

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Reimbursable Costs has the meaning given to that term in Schedule F1 (*Payment*).

Reimbursable Work means the entirety of the Contractor's Activities other than:

- (a) the activities covered by the Management Fee and the Excluded Costs;
- (b) the Provisional Sum Work; and
- (c) the Post Completion Activities.

Related Body Corporate has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

Relevant Matters has the meaning given to that term in clause 13.22(a).

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

Remediation Action Plan means a plan for the Remediation of Contamination which satisfies the requirements of clause 7.12(b).

Replacement Baseline Road Occupancy has the meaning given to that term in clause 7.2(h).

Replacement Major Road Occupancy has the meaning given to that term in clause 7.2A(e)(i).

Required Existing Asset Works has the meaning given to that term in clause 7.16(a).

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

Resolution Institute means the Resolution Institute, Australia.

Risk Register means a register of the risks to the Contractor's Activities and the Works, and associated mitigation measures, which the Contractor is required to prepare and update in accordance with clause 13.23(c).

Road Occupancy has the meaning given to that term in Attachment C.4-1 of Appendix C.4 of the SWTC.

Road Occupancy Licence means a road occupancy licence issued by CJM pursuant to section 138 of the *Roads Act 1993* (NSW), as described in Appendices C.4 and C.5 of the SWTC.

Road Transport Agency means TfNSW and each of its divisions, including the Traffic Management Centre and the Sydney Coordination Office.

Road Transport Legislation has the meaning given to that term by the definition in section 6 of the *Road Transport Act 2013* (NSW) and includes the regulations and statutory rules made under that Act (such as the *Road Rules 2014* (NSW)).

ROL means a Road Occupancy Licence.

ROL Application means a written application to the CJM by the Contractor for a ROL required for the Contractor's Activities, whether or not the relevant ROL is covered by the Baseline ROL Schedule.

ROL Application Requirements means the requirements for ROL Applications set out in clause 7.2(a)(iv).

ROL Change Register has the meaning given to that term in clause 7.2(g)(iii).

Schedule of Rates means the schedule of rates set out in Part B of Schedule F2 (*Schedule of Rates and Labour Costs*).

Security Interest has the meaning given to that term in clause 21.17.

Self-Performed Reimbursable Work means the part of the Reimbursable Work to be performed by the Contractor itself or by its Related Bodies Corporate as described in Schedule F8 (*Self-Performed Reimbursable Work*) or otherwise approved by the Principal under clause 11.14.

Share of Cost Overrun means the amount determined by applying the percentage stated in Schedule A1 (*Contract Particulars*) to the amount (if any) by which the Outturn Cost is greater than the Target Cost.

Share of Cost Overrun Cap means an amount equal to the [REDACTED] as increased pursuant to the exercise of the Refresh Right (if applicable).

Share of Savings means the amount determined by applying the percentage stated in Schedule A1 (*Contract Particulars*) to the amount (if any) by which the Outturn Cost is less than the Target Cost.

Shared Access Road means the road identified as the shared access road in Appendix B.30 of the SWTC.

Shared Construction Site Area means:

- (a) the Shared Access Road; and
- (b) any part of the Construction Site that is a road or footpath that motorists, cyclists or pedestrians are normally permitted to enter at times when that area is not subject to an ROL.

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

Site Access Expiry Date means in respect of an area of the Construction Site identified in the Site Access Schedule, the date specified as the "Site Access Expiry Date" (if any) for that area, as may be extended in accordance with this deed.

Site Access Schedule means Schedule E1 (*Construction Site and Related Drawings*).

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

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, Hazardous Chemical or other spoil or Waste;
- (f) topography of the Construction Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (i) local traffic conditions; and
- (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, windblown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions.

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

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

Specified Claim means any Claim:

- (a) for a Variation directed in accordance with clause 10 or a direction by the Principal's Representative to which clause 22.1 applies; and
- (b) for an extension of time under clause 14.8.



Subcontract means a contract entered into with a Subcontractor and includes an agreement for supply of goods or services (including professional services and plant hire) or both.

Subcontract Proposal has the meaning given to that term in clause 11.2(b).

Subcontract Tender Documentation means, in relation to a Subcontract Proposal:

- (a) the Design Documentation that the Contractor intends to use for tendering purposes relevant to the part of the Reimbursable Work to be subcontracted;
- (b) the conditions of the Subcontract which must, unless otherwise expressly directed in writing by the Principal's Representative, be on the terms approved by the Principal's Representative;
- (c) if the Principal's Representative so directs, a request for tender; and
- (d) any other documentation necessary for that part of the Reimbursable Work to be subcontracted.

Subcontractor means any person (including a supplier of the Contractor) engaged by the Contractor to perform any part of the Works not being performed by the Contractor as Self-Performed Reimbursable Work, and excludes any Related Body Corporate of the Contractor.

Substantial Detailed Design Stage has the meaning given to that term in Appendix C.2 of the SWTC.

Survey Certificate has the meaning given to that term in the *Surveying and Spatial Information Regulation 2012* (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 which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with, the SWTC.

SWTC means the Scope of Work and Technical Requirements for the Project Works described in Schedule C1 (SWTC).

Sydney Program Alliance means the non-owner participants of the alliance formed between the Principal and the non-ownership participants under the agreement titled "Program Alliance Agreement" dated 14 May 2019, being John Holland Pty Ltd, Jacobs Group (Australia) Pty Ltd and Freyssinet Australia Pty Ltd.

Target Cost means the sum of the Management Fee and the Reimbursable Cost Element, set out in Schedule F1 (*Payment*), as adjusted for:

- (a) Management Fee Adjustments;
- (b) Reimbursable Cost Element Adjustments; and
- (c) a Pre-Agreed Variation directed pursuant to clause 10.10.

Target Cost Increase has the meaning given to that term in clause 5.1.

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 but does not include GST.

Temporary Areas means the land specified as the Temporary Areas in the Site Access Schedule.

Temporary Works means any temporary works required to be carried out or provided by the Contractor for the purpose of the execution of the Contractor's Activities (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed), but not forming part of the Project Works.

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

Third Party Agreement means:

- (a) an agreement which appears in Schedule E4 (*Third Party Agreements*); and
- (b) any Draft Third Party Agreement, Additional Third Party Agreement or Amended Third Party Agreement with which the Contractor must comply pursuant to clause 3.6.

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

Tolling Contractor means either the Tolling RSS Contractor or Sydney Program Alliance.

Tolling RSS Contractor means any contractor engaged by the Principal to design, install, test and commission the "New ETC RSS" as defined and described in SWTC Appendix B.10.

Traffic Management and Safety Plan means the plan of that name which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with the SWTC.

Traffic Control Group means the group referred to in clause 13.29.

Traffic Stream has the meaning given to that term in Schedule E6 (*Lane Occupancy Fees*).

Training Management Guidelines means the NSW Government Training Management Guidelines: Skills, training and diversity in construction, July 2020.

Unknown Artefact means an Artefact within or adjacent to the Construction Site that is discovered after the date of this deed, that differs materially in nature, location, extent or scope from what could have been reasonably anticipated or foreseen at the date of this deed by a prudent and competent contractor in the position of the Contractor, who had done those things that the Contractor warrants under clause 7.8(d) that it has done.

Unknown Contamination means Contractor Contamination that:

- (a) in the case of Contractor Contamination in existence within the Construction Site at the date of this deed, such Contamination differs materially in nature, location, extent or scope from what could have been reasonably anticipated or foreseen at the date of this deed by the Contractor based on the Information Documents; or
- (b) in the case of Contractor Contamination in existence outside the Construction Site which migrates onto the Construction Site after the date of this deed, it could not have been reasonably anticipated or foreseen at the date of this deed by the Contractor based on the Information Documents that such Contractor Contamination would migrate onto the Construction Site as a result of the Contractor's Activities and such migration was not caused or contributed to by a breach of the Contractor of this deed or a negligent or otherwise wrongful act or omission of the Contractor or its Associates,

excluding any Contaminated groundwater that is able to be remediated or treated to the standard required by this deed using treatment facilities already in existence on the Construction Site (to the extent the facilities have capacity to remediate or treat the groundwater) or otherwise required by this deed.

Unknown Obstructions means any man-made physical and structural conditions (including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works) or other artificial conditions or things, on, in or under, or in the vicinity of, the Construction Site or its surroundings that:

- (a) are discovered by the Contractor in the course of carrying out the Contractor's Activities;

- (b) differ materially in nature, extent or scope from what could have been reasonably anticipated or foreseen at the date of this deed by a prudent and competent contractor in the position of the Contractor, who had done those things that the Contractor warrants under clause 7.8(d) that it has done; and
- (c) adversely affects or impacts the piling or pipe jacking activities forming part of the Contractor's Activities,

but excluding any condition or thing which constitutes an:

- (d) Latent Condition;
- (e) Unknown Artefact;
- (f) Unknown Utility; or
- (g) Unknown Pavement Fault.

Unknown Utility means a Utility Service to the extent that:

- (a) the Utility Service is in existence within or in the vicinity of the Construction Site; and
- (b) the Utility Service, or the work required in connection with the Utility Service, differs materially in nature, location, extent, type or scope from what could have been reasonably anticipated or foreseen at the date of this deed by a prudent and competent contractor in the position of the Contractor, who had done those things that the Contractor warrants under clause 7.8(d) that it has done,

excluding any Utility Service connecting a property to a common service.

Unknown Pavement Fault means a fault in any existing pavement which is discovered by the Contractor:

- (a) in the course of carrying out the Project Works (including during the development of Design Documentation for the Project Works as contemplated under clause 7.15(a)); and
- (b) within a part of the Construction Site that the Works (other than Works relating to the Delivery Phase Maintenance) are required to be constructed,

to the extent:

- (c) such fault is:
 - (i) of a type specified in Schedule C5 (*Unknown Pavement Faults*);
 - (ii) beneath the pavement surface and not visible from the pavement surface as at the date of this deed; and
 - (iii) not described in and cannot be reasonably inferred from the Information Documents; and
- (d) the rectification of such fault does not form part of the Contractor's scope of works as described in or reasonably inferred from the SWTC (including the Concept Design),

excluding any "Fault" as that term is defined in Appendix C.6 of the SWTC.

Unknown Pavement Fault Hold Point means the Hold Points described in clause 7.15(c)(i)(B) and clause 7.15(c)(ii)(B).

Unknown Site Conditions means:

- (a) Latent Conditions;
- (b) Unknown Artefacts;
- (c) Unknown Contamination;
- (d) Unknown Utilities;
- (e) Unknown Obstructions; and
- (f) Unknown Pavement Faults.

Unknown Site Condition Notice has the meaning given to that term in clause 7.9(b).

Urgent Defect means a Defect, which:

- (a) poses an actual or potential risk:
 - (i) to the health or safety of any person; or
 - (ii) of loss of or damage to property; or
- (b) if not corrected, will delay or disrupt the construction activities to be performed by any Interface Contractor.

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

Utility Service Works means the construction, modification, or relocation of Utility Services to be designed and constructed by the Contractor as part of the Project Works and are necessary for the due and proper performance of the Project Works, which are handed over to the Principal, an Authority or any other person in accordance with this deed including any such works specified in the SWTC, including in Appendix B.39 of the SWTC (and including, to the extent relevant to such works, Variations directed in accordance with this deed).

Valid Baseline ROL Application means an ROL Application submitted to CJM that:

- (a) complies with the ROL Application Requirements in all respects; and
- (b) is for an ROL covered by the Baseline ROL Schedule.

Valid Major ROL Application means an ROL Application submitted to CJM that:

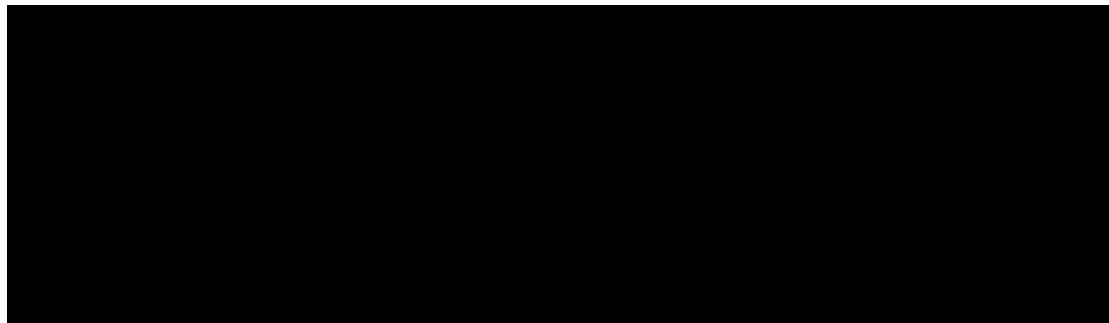
- (a) complies with the ROL Application Requirements in all respects; and
- (b) is for an ROL covered by a Major ROL Schedule Item.

Validity Period has the meaning given to that term in clause 10.4(d).

Value for Money means an approach that balances quality levels, performance standards, risk, price and whole of life costs, having regard to the requirements of this deed.

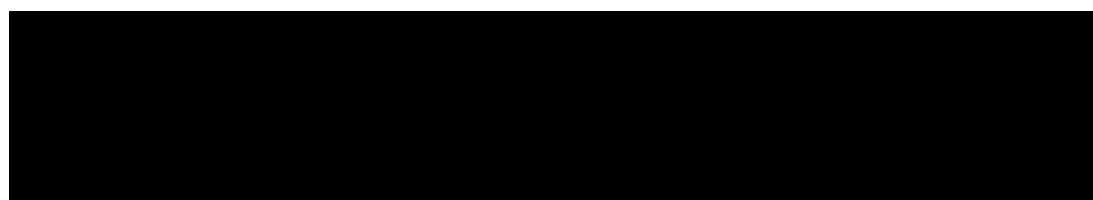
Variation means any change to the Contractor's Activities or the Works, including:

- (a) any addition, reduction, increase to, decrease, omission or deletion from the Works or the Contractor's Activities;
- (b) any change to the character or quality of any Material or work;
- (c) any change to the levels, lines, positions or dimensions of any part of the Works;
- (d) changes to the boundaries of the Construction Site, or any Site Access Date or Site Access Expiry Date specified in this deed;
- (e) changes to any sequence, method or timing of construction other than any changes necessary for the Contractor to comply with its obligations under this deed; and



but excludes:

- (g) any Provisional Sum Work;
- (h) the changes to the Works that are required as a result of the Principal's Representative instructing a Pre-Agreed Variation directed under clause 10.10;
- (i) any direction under clause 9.2(b); and



Variation Order means a notice titled "Variation Order" issued by the Principal under clauses 10.6(b), 10.7(b), 10.7(d)(i), 10.8(a) or 10.11(d)(i)(A).

Variation Proposal means a proposal submitted by the Contractor under clause 10.4(c).

Variation Proposal Request means a notice titled "Variation Proposal Request" issued by the Principal under clause 10.4(a).

Variations Working Group means the group referred to in clause 10.3.

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

Witness Point has the meaning given to that term in the SWTC.

WFU Works means the Project Works other than the Third Party Works.

WHS means work health and safety.

WHS Guidelines means the NSW Government Work Health and Safety Management Systems Guidelines (sixth edition) (December 2019) or any document issued from time to time which amends or substitutes that 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 Project Works.

WHT Contractor means the Interface Contractor or Interface Contractors carrying out the WHT Works.

WHT Works means the works and activities with respect to the design and construction of the Western Harbour Tunnel, as described in the SWTC.

Work Health and Safety Management Plan means the Project Plan of that name which is required to be provided, implemented and updated by the Contractor pursuant to the SWTC and which must:

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

WHTBL Program has the meaning given to that term in the Recitals.

Wilful Misconduct or Reckless Misconduct means any malicious conduct or any breach of this deed which results from a conscious and intentional indifference or disregard of:

- (a) the relevant provisions of this deed; or
- (b) the risk of causing the loss claimed by the relevant party in respect of the breach, but does not include errors in judgement, mistakes, errors or acts or omissions made in good faith.

Workforce Development Management Plan means the Project Plan of that name which is required to be provided and implemented by the Contractor pursuant to clause 13.20(d).

Works Site means the land specified as the "Works Site" in the Site Access Schedule.

Workplace Relations Management Plan means the Project Plan of that name which complies with the NSW Guidelines and which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with the NSW Guidelines and the SWTC.

Works means the Project Works and the Temporary Works.

1.2 Interpretation

In this deed:

- (a) (**Headings**): headings are for convenience only and do not affect the interpretation of this deed;

and unless the context indicates a contrary intention:

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

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

- (d) (**Includes**): includes in any form is not a word of limitation;

- (e) (**Authorities**): 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 applicable; and

- (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;

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

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

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

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

- (h) (**Deed**): a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed;

- (i) (**Schedules**): a reference to:

- (i) this deed includes all schedules, exhibits (subject to clause 7.17), attachments and annexures to it, including the SWTC; and

- (ii) a reference to the SWTC includes all appendices to the SWTC;

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

- (k) (**Other forms of word**): if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) (**Public holidays**): for the purposes of clauses 14.10 and 14.12:
- (i) any extension of time stated in days; or
 - (ii) any reference to day,
- will exclude days which are public holidays in Sydney and include only those days which are stated in the most recent Contractor's Program submitted under clause 14.2 as working days;
- (m) (**Day**): for all purposes other than as set out in clause 1.2(l) or where otherwise designated as a Business Day, day means calendar day;
- (n) (**Court or tribunal**): a reference to a court or tribunal is to an Australian court or tribunal;
- (o) (**Group**): a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (p) (**Month**): a reference to a month is a reference to a calendar month;
- (q) (**Dollars**): a reference to \$ or dollar is to Australian currency;
- (r) (**Intended purpose or use**): any reference to:
- (i) the Works;
 - (ii) the Project Works;
 - (iii) the Temporary Works;
 - (iv) the Asset Management Information;
 - (v) the SWTC;
 - (vi) the Design Documentation; or
 - (vii) any other document or thing,
- or any part of any of them:
- (viii) being fit for its purpose or for its intended purpose; or
 - (ix) as having an intended use,
- (or any similar reference) will be read as referring to the purpose, intended purpose or intended use stated in or reasonably ascertainable from this deed (other than the objectives referred to in clause 2.1) and having regard to:
- (x) the Principal's intention that the Project Works will be used as an integral part of the WHTBL Program and which may:
 - (A) be required to accommodate high levels of traffic;
 - (B) be subject to continuous operation;

- (C) be operated by either the State of New South Wales or by private operator(s) on its behalf;
- (D) be connected to or integrated with other transport infrastructure to the extent referred to in this deed; and
- (xi) any purpose, intended purpose or intended use stated in or reasonably ascertainable from:
 - (A) this deed, including:
 - (aa) the objectives referred to in clause 2.2 (but excluding the objectives referred to in clause 2.1); and
 - (bb) the requirement that the Project Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; and
 - (B) to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Variation, any document provided by the Principal to the Contractor specifically in connection with the Variation (excluding any Information Documents);
- (s) (**Fit for purpose**): any reference to the Project Works or any part of any of them being capable of remaining at all relevant times or at all times fit for their purpose or for their intended purpose will be read as being subject to the Principal and its Associates operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information;
- (t) (**Information**): any reference to information will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (u) (**Obligations**): any obligation of the Contractor under this deed with respect to:
 - (i) Project Plans, will be read as an obligation with respect to the Initial Project Plans, or where a version has been submitted to the Principal's Representative, the version of the relevant Project Plans last submitted by the Contractor to the Principal's Representative, and which has not been rejected by the Principal's Representative in accordance with clause 13.13(h)(ii)(C); or
 - (ii) the Asset Management Information will be read as an obligation with respect to the version of the relevant Asset Management Information last submitted by the Contractor to the Principal's Representative under clause 8.12(a) which has not been rejected by the Principal's Representative in accordance with clause 8.12(c)(i);
- (v) (**GST Law**): words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (w) (**Liability to pay GST**): on the basis that the Principal is notionally liable to pay GST under the GST Law, a reference in this deed to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement;

- (x) **(Member of GST group):** 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;
- (y) **(Business Day):** if the day on or by which any thing is to be done under this deed is not a Business Day, that thing must be done:
 - (i) if it involves a payment other than a payment which is due on demand, on the preceding Business Day; and
 - (ii) in all other cases, no later than the next Business Day;
- (z) **(Direction):** a reference to direction in the definition of Claim in clause 1.1 or in any of clauses 3.1(a)(vii), 13.1, 13.13(o) and 22, will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document;
- (aa) **(Party drafting deed):** no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this deed or any part;
- (bb) **(Subcontractor):** the word subcontractor will include subcontractors, suppliers, Designers and Subcontractors, and the word subcontract will include a contract with a subcontractor (including an Approved Subcontract);
- (cc) **(Claims and Liability):** where, in this deed, it is stated that:
 - (i) the Contractor is not entitled to make any Claim against the Principal; or
 - (ii) the Principal is not liable to the Contractor,
 or words to that effect, then:
 - (iii) subject to clause 1.2(cc)(iv), the Contractor releases the Principal absolutely from any Claim whatsoever and however arising (including in negligence) which the Contractor had or, but for this deed, might have had in connection with the subject matter for which this deed states that the Contractor has no entitlement to make a Claim; and
 - (iv) for the purposes of the clauses specified in Schedule A1 (*Contract Particulars*), the Contractor is not prevented from making a Claim for payment under and in accordance with clause 15 for Reimbursable Costs, the Management Fee, amounts in respect of Provisional Sum Work or amounts in respect of Post Completion Activities;
- (dd) **(Relationship):** nothing in, or contemplated by, this deed will be construed or interpreted as:
 - (i) constituting a relationship between the Principal or the NSW Government and the Contractor and any of its related companies of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
 - (ii) imposing any general duty of good faith on the Principal to the Contractor, other than to comply with the obligations (if any) expressly stated to be assumed by the Principal under this deed on a good faith basis;
- (ee) **(Exercising right or remedy):** when the Principal may exercise a right or remedy, the Principal has an absolute discretion whether or not to do so, and is not required

to exercise the discretion in good faith or having regard to, or for the benefit of, the Contractor;

(ff) (**Best or reasonable endeavours**): if the Principal is required to exercise best or reasonable endeavours, the Contractor acknowledges that:

- (i) the Principal will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
- (ii) the Principal cannot guarantee the relevant outcome; and
- (iii) the Principal, by undertaking to exercise best or reasonable endeavours, is not required to:
 - (A) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (B) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of this deed if the Principal regards that exercise as not in the public interest;
 - (C) develop policy or legislate by reference only or predominantly to the interests of this deed;
 - (D) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this deed; or
 - (E) act in any other way that the Principal regards as not in the public interest; and

(gg) (**Portions**): the interpretations of:

- (i) Contractor's Activities;
- (ii) Works;
- (iii) Project Works;
- (iv) Temporary Works;
- (v) Third Party Works;
- (vi) Construction Site;
- (vii) Temporary Areas;
- (viii) Completion;
- (ix) Date for Completion;
- (x) Date of Completion; and
- (xi) Defects Correction Period,

and clauses 7, 12, 14, 16, and 17.1, the Site Access Schedule and the SWTC will apply separately to each Portion (including any Portion determined under clause 16.4) and references therein to any of the terms in clauses 1.2(gg)(i) to 1.2(gg)(xi) (inclusive) will mean so much of the Contractor's Activities, Works,

Project Works, Temporary Works, Third Party Works, Temporary Areas, Construction Site, Completion, Date for Completion, Date of Completion and Defects Correction Period as is comprised in, or associated with, the relevant Portion.

1.3 Ambiguous terms

- (a) (**Error**): If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing pursuant to clause 1.3(b) that it considers, that there is an Error within this deed (including in any schedule), the Principal's Representative must, direct the interpretation of this deed which the Contractor must follow.
- (b) (**Notification**): The Contractor must promptly notify the Principal's Representative if it considers there is an Error within this deed (including in any schedule).
- (c) (**No requirement for determination**): 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 deed.
- (d) (**Direction by Principal's Representative**): To the extent that a direction by the Principal's Representative under clause 1.3(a) is not consistent with the order of precedence in clause 1.4(c) and clause 1.4(d), the Principal must direct a Variation under clause 10.8(a).
- (e) (**No Claim**): The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim against the Principal in connection with a direction by the Principal's Representative under clause 1.3(a) other than as set out in clause 1.3(d).

1.4 Order of Precedence

- (a) (**Concept Design**): The Concept Design is subject to the provisions of clause 9.2.
- (b) (**Other documents**): The documents, other than the Concept Design, which comprise this deed (including the SWTC) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
- (c) (**Order of Precedence**): If (notwithstanding clause 1.4(b)) there is any Error in or between the various documents that comprise this deed then, except to the extent clause 9.2 applies:
 - (i) if the Error is between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - (A) this deed (excluding the schedules);
 - (B) the main body of the SWTC (excluding the Appendices);
 - (C) the Contractor Documentation Schedule;
 - (D) the other Appendices of the SWTC;
 - (E) Schedule A1 (*Contract Particulars*); then
 - (F) the remainder of the Schedules; and
 - (ii) to the extent clause 1.4(c)(i) does not apply to or resolve the Error, the document, term or requirement which prescribes or requires the highest

standard of compliance consistent with complying with all Approvals will take precedence (unless the Principal's Representative directs otherwise).

- (d) **(Project Plans):** To the extent that the Contractor is required pursuant to the deed to comply with a Project Plan:
- (i) the terms of this deed including the Schedules will have precedence over the Project Plan to the extent of any inconsistency, ambiguity or discrepancy; and
 - (ii) a Project Plan cannot impose an obligation on the Principal to do something different to, or earlier than, required by this deed.

1.5 Authorities

- (a) **(Unfettered discretion):** This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal or any other Road Transport Agency to exercise any of their respective functions and powers pursuant to any Law.
- (b) **(No act or omission):** Without limiting clause 1.5(a), anything the Principal or any other Road Transport Agency does, or fails to do or purports to do, pursuant to their respective functions and powers under any Law, will be deemed not to be an act or omission by the Principal under this deed.
- (c) **(Without Limitation):** The parties agree that clauses 1.5(a) and 1.5(b) are taken not to limit any Liability which the Principal would have had to the Contractor under this deed as a result of a breach by the Principal of a term of this deed, or a failure by the Principal to give access as required by clause 7.1(a), but for clauses 1.5(a) and 1.5(b) of this deed.

1.6 Electronic Files

Where this deed refers to an electronic file which forms part of this deed, such electronic files are contained in the electronic storage device included in Schedule G1 (*Electronic Files*).

2. OBJECTIVES

2.1 Objectives for the WHTBL Program

The Principal's objectives for the WHTBL Program are to:

- (a) reduce congestion on key roads around the Harbour CBD, including the Sydney Harbour Bridge, Sydney Harbour Tunnel and Anzac Bridge;
- (b) create faster, safer and more reliable journeys across Sydney Harbour, particularly for traffic bypassing the Harbour CBD to the west;
- (c) improve productivity by allowing commuters and freight to reach their destination faster, more safely and more reliably;
- (d) increase the ability for the Harbour CBD road network to cope with traffic incidents;
- (e) reduce travel times, delays and queuing on the Warringah Freeway by improving cross-harbour capacity and reducing merges and weaves, supporting long-term increased demand; and
- (f) improve streetscapes, sustainability and liveability across the Eastern City and North Districts by reducing congestion.

2.2 Objectives for the Project Works

The Principal's objectives for the Project Works are to:

- (a) deliver a space for the new Western Harbour Tunnel and Beaches Link tunnel portals;
- (b) integrate the Western Harbour Tunnel and Beaches Link into the arterial road network;
- (c) improve the operation of the three harbour crossings;
- (d) minimise construction impacts on the local community;
- (e) enable faster, more reliable journeys on Sydney Harbour Bridge and other harbour motorway crossings; and
- (f) improve traffic performance on the Warringah Freeway to support long-term increased demand.

3. CONTRACTOR'S OBLIGATIONS

3.1 General

- (a) **(General obligations):** The Contractor:
 - (i) must execute the Contractor's Activities, including the design, construction, supply, delivery, installation, integration, testing, Commissioning and hand-over of the Project Works and each Portion, in accordance with this deed;
 - (ii) warrants that it will use its best endeavours to ensure that it achieves Completion of the Project Works in accordance with the Cost Plan and so that the Outturn Cost does not exceed the Target Cost;
 - (iii) warrants that it will ensure the Contractor's Activities are performed:
 - (A) in a proper and workmanlike manner; and
 - (B) in compliance with clause 8.1;
 - (iv) warrants that the Temporary Works will at all relevant times be fit for their intended purposes;
 - (v) warrants that the Project Works and each Portion will:
 - (A) upon Completion, be fit for their intended purposes; and
 - (B) thereafter be capable of remaining at all relevant times fit for their intended purposes;
 - (vi) warrants that it will exercise a duty of the utmost good faith to the Principal in performing the following obligations under this deed:
 - (A) the preparation of documentation and proposals in relation to Self-Performed Reimbursable Work;
 - (B) the preparation of the Subcontract Tender Documentation for Reimbursable Work and in all post-tender communications (verbal or otherwise) with tenderers prior to the entry of an Approved Subcontract (where applicable);

- (C) the administration of Approved Subcontracts including all negotiations concerning Variations and extensions of time; and
 - (D) in making Payment Claims under clause 15.2;
- (vii) must commence and progress the Contractor's Activities expeditiously and in accordance with any directions of the Principal given pursuant to this deed and achieve Completion of each Portion by the relevant Date for Completion;
 - (viii) must use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Contractor's Activities; and
 - (ix) must liaise, cooperate and confer with others as directed by the Principal.
- (b) **(Responsibility for Loss):** Without limiting the generality of the Contractor's obligations but subject to its entitlement to payment of the Reimbursable Costs, the Management Fee, amounts for Post Completion Activities and amounts for Provisional Sum Work under clause 15 and any express entitlements set out in this deed, the Contractor will be responsible for and accepts the risk of any Loss, delays or disruptions which it incurs or suffers arising out of or in any way in connection with, the performance of its obligations under this deed, including:
- (i) controlling, coordinating, administering and directing all activities necessary for the planning, design, commencement, construction, supply, delivery, installation, integration, testing, Commissioning, completion and handover of the Project Works;
 - (ii) the performance of the Design Work, Construction Work, Preliminaries and Delivery Phase Maintenance;
 - (iii) the engagement, supervision, control, coordination, performance and direction of all Subcontractors;
 - (iv) obtaining access to all areas other than the Construction Site under clause 7.7;
 - (v) Site Conditions;
 - (vi) all information provided or not provided by the Principal about the Project Works, the Temporary Works, the WHTBL Program and the Construction Site;
 - (vii) traffic conditions on or around the Construction Site and Extra Land, and any other difficulties with obtaining access to and from the Construction Site or Extra Land;
 - (viii) Contamination;
 - (ix) complying with Schedule E4 (*Third Party Agreements*) and clause 3.6;
 - (x) complying with all Laws, Approvals and requirements of Authorities;
 - (xi) the existence, location, condition and availability of Utility Services in respect of the Contractor's Activities;
 - (xii) industrial relations issues;
 - (xiii) foreign exchange movements in any currencies adverse to the Contractor;

- (xiv) increases in the costs of Materials, Construction Plant, Utility Services and labour required for the performance of the Contractor's Activities;
- (xv) damage to the Contractor's Activities, Project Works, Temporary Works, Construction Site or any Extra Land under clause 17.1; and
- (xvi) third party claims under clause 17.2.

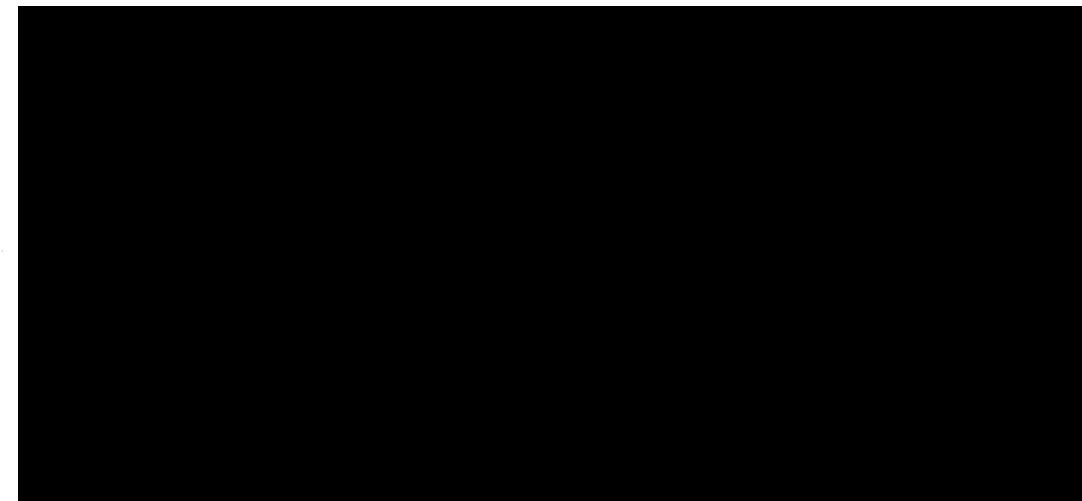
3.2 Cooperation and coordination with Interface Contractors

- (a) **(Acknowledgement):** Without limiting the Contractor's obligations under each Interface Deed the Contractor acknowledges that:
 - (i) the Contractor's Activities interface with the Interface Works;
 - (ii) Interface Contractors may be executing Interface Works on or adjacent to parts of the Construction Site or Extra Land at the same time as the Contractor is performing the Contractor's Activities;
 - (iii) the Handover Portions (including the Handover Areas) will be handed over to the Handover Contractors;
 - (iv) it may require certain design and work methodology input from Interface Contractors to coordinate the design of the Works with the Interface Works;
 - (v) Interface Contractors may require the Contractor to provide design and work methodology information to them to coordinate the design or conduct of the Interface Works with the Works, and this must be provided in a timely manner by the Contractor; and
 - (vi) any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or cooperating and coordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages.
- (b) **(Cooperation and coordination):** The Contractor must:
 - (i) permit Interface Contractors to execute the Interface Works on the applicable parts of the Construction Site, or on any adjacent property to the Construction Site:
 - (A) at the same time as the Contractor is performing the Contractor's Activities; and
 - (B) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose where the Appointed Principal Contractor is principal contractor of the Construction Site ensure they have safe, clean and clear access to those parts of the Construction Site required by them for the purpose of carrying out their work;
 - (ii) protect the Works and other improvements on the Construction Site or Extra Land from accidental damage by Interface Contractors;
 - (iii) not damage the Interface Works or the Interface Contractors' plant and equipment;

- (iv) cooperate with Interface Contractors, and do everything reasonably necessary to facilitate the execution of Interface Works, including providing Interface Contractors with such assistance as may be reasonably directed by the Principal's Representative;
- (v) carefully coordinate and interface the Contractor's Activities with the Interface Works and for this purpose:
 - (A) make proper allowance in all programs for the Interface Works;
 - (B) review all programs provided by Interface Contractors and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Interface Works with the Contractor's Activities;
 - (C) monitor the progress or conduct of the Interface Works;
 - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Completion of any Portion; and
 - (E) provide the Interface Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate their Interface Works with the Contractor's Activities;
- (vi) cooperate, meet with, liaise and share information so that the Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- (vii) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to, or otherwise adversely affect, the Interface Works;
- (viii) coordinate the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative copies of work method statements for those parts of the Project Works or Temporary Works which are adjacent to or interface with any Interface Works, at least fifteen (15) Business Days prior to commencing the work described in the work method statement;
- (ix) work directly with Interface Contractors where required to complete the design of the Works and provide all necessary information to Interface Contractors in respect of the Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with this deed, including the SWTC;
- (x) attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others monthly, 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;
- (xi) when information is required from an Interface Contractor, provide reasonable written notice which must be at least ten (10) Business Days (except in special circumstances) or any longer period of notice required under the SWTC to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;

- (xii) ensure that any written notice given under clause 3.2(b)(xi) provides the Interface Contractor with the longest possible time for the provision of the information;
- (xiii) when any information is reasonably requested by the Principal or the Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Works with the Project Works or the Contractor's Activities:
- (A) provide the information to the Principal's Representative or the Interface Contractor, with a copy to the Principal's Representative (as applicable), within the time requested by the Principal or the Interface Contractor, provided that this time is reasonable;
 - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate;
- (xiv) achieve a high level of cooperation, coordination and collaboration with the Interface Contractors to ensure that:
- (A) the Works are fully integrated with the Interface Works; and
 - (B) any delay, or potential delay, to the Contractor's Activities or the Interface Works is mitigated;
- (xv) closely cooperate with the Interface Contractors with respect to community and stakeholder liaison issues; and
- (xvi) use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
- (A) the provision of information;
 - (B) the obtaining of information;
 - (C) the adequacy of information provided to, or received from, Interface Contractors;
 - (D) the compatibility of the Works with the Interface Works;
 - (E) coordination in accordance with this clause 3.2; and
 - (F) technical issues with the information provided to, or received from, Interface Contractors.



- (c) **(Notification of adverse effect):** The Contractor must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this deed or otherwise have an adverse effect upon the Contractor's Activities.
- (d) **(Similar conditions):** The Contractor acknowledges that conditions similar to those in clauses 3.2(a) and 3.2(b) applying to the Contractor will apply to all Interface Contractors engaged by the Principal, whether working on the Construction Site or on any other site.
- (e) **(Interface issue or dispute):** If, despite the Contractor having complied with all of its obligations under clause 3.2 and any relevant Interface Deed, the Contractor and any Interface Contractor fail to resolve any interface issue or dispute between them, the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor (with a copy to the relevant Interface Contractor).
- (f) **(Principal's Representative to convene meeting):** Upon receipt of the Contractor's notice under clause 3.2(e), the Principal's Representative must:
 - (i) convene a meeting between the Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by the Principal's Representative); and
 - (ii) both the Principal's Representative and the Contractor must work in good faith with the Interface Contractor to resolve the issues or dispute.
- (g) **(Interface Contractors after the date of the deed):** Despite any other provision of this deed, the parties acknowledge and agree that if:
 - (i) the Principal's Representative identifies an Other Contractor that is not listed in Schedule A1 (*Contract Particulars*) as an Interface Contractor after the date of this deed; and
 - (ii) the Interface Works to be performed by that Interface Contractor:
 - (A) do not relate to the WHTBL Program; and
 - (B) could not have been reasonably anticipated or foreseen at the date of this deed by a prudent and competent contractor in the position of the Contractor as being works that the Contractor would need to interface with in performing the Contractor's Activities,

the Principal must issue a Variation Proposal Request under clause 10.4 or a Variation Order under clause 10.8 in respect of the change to the Contractor's Activities in connection with such additional Interface Contractor.

(h) **(Obligations and risks):** The Contractor:

(i) acknowledges and agrees that:

- (A) no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of deed or Variation directed by the Principal's Representative);
 - (B) subject to clauses 3.2(g) and 14.17, and the Contractor's right to claim an extension of time in connection with an Early Utilities Works Delay, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with:
 - (aa) the Interface Contractors carrying out their work; or
 - (bb) any act or omission of an Interface Contractor;
 - (C) the Interface Contractors may require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal; and
 - (D) the Contractor's Program will accommodate requirements for design iterations as part of the Interface Works and incorporate the requirements of the Interface Deeds; and
- (ii) warrants that, as at the date of this deed, each element of the Target Cost and the Contractor's Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under this clause 3.2, including the cost of all the design iterations required to accommodate Interface Works.

3.3 Co-operation with Other Contractors

Without limiting or being limited by clause 3.2, the Contractor must:

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

3.4 Interface Deeds

(a) **(Contractor must provide):** The Contractor must:

- (i) within five (5) Business Days of receipt of a request from the Principal, provide to the Principal an Interface Deed with any Interface Contractor nominated by

the Principal duly executed by the Contractor in the number of counterparts required by the Principal; and

(ii) at all relevant times comply with the terms of each executed Interface Deed.

(b) (**No warranty**): If the Principal issues a request pursuant to clause 3.4(a)(i), the Principal will also request that each applicable Interface Contractor executes the relevant Interface Deed but:

(i) does not represent or warrant that the relevant Interface Contractor will execute; and

(ii) will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with any Interface Contractor not executing an Interface Deed.

3.5 Incident Management Reporting

(a) (**Guidelines and procedure**): The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the SWTC.

(b) (**Reporting of Incident**): Should an Incident occur which is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the SWTC.

(c) (**Contamination and Pollution**): In relation to any environmental or safety Incident involving Contamination, Pollution or other waste that arises during the performance of the Contractor's Activities, the Contractor must, subject to clauses 3.5(d) and 7.10(c):

(i) 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) 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) (**Contamination or Pollution caused by Contractor**): Without limiting clause 7.10(c), to the extent any Contamination, Pollution or other waste that arises during the performance of the Contractor's Activities is caused by the Contractor (or its Associates):

(i) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal; and

(ii) the costs incurred in remediating such Contamination will not be Reimbursable Costs.

(e) (**Failure to notify**): If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal may without prejudice to any other right it has under this deed give the Contractor a written notice under clause 18.1(a).

- (f) **(Inadequate measures to manage Incident):** Without prejudice to the Principal's other rights under this deed, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident.
- (g) **(Costs and expenses):** If the Principal takes any action under clause 3.5(f) it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to the Principal.
- (h) **(Suspension):** Without prejudice to the Principal's other rights under this deed, the Principal's Representative may issue a direction under clause 14.14 requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor's Activities in the event of:
 - (i) 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 which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to SafeWork NSW or other work health and safety regulator) or damage to property.
- (i) **(No Claim):** Other than as specified in clause 14.14(b)(ii), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in connection with:
 - (i) any suspension due to a direction to suspend issued, or for the failure to issue a notice to suspend, in the circumstances set out in clause 3.5(h); and
 - (ii) complying with a direction issued under clauses 3.5(j) or 3.5(k), including complying with the steps which the Principal's Representative directs that the Contractor must take before the Principal's Representative will issue a direction to recommence the Contractor's Activities,

and any costs incurred in connection with such directions are not Reimbursable Costs.
- (j) **(Timing for recommencing activities):** If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.5(h), the Contractor may not recommence the Contractor's Activities in respect of the part of the Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (k) **(Steps for re-commencing activities):** If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.5(h) the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to

clause 14.14 permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.

- (l) (**Permitting recommencement of activities**): If clause 3.5(k) applies, the Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has complied with the requirements of the direction issued under clause 3.5(k) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (m) (**Principal's entitlement to costs**): If the Contractor is not entitled to relief under clause 14.14(b)(ii), the Principal may 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 3.5(g), as a debt due and payable from the Contractor to the Principal.

3.6 Third Party Agreements

- (a) (**Acknowledgements**): The parties acknowledge and agree that:
 - (i) the Principal has entered or may enter into the Third Party Agreements;
 - (ii) the Contractor must comply with its obligations in Schedule E3 (*Requirements of Third Party Agreements*);
 - (iii) as at the date of this deed:
 - (A) the terms of the Third Party Agreements identified in Schedule A1 (*Contract Particulars*) as "Draft" have not been finalised between the Principal and the relevant Third Party (each a **Draft Third Party Agreement**); and
 - (B) there may be Additional Third Party Agreements which the Principal may, in its absolute discretion, enter into;
 - (iv) the Contractor has reviewed the Third Party Agreements executed at the date of this deed and the Draft Third Party Agreements and has included in the Target Cost all of its costs (including the cost of all physical works and allowance for any delay or disruption) in complying with its obligations under clause 3.6(a)(ii) in respect of the Principal's obligations under the Third Party Agreements executed at the date of this deed and the Draft Third Party Agreements (other than those obligations identified in Schedule E3 (*Requirements of Third Party Agreements*) for the Principal to perform); and
 - (v) following:
 - (A) finalisation of any Draft Third Party Agreement;
 - (B) the execution of any Additional Third Party Agreement; or
 - (C) the amendment of an existing Third Party Agreement (**Amended Third Party Agreement**),

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

- (D) final (and, where applicable, executed) version of the Draft Third Party Agreement, Additional Third Party Agreement or Amended Third Party Agreement (as applicable); and
- (E) amendments (if any) to Schedule E3 (*Requirements of Third Party Agreements*) arising out of the execution of the Draft Third Party Agreement, or any Additional Third Party Agreement or Amended Third Party Agreement (as applicable), including any amendments to clause 3A in Schedule E3 (*Requirements of Third Party Agreements*) (**Revised Allocation**).
- (b) **(Obligations and costs)**: The Contractor must carry out its obligations under this deed:
- (i) on the basis of:
 - (A) the latest version of the Draft Third Party Agreement, Additional Third Party Agreement or Amended Third Party Agreement (as applicable) provided by the Principal; and
 - (B) the Revised Allocation; and
 - (ii) subject to clause 3.6(c), without any adjustment to the Target Cost or any entitlement to make any other Claim.
- (c) **(Discrepancy in obligations)**: To the extent the terms of:
- (i) the final version of any Draft Third Party Agreement;
 - (ii) any Additional Third Party Agreement;
 - (iii) any Amended Third Party Agreement; or
 - (iv) the Revised Allocation,
- imposes greater or different obligations on the Contractor than it would otherwise have had in complying with the terms of this deed, it will be a Reimbursable Cost Element Adjustment Event, a Management Fee Adjustment Event, and an Extension Event.
- (d) **(Claims from Third Parties)**: The Contractor:
- (i) must indemnify the Principal from and against:
 - (A) any claim by a Third Party against the Principal; or
 - (B) any Liability of the Principal to a Third Party,
- arising out of or in any way in connection with a Third Party Agreement (including a Draft Third Party Agreement, an Additional Third Party Agreement or an Amended Third Party Agreement), to the extent that the claim or Liability arises out of or in any way in connection with the Contractor's breach of this deed or the Contractor's negligence or Wilful Misconduct or Reckless Misconduct, provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, the relevant Third Party, an Other Contractor or an agent of the Principal contributed to the claim or Liability; and

- (ii) subject to 3.6(c), will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
 - (A) complying with its obligations under this clause 3.6; or
 - (B) any acts or omissions of Third Parties or their respective employees, agents, contractors or officers.

3.7 Commissioning

The Contractor acknowledges that:

- (a) (**Part of Contractor's Activities**): Commissioning of certain aspects of the Project Works is part of the Contractor's Activities, as specified in the SWTC;
- (b) (**Compliance with deed**): to the extent Commissioning is part of the Contractor's Activities, it must be completed in accordance with this deed; and
- (c) (**Cooperation with Principal**): to the extent Commissioning of any part of the Project Works is carried out by the Principal or an Other Contractor, the Contractor must co-operate with the Principal or Other Contractor (as applicable) and provide all reasonable assistance that the Principal may request in connection with any such Commissioning.

3.8 Existing Operations

- (a) (**Construction Site**): The Contractor acknowledges that:
 - (i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the Contractor's Activities;
 - (ii) the access ways to the Construction Site are used by Existing Operators and other persons and will not be available exclusively to the Contractor; and
 - (iii) in using these access ways the Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) (**Coordination of access**): The Contractor must coordinate its access to the Construction Site with any other relevant party (including Existing Operators) that use the access ways to the Construction Site.
- (c) (**Contractor's obligations**): Without limiting any other obligations of the Contractor, the Contractor must:
 - (i) to the extent reasonably possible in performing the Contractor's Activities and subject to clause 7.2, not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Construction Site or the Existing Operations or block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, pedal cycle paths, or other facilities associated with the Existing Operations and comply with the Principal's reasonable directions in relation to them;
 - (ii) comply with the Principal's reasonable directions in connection with:
 - (A) the Existing Operations (including access to and use of the Construction Site); and

- (B) workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any WHS Legislation;
 - (iii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety or the Environment);
 - (iv) comply with, and not do anything which may place the Principal in breach of, any Law applying to the Existing Operations on the Construction Site;
 - (v) ensure that in carrying out and completing the Contractor's Activities, the Project Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works, when completed, to fully comply with the requirements of this deed; and
 - (vi) immediately:
 - (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the Contractor's Activities; and
 - (B) when directed by the Principal's Representative, take such action as is required to comply with its obligations in this clause 3.8(c).
- (d) **(Minimise disruption):** Except to the extent expressly permitted by this deed, the Contractor must:
- (i) not disrupt, interrupt or interfere in any way with the Existing Operations;
 - (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the Contractor's Activities in accordance with this deed; and
 - (iii) program and coordinate the Contractor's Activities under this deed using Good Industry Practice and so as to minimise the effect that the carrying out of the Contractor's Activities under this deed has on the Existing Operations.
- (e) **(Subcontractors):** The Contractor must ensure that its Subcontractors and any of the respective employees, agents, contractors or officers of the Contractor and its Subcontractors at all times comply with this clause 3.8.

3.9 Project Plans

The Contractor must:

- (a) **(Development):** develop the Project Plans as required by the SWTC;
- (b) **(Consistency):** ensure that the relevant Project Plans are consistent with the Initial Project Plans;
- (c) **(Updates):** update the Project Plans:
 - (i) if there is a Variation, Change in Law, New COVID-19 Directive or Change in Planning Approval that affects the content of the Project Plans; and

- (ii) otherwise as required by the SWTC or as directed by the Principal's Representative; and
- (d) **(Compliance):** comply with:
 - (i) the Project Plans; and
 - (ii) to the extent the Project Plans are not finalised, the Initial Project Plans as if they were the Project Plans.

3.10 Cleaning Up

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

- (a) **(Clean and tidy):** keep the Construction Site, Extra Land and the Project Works clean and tidy and free of refuse;
- (b) **(Remove rubbish):** regularly remove rubbish, litter, graffiti and surplus material from the Construction Site and Extra Land;
- (c) **(Remove prior to vacating):** prior to vacating any area of the Construction Site and Extra Land, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the relevant parts of the Construction Site and Extra Land; and
- (d) **(Condition precedent to Completion):** as a condition precedent to Completion of a Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Construction Site and Extra Land or the part of the Construction Site or Extra Land relevant to that Portion, except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by the Principal's Representative.

3.11 Construction Plant and Materials Removal

Except for the purpose of achieving Completion of a Portion as contemplated by clause 3.10(d) or where no longer required for the performance of the Works, the Contractor must not remove from the Construction Site or the Contractor's Activities any:

- (a) **(Significant or major materials):** significant Materials or major items of Construction Plant; or
- (b) **(Material specified in written notice):** 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, not to be unreasonably withheld.

3.12 Heavy Vehicle National Law

- (a) **(Compliance):** The Contractor must, at all times during the term of this deed and without limiting any other provisions of this deed, including Schedule D1 (*Heavy Vehicle National Law Requirements*):
 - (i) comply with, and ensure that each Subcontractor complies with, the provisions of the Heavy Vehicle National Law (including requirements relating to vehicle standards, mass, dimension and loading requirements, driver fatigue management, speed management, maintenance management and the Chain of Responsibility Provisions) and the Road Transport Legislation;

- (ii) ensure so far as is reasonably practicable the safety of the Contractor's and any Subcontractors' transport activities relating to the use of any Construction Plant regulated by the Heavy Vehicle National Law on a road in the course of the Contractor's Activities;
 - (iii) ensure that every Subcontract includes provisions expressly requiring Subcontractors to comply with the Heavy Vehicle National Law (including the Chain of Responsibility Provisions), the Road Transport Legislation and including the provisions of any Chain of Responsibility Management Plan which has been submitted to the Principal under this clause 3.12; and
 - (iv) invite and permit the Principal or its nominee to attend and participate in any risk assessment workshops associated with the Chain of Responsibility Provisions of the Heavy Vehicle National Law.
- (b) **(Subcontractors' role):** The Contractor acknowledges that for the purposes of the Chain of Responsibility Provisions of the Heavy Vehicle National Law, its Subcontractors may hold a number of roles including as consignor, loader, unloader, loading manager, prime contractor, operator, scheduler and packer (as those terms are defined in the Heavy Vehicle National Law).
- (c) **(Development of Chain of Responsibility Management Plan):** Before the Contractor undertakes any Contractor's Activities which involve the Contractor or any Subcontractor using any Construction Plant regulated by the Heavy Vehicle National Law on a road in the course of the Contractor's Activities, the Contractor must develop a Chain of Responsibility Management Plan.
- (d) **(Requirements for Chain of Responsibility Management Plan):** Without limiting the requirements set out in Schedule D1 (*Heavy Vehicle National Law Requirements*) or Appendix C.1 of the SWTC, the Chain of Responsibility Management Plan must (at a minimum):
- (i) identify and assess the aspects of the Contractor's Activities and any activities performed by a Subcontractor that may lead to a contravention of the Heavy Vehicle National Law and undertake this identification and assessment at least annually and, in any event, after any event which reasonably indicates that the way that the Contractor has identified and assessed any such risks has led or may lead to a breach of the Heavy Vehicle National Law, whether by act or omission;
 - (ii) for any such risks identified under clause 3.12(d)(i), set out the measures that the Contractor or any Subcontractors may take to eliminate any such risk, or if it is not reasonably practicable to eliminate any such risk, to minimise it;
 - (iii) identify how the Contractor will ensure so far as is reasonably practicable, that the condition of all Construction Plant used in performing the Contractor's Activities meets, and will continue to meet, the requirements of the Heavy Vehicle National Law;
 - (iv) identify the systems to be developed by the Contractor to ensure that the Contractor and any Subcontractors meet their duties in respect of speed, fatigue, mass, dimension, maintenance and loading requirements under the Heavy Vehicle National Law (including the Chain of Responsibility Provisions);
 - (v) set out a process for notifying the Principal of any suspected, alleged or actual breaches of the Heavy Vehicle National Law by the Contractor or a Subcontractor;

- (vi) identify how the Contractor will address and remedy any suspected or actual incident of non-compliance with the Heavy Vehicle National Law; and
 - (vii) address each of the matters and meet or exceed each of the compliance measures set out in the Chain of Responsibility Guideline.
- (e) **(Submission of Chain of Responsibility Management Plan):** The Chain of Responsibility Management Plan must be submitted to the Principal for its review at least twenty-five (25) Business Days prior to the commencement of any of the Contractor's Activities using any Construction Plant governed by the Heavy Vehicle National Law on a road.
- (f) **(Compliance):** The Contractor must comply with and ensure that any Subcontractors comply with the Chain of Responsibility Management Plan which has been submitted to the Principal under this clause 3.12.
- (g) **(Liabilities not affected):** The Contractor agrees that:
- (i) any review of, comments upon or any other act or omission of the Principal about a Chain of Responsibility Management Plan; and
 - (ii) compliance with the Chain of Responsibility Management Plan by the Contractor,
- will not in any way lessen or affect:
- (iii) the Liabilities or responsibilities of the Contractor under the Project Documents or otherwise according to Law; or
 - (iv) the Principal's rights against the Contractor, whether under the Project Documents or otherwise according to Law.
- (h) **(Contractor to provide training):** The Contractor must ensure that its personnel, and its Subcontractors and their personnel, are provided with adequate information, training, instruction and supervision in relation to any of their obligations and compliance with the Heavy Vehicle National Law, including:
- (i) induction training prior to the relevant personnel's commencement of their involvement in the Contractor's Activities; and
 - (ii) ongoing training in relation to their obligations and compliance with the Heavy Vehicle National Law.
- (i) **(Breach, warning or notice):** Where the Contractor becomes aware of any suspected, alleged or actual breach by the Contractor or any Subcontractor or its employees or becomes aware of any regulatory or administrative warning or caution, any notice requiring information or production of documents, inspections, infringement notices, notices or legal proceedings issued in respect of any Construction Plant used in performing the Contractor's Activities, the Contractor must:
- (i) promptly give the Principal a detailed written report of the matter and any steps taken or intended to be taken to respond to any such suspected, alleged or actual breach or to prevent any other similar suspected, alleged or actual breach from occurring; and
 - (ii) otherwise comply with Law and the relevant Project Plans.

- (j) **(Show cause notice):** The Principal may, if it reasonably believes that the Contractor is not in compliance with, or the Contractor has not procured a Subcontractor's compliance with, its obligations under this clause 3.12 or Schedule D1 (*Heavy Vehicle National Law Requirements*), by written notice direct the Contractor to show cause why the Contractor should not be directed to suspend any or all of the Contractor's Activities (including any activities carried out by any non-compliant Subcontractor) until such time as the Principal can be reasonably satisfied that any non-compliance has been remedied. Without limiting any other provision of this deed, the Principal may also, in its sole and absolute discretion:
 - (i) require that the persons responsible for any breach of the Heavy Vehicle National Law are not used or engaged to provide any further goods or services in respect of the Contractor's Activities; and
 - (ii) report any suspected or alleged breach to any State or Territory road safety authority or authorised officer under the Heavy Vehicle National Law.
- (k) **(No Claim):** The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of an order by a court or direction by the Principal that the Contractor cease to perform its obligations under the Project Documents as a result of a suspected, alleged or actual breach of this clause 3.12, Schedule D1 (*Heavy Vehicle National Law Requirements*) or the Heavy Vehicle National Law, and any costs incurred in connection with such order or direction will not be Reimbursable Costs.
- (l) **(Injury or damage):** The Contractor is responsible for preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Construction Site and Extra Land and any other areas affected by the Contractor's Activities, including personal injury or death or loss or damage in connection with the Contractor's obligations under the Chain of Responsibility Provisions in the course of bringing to and removing from the Construction Site, Extra Land or any other areas affected by the Contractor's Activities of items that require transport services or the movement on any road of any Construction Plant, whether loaded or not.
- (m) **(Records and audit):** The Contractor must:
 - (i) keep and must ensure that any Subcontractors keep records of any steps taken in compliance with this clause 3.12, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan for at least three years after taking any such steps; and
 - (ii) have its compliance independently audited, and provide the Principal with an independent audit report in relation to the Contractor's compliance with this clause 3.12, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan by no later than 30 June each year.

3.13 Media events

- (a) **(Contractor to permit):** The Contractor must:
 - (i) permit the Principal and the NSW Government to hold media events on the Construction Site:
 - (A) on or about the Date of Completion of the last Portion to achieve Completion; and
 - (B) at such other times as may be reasonably requested by the Principal,

- provided that the attendees comply with the Contractor's reasonable site access requirements; and
- (ii) co-operate with the Principal and provide all reasonable assistance that the Principal may request in connection with any such media event.
 - (b) (**Principal to liaise**): The Principal must liaise with the Contractor in relation to any such media events, including the planned date and time for any such media events.
 - (c) (**Responsibility for costs**): If the Principal holds a media event pursuant to clause 3.13(a)(i)(B), it will be a Reimbursable Cost Element Adjustment Event.

3.14 Media releases and enquiries

- (a) (**Principal's consent required**): The Contractor must obtain the Principal's prior written consent to:
 - (i) any press release or promotional advertisement it wishes to make or place concerning this deed, the Principal or the Works; and
 - (ii) the release for publication in any media of any information concerning this deed, the Principal or the Works.
- (b) (**Refer enquiries**): The Contractor must:
 - (i) refer any media enquiries concerning this deed, the Principal or the Works to the Principal; and
 - (ii) not respond to any such media enquiry without the Principal's prior written consent.
- (c) (**Compliance**): The Contractor must ensure that all Subcontractors comply with this clause 3.14 and obtain the Principal's prior written consent (through the Contractor) before doing anything which, if done by the Contractor, would require the Principal's prior written consent.
- (d) (**Principal discretion**): The Principal may give or refuse its consent pursuant to this clause 3.14, in its absolute discretion.

3.15 Communication, stakeholder and community engagement

The Contractor must:

- (a) (**Minimise disruption**): minimise disruption, delay and inconvenience to the affected public, road and public transport users, adjacent businesses, stakeholders and the community during the construction of the Works; and
- (b) (**Plan and manage**): plan, implement, manage and participate in all communication, stakeholder and community engagement programs and activities as:
 - (i) required by the SWTC;
 - (ii) contained in the Communications Strategy; or
 - (iii) reasonably required by the Principal from time to time.

3.16 Delivery Phase Maintenance

- (a) **(Maintenance work by Contractor):** The Contractor must carry out all maintenance work specified in Appendix C.6 of the SWTC (including all related documentation, asset condition assessments and reporting) on:
- (i) the Shared Access Road, and such other roads within the Construction Site as specified in Appendix C.6 of the SWTC, commencing from the date that the Contractor is granted access to any part of the Construction Site in accordance with the Site Access Schedule until the Date of Completion of the last Portion to achieve Completion; and
 - (ii) without limiting clause 16A, all relevant completed parts of the Project Works, commencing from the date that the Contractor is granted access to the relevant part of the Construction Site in accordance with the Site Access Schedule until the Date of Completion of the relevant Portion.
- (b) **(Access):** The Contractor acknowledges and agrees that:
- (i) despite clause 7.1, the Contractor is responsible for procuring access to the areas identified in clause 3.16(a) for the purposes of the Delivery Phase Maintenance, in accordance with clause 7.2; and
 - (ii) it must comply with the "Access and Communications Protocol" specified in Attachment C.6-4 of the SWTC while carrying out the Delivery Phase Maintenance.
- (c) **(Maintenance and activities by other contractors):** The Contractor acknowledges and agrees that:
- (i) the Maintenance Contractor has maintained and will maintain the existing roads within the Construction Site up to the date on which the Contractor's maintenance obligations commence under clause 3.16(a);
 - (ii) other entities (including the Maintenance Contractor) will continue to maintain roads adjacent to the Construction Site and the Contractor must cooperate and coordinate with such entities and must allow them to perform such work; and
 - (iii) Other Contractors will be using the Shared Access Road during the period referred to in clause 3.16(a) and the Contractor's maintenance obligations include the activities and repairs required as a consequence of such use.
- (d) **(Maintenance activities):** In addition to the maintenance activities specified in the SWTC, the Contractor must undertake all other maintenance activities:
- (i) reasonably required to provide for safe and uninterrupted passage of road users within the Construction Site; and
 - (ii) required due to the Project Works and as a consequence of the Contractor's Activities.
- (e) **(Maintenance management procedures):** The Contractor must provide its maintenance management procedures to the Principal within forty (40) Business Days of the date that it is given access to any road within the Construction Site pursuant to the Site Access Schedule.
- (f) **(Maintenance records):** The Contractor must keep detailed and accurate records of all maintenance work and activities it carries out as part of the Contractor's

Activities and provide them to the Principal as a condition precedent to Completion of the last Portion to achieve Completion.

- (g) (**Contractor to notify**): The Contractor may, no later than twenty-five (25) Business Days prior to the first Site Access Date specified in the Site Access Schedule, notify the Principal of any required Maintenance Pavement Interventions it has identified within the Construction Site.
- (h) (**Principal to use reasonable endeavours**): The Principal will use reasonable endeavours to procure that any Maintenance Pavement Interventions notified to it by the Contractor under clause 3.16(g) are carried out by the Maintenance Contractor or an Other Contractor prior to the first Site Access Date specified in the Site Access Schedule.
- (i) (**Contractor to correct**): If the Principal is unable to procure that any Maintenance Pavement Intervention notified by the Contractor under clause 3.16(g) is carried out prior to the first Site Access Date specified in the Site Access Schedule:
 - (i) the Contractor must carry out such Maintenance Pavement Intervention in accordance with Appendix C.6 of the SWTC as part of the Delivery Phase Maintenance; and
 - (ii) the carrying out of such Maintenance Pavement Intervention will be a Reimbursable Cost Element Adjustment Event and a Management Fee Adjustment Event.
- (j) (**No Claim**): Other than as set out in clause 3.16(i), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of the Principal failing to carry out any Maintenance Pavement Interventions notified to it by the Contractor under clause 3.16(g) (or failing to procure that such Maintenance Pavement Interventions are carried out by the Maintenance Contractor or an Other Contractor).

3.17 No restrictions on the Principal

The Contractor acknowledges that nothing in this deed will in any way limit or restrict the ability or power of the Principal or the NSW Government, directly or through any Authority, to:

- (a) (**Roads and tunnels**): develop, construct, operate or maintain directly, by subcontractors or otherwise, other tollways, tunnels, freeways and other roads in New South Wales;
- (b) (**Traffic or transport system**): maintain, manage, develop, change or extend the Sydney road and transport network or any traffic or transport system;
- (c) (**Existing roads and tunnels**): extend, alter, close or upgrade existing tollways, tunnels, freeways and other roads;
- (d) (**Existing public transport routes or services**): extend, alter or upgrade existing public transport routes or services;
- (e) (**New public transport routes or services**): construct new public transport routes or establish new transport services;
- (f) (**Public transport routes or services generally**): develop the transport and public transport network generally;
- (g) (**Policies**): implement NSW government policies; or

- (h) (**Persons and Law**): contract with any person for any of these things or to otherwise do anything which they are empowered to do by Law.

4. CHANGES TO TARGET COST

4.1 Adjustments

The parties acknowledge and agree that the Target Cost will only change as a result of:

- (a) Reimbursable Cost Element Adjustments; and
- (b) Management Fee Adjustments; and
- (c) a Pre-Agreed Variation directed pursuant to clause 10.10,

and only pursuant to the process set out in this clause 4, clause 10.8A(b) or clause 10.10.

4.2 Claims for adjustments

- (a) (**Contractor may Claim**): If a Reimbursable Cost Element Adjustment Event or a Management Fee Adjustment Event (or both) has occurred and the Contractor wishes to make a Claim for a Reimbursable Cost Element Adjustment or a Management Fee Adjustment (or both), the Contractor must:
 - (i) submit the notices and Claims required by clause 22.2 and clause 22.3 to the Principal; and
 - (ii) with the Contractor's Claim submitted pursuant to clause 22.3(c), provide the Contractor's proposed Reimbursable Cost Element Adjustment or the Management Fee Adjustment (or both, as applicable), including sufficient evidence to support the proposed adjustments on an Open Book Basis.
- (b) (**Principal may notify**): Without limiting clause 4.2(a), if the Principal considers that a Reimbursable Cost Element Adjustment Event or a Management Fee Adjustment Event (or both) has occurred it may notify the Contractor and clauses 4.3 to 4.5 will apply.

4.3 Reimbursable Cost Element Adjustments

- (a) (**Method of determination**): Subject to clauses 4.3(b) and 4.5(a)(ii), in respect of each Reimbursable Cost Element Adjustment Event for which the Contractor has made a valid Claim pursuant to clause 4.2(a) or the Principal has issued a notice pursuant to clause 4.2(b), the Reimbursable Cost Element Adjustment will be:
 - (i) the amount agreed by the parties; or
 - (ii) failing agreement between the parties, the amount determined by the Principal as follows:
 - (A) in respect of costs for Reimbursable Work carried out under Approved Subcontracts, the increase or decrease in any amounts payable by the Contractor to Subcontractors for the performance of Reimbursable Work in accordance with the Approved Subcontracts, having regard to the rates or prices under any relevant Approved Subcontract, to the extent that the Principal's Representative determines that those rates or prices are applicable;

- (B) in respect of costs for Self-Performed Reimbursable Work, a reasonable amount to reflect the increase or decrease in such work resulting from the Reimbursable Cost Element Adjustment Event having regard to:
 - (aa) the applicable formulas or rates in Schedule F2 (*Schedule of Rates and Labour Costs*); or
 - (bb) where there is no applicable formula or rate in Schedule F2 (*Schedule of Rates and Labour Costs*) or otherwise agreed between the parties in writing, a reasonable rate (which will exclude any margin for overheads or profit) as determined by the Principal's Representative; or
 - (C) in respect of any other Reimbursable Costs, a reasonable amount to reflect the actual increase or decrease in the Contractor's costs,
- in each case:
- (D) including a reasonable contingency amount on account of any material risks which may arise in connection with the work or activities involved in connection with the Reimbursable Cost Element Adjustment Event (if any); and
 - (E) on the basis that the increase or decrease is directly related to the Reimbursable Cost Element Adjustment Event,

but excluding all Excluded Costs and any amounts paid or payable in respect of the Management Fee, Provisional Sums, or the Post Completion Activities.

- (b) **(Mitigation):** For the purposes of clause 4.3(a):
 - (i) the Contractor must take all reasonable steps to mitigate the adverse consequences of a Reimbursable Cost Element Adjustment Event on the performance of the Contractor's Activities; and
 - (ii) in determining the Reimbursable Cost Element Adjustment, the amount will be reduced to the extent the Contractor:
 - (A) can mitigate, lessen or avoid (or could have mitigated, lessened or avoided) the increase in any amounts payable by the Contractor to Subcontractors or the increase in the amount of Reimbursable Work required in connection with the Reimbursable Cost Element Adjustment Event; or
 - (B) caused or contributed to the Reimbursable Cost Element Adjustment Event.
- (c) **(Value for Money):** If requested by the Principal, the Contractor must provide such information and documentation as may be reasonably required by the Principal in order to show that the amount specified by the Contractor under clause 4.2(a)(ii) offers Value for Money.
- (d) **(Cost savings):** Despite anything to the contrary in this deed, the parties acknowledge and agree that in respect of any Variation that:
 - (i) results in net cost savings; and

- (ii) does not involve:
 - (A) deleting or omitting; or
 - (B) reducing the quality or standard of, any part of the Contractor's Activities or Works,

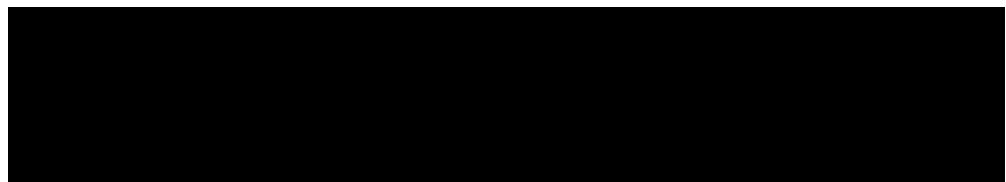
the Reimbursable Cost Element Adjustment will be nil.

- (e) **(Additional information):** The Principal may advise the Contractor that it requires further information or clarification with respect to Contractor's Claim under clause 4.2(a), in which case the Contractor must provide the Principal with such additional information within five (5) Business Days of receiving the Principal's notice.

4.4 Management Fee Adjustment

In respect of each Management Fee Adjustment Event for which the Contractor has made a valid Claim pursuant to clause 4.2(a) or the Principal has issued a notice pursuant to clause 4.2(b), the Principal will determine the Management Fee Adjustment by multiplying:

- (a) where the associated Reimbursable Cost Element Adjustment is a positive amount, and:



- (b) where the associated Reimbursable Cost Element Adjustment, is a negative amount, [REDACTED] per cent of the Management Fee Percentage,

by the amount of the Reimbursable Cost Element Adjustment for the Reimbursable Cost Element Adjustment Event that corresponds with the Management Fee Adjustment Event.

4.5 Management Review Group and Principal's determinations

- (a) **(Management Review Group may consider):** Subject to clause 4.5(b), the parties agree that:
 - (i) the Management Review Group is entitled to consider and resolve Claims by the Contractor under clause 4.2(a); and
 - (ii) if the Management Review Group resolves any such Claim in accordance with clause 13.25(d), the Principal's Representative must determine that Claim in accordance with the Management Review Group's determination.
- (b) **(Principal's determination):** Despite clause 4.5(a), the Principal's Representative:
 - (i) may determine a Claim by the Contractor under clause 4.2(a) prior to Management Review Group first considering such Claim, but only if the Principal's Representative determination is that the Reimbursable Cost Element Adjustment or Management Fee Adjustment (or both, as applicable) will be equal to, or not materially different from, the amount claimed by the Contractor, in which case the Management Review Group is not entitled to consider that Claim under clause 4.5(a); and

- (ii) in any event, must determine a Claim by the Contractor under clause 4.2(a) by no later than:
 - (A) fifteen (15) Business Days after the date of the meeting of the Management Review Group at which the Contractor's Claim was determined by the Management Review Group in accordance with clause 4.5(a) (if applicable); and
 - (B) forty-five (45) Business Days after the date of the Contractor's Claim, regardless of whether the Claim has been considered or resolved by the Management Review Group.
- (c) (**Adjustment**): The amount of each Reimbursable Cost Element Adjustment and Management Fee Adjustment determined by the Principal under clause 4.3 and 4.4 will be added to or deducted from the Target Cost (as applicable).

5. SECURITY

5.1 Unconditional Undertakings

- (a) (**Contractor to provide**): The Contractor must provide to the Principal:
 - (i) on or before the date of this deed:
 - (A) one or more unconditional undertakings totalling [REDACTED] per cent of the Target Cost as at the date of this deed; and
 - (B) one or more unconditional undertakings totalling [REDACTED] per cent of the Target Cost as at the date of this deed; and
 - (ii) each time the Target Cost increases by an amount equivalent to [REDACTED] per cent of the Target Cost as at the date of this deed (**Target Cost Increase**), an unconditional undertaking for [REDACTED] per cent of the relevant Target Cost Increase within ten (10) Business Days of a written request by the Principal.
- (b) (**Due and proper performance**): Without limiting clauses 5.3 and 5.7, the unconditional undertakings to be provided under this clause 5 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this deed and to provide for the bearing of risk of financial burden during the time of any unresolved dispute or difference to be borne by the Contractor.

5.2 Requirements for unconditional undertakings

Each unconditional undertaking provided under clauses 5.1, 5.5, 5.7 and 15.6(b)(ii) must be:

- (a) (**Form**): in the form of Schedule F3 (*Form of Unconditional Undertaking*) (or such other form approved by the Principal);
- (b) (**Principal**): in favour of the Principal;
- (c) (**Institution**): issued by an Institution approved by the Principal that:
 - (i) maintains the Required Rating; and
 - (ii) has a branch or office in Sydney; and
- (d) (**Stamping**): where required by Law, duly stamped.

5.3 Recourse to unconditional undertakings

The Principal may have recourse to any unconditional undertaking provided under clauses 5.1, 5.5, 5.7 or 15.6(b)(ii) at any time.

5.4 Release of unconditional undertakings

- (a) (**Times for release**): Subject to clause 5.4(b) and to the Principal's rights to have recourse to the unconditional undertakings and to the cash proceeds if one or more of the unconditional undertakings are converted into cash, the Principal must:
- (i) within twenty (20) Business Days after the Date of Completion of the last Portion to achieve Completion, release so much of the unconditional undertakings provided by the Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of [REDACTED] per cent of the Target Cost as at the date of this deed; and
 - (ii) subject to clause 5.5, within fifty (50) Business Days after the expiry of the Defects Correction Period of the last Portion to achieve Completion in respect of the WFU Works (not including any extended Defects Correction Period), release the balance of the unconditional undertakings provided by the Contractor under clause 5.1 as may be then held by the Principal.
- (b) (**Principal may retain**): Despite any other provision of this deed to the contrary, where this deed may otherwise require the Principal to release an unconditional undertaking or this deed is terminated by the Principal either pursuant to clause 18 or by reason of the Contractor repudiating this deed (or otherwise at Law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this deed to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this deed or the Contractor's Activities whether for damages or otherwise.

5.5 Replacement on expiry of initial Defects Correction Period

- (a) (**Replacement**): If, upon expiry of the Defects Correction Period of the last Portion to achieve Completion (not including any extended Defects Correction Period), there are:
- (i) Defects remaining in the Works of which the Contractor has been notified under clause 12 but which it has not rectified; or
 - (ii) rectified Defects which are the subject of an extended Defects Correction Period under clause 12 which has not expired,
- with an aggregate value greater than the undrawn amount of the unconditional undertakings then held by the Principal, the Contractor must procure a replacement unconditional undertaking in the Principal's favour which:
- (iii) is for an amount equal to [REDACTED] per cent of the aggregate estimated cost to rectify of such Defects, as reasonably determined by the Principal or the Independent Certifier at the Principal's request; and
 - (iv) otherwise satisfies the requirements of clause 5.2.
- (b) (**Release**): The Principal must, within twenty (20) Business Days after the expiry of the last Defects Correction Period (including any extended Defects Correction Period) for the Works in accordance with clause 12, release any unconditional undertakings provided by the Contractor under this clause 5.5 as may be then held by the Principal (or the remaining proceeds if the undertaking has been converted into cash).

5.6 No injunction

The Contractor must not take any steps to injunct or otherwise restrain:

- (a) (**Payment to Principal**): any issuer of any unconditional undertaking provided under this deed from paying the Principal pursuant to the unconditional undertaking;
- (b) (**Prevention of receiving payment**): the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this deed or receiving payment under any such unconditional undertaking; or
- (c) (**Use of money**): the Principal using the money received under any unconditional undertaking provided under this deed.

5.7 Replacement of unconditional undertakings

- (a) If the issuer of any unconditional undertaking provided under this deed ceases to have the Required Rating then the Contractor must:
 - (i) (**Notification**): promptly notify the Principal of that circumstance; and
 - (ii) (**Procure issue of replacement**): within fifteen (15) Business Days of being requested to do so by the Principal, procure the issue to the Principal of a replacement unconditional undertaking which must:
 - (A) be from an Institution acceptable to the Principal which has the Required Rating;
 - (B) have a face value equal to that of the unconditional undertaking being replaced;
 - (C) comply in all respects with the requirements of this deed, including the requirements related to the Institution issuing the relevant unconditional undertaking.
- (b) (**Expiry**): Not less than twenty (20) Business Days before the expiry of any unconditional undertaking provided under this deed, the Contractor must procure the issue to the Principal of a replacement unconditional undertaking for the undrawn amount of the unconditional undertaking that it is to replace which satisfies the requirements of clause 5.1 which are applicable to the relevant unconditional undertaking.
- (c) (**Return**): Where the Contractor provides a replacement unconditional undertaking in accordance with this clause 5.7, following receipt of such replacement unconditional undertaking, the Principal must promptly surrender (or procure the surrender of) the unconditional undertaking that has been replaced.
- (d) (**Failure to replace**): If the Contractor fails to replace an unconditional undertaking in accordance with this deed, the Principal may have recourse to the relevant unconditional undertaking and hold the proceeds as cash security until the relevant unconditional undertaking is replaced in accordance with this deed.

5.8 No interest

The Principal is not obliged to pay the Contractor interest on:

- (a) (**Unconditional undertaking**): any unconditional undertaking; or

- (b) (**Proceeds**): the proceeds of any unconditional undertaking if it is converted into cash.

5.9 No trust

The Principal does not hold the proceeds of any unconditional undertaking on trust for the Contractor.

5.10 Parent Company Guarantee

The Contractor must on or prior to the date of this deed:

- (a) (**Provision by Contractor**): give the Principal a guarantee or guarantees duly executed by the person or persons identified as the Parent Company Guarantor(s) in Schedule A1 (*Contract Particulars*) in favour of the Principal in the form of Schedule F4 (*Parent Company Guarantee*) and which is, where required, duly stamped; and
- (b) (**Foreign parent company**): if any Parent Company Guarantor is incorporated outside of Australia, give the Principal:
 - (i) a Legal Opinion supporting, and in respect of, the executed Parent Company Guarantee; and
 - (ii) any other assistance reasonably required by the Principal to enforce the Parent Company Guarantee in the jurisdiction in which the Parent Company Guarantor is domiciled.

6. LAW AND APPROVALS

6.1 Compliance with Law

Subject to clause 6.2(a), the Contractor must, in carrying out the Contractor's Activities:

- (a) (**Law**): comply with, and ensure that the Works comply with, all applicable Law;
- (b) (**Notices and fees**): 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 deed 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;
- (c) (**Provide to Principal's Representative**): give the Principal's Representative copies of all documents (including Approvals and other notices) that Authorities issue to it;
- (d) (**Codes and Standards**): at all times conform and comply with, and ensure that the Works conform and comply with, all Codes and Standards; and
- (e) (**Fraud**): not engage in any fraud, bribery or corruption.

6.2 Approvals

The Contractor must:

- (a) (**Obtain Approvals**): obtain all Approvals required for the execution of the Contractor's Activities and occupation and use of the completed Portions (and for that purpose prepare and submit all applications and associated documents to relevant Authorities), except for the Principal's Approvals;

- (b) (**Compliance with Approvals**): comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is required to comply with, satisfy, carry out and fulfil, except for the conditions and requirements of Approvals which are to be satisfied or fulfilled by the Principal as set out in Schedule E2 (*Planning Approval*);
- (c) (**Assist with obtaining Approval**): in respect of any:
 - (i) Approvals which are to be obtained by the Principal after the date of this deed; or
 - (ii) conditions and requirements of Approvals which are to be satisfied or fulfilled by the Principal,
 as set out in Schedule E2 (*Planning Approval*), provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to obtain the Approvals or satisfy or fulfil the conditions and requirements;
- (d) (**Studies and reports**): for the purpose of obtaining all Approvals as required by clause 6.2(a), prepare all associated studies and reports required because of the design of the Project Works or Temporary Works proposed by the Contractor; and
- (e) (**Conditions precedent**): as a condition precedent to Completion of a Portion, ensure that in respect of that Portion it has:
 - (i) obtained all Approvals it is required to obtain under this deed;
 - (ii) complied with, carried out and fulfilled all conditions and requirements of all Approvals it is required to comply with, carry out and fulfil under this deed; and
 - (iii) without limiting clauses 6.2(e)(i) and 6.2(e)(ii), 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 deed; and
 - (iv) unless it is included in Schedule E2 (*Planning Approval*) as an Approval which the Principal will obtain, obtained and supplied to the Principal's Representative certification that the Portion, as designed and built, complies with the requirements of the Building Code of Australia to the extent applicable,
 including any Approvals, conditions or requirements which must be obtained, carried out or fulfilled to enable the Principal to occupy and use the Project Works or Portion for its intended purpose.

6.3 Change in Codes and Standards

- (a) (**Notice of change**): Where there is a Change in Codes and Standards:
 - (i) the Contractor must give a written notice to the Principal's Representative promptly after becoming aware of a proposed or future Change in Codes and Standards;
 - (ii) notwithstanding clause 6.3(a)(i), the Contractor must give a written notice to the Principal's Representative within ten (10) Business Days of the Contractor

first becoming aware (or when it ought reasonably to have first become aware) of the Change in Codes and Standards coming into effect containing:

- (A) details of the Change in Codes and Standards or the proposed future Change in Codes and Standards, as applicable; and
 - (B) the information required by clause 10.4(c) as if such notice was a Variation Proposal.
- (b) (**Direction by Principal**): Within ten (10) Business Days after the Contractor's notice under clause 6.3(a), the Principal's Representative will either:
- (i) direct the Contractor to disregard the Change in Codes and Standards (to the extent that to do so would not place the Contractor in breach of Law); or
 - (ii) direct a Variation under clause 10.8(a) in respect of the Change in Codes and Standards.
- (c) (**No Claim**): If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards, the Contractor must comply with the change and will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in any way in connection with the change.
- (d) (**No Breach**): If the Principal's Representative gives a notice under clause 6.3(b)(i):
- (i) the Contractor will not be regarded as being in breach of this deed (including the Contractor's fitness for purpose obligations in this deed) to the extent that it disregarded the relevant Change in Codes and Standards; and
 - (ii) the Principal will not be precluded from subsequently issuing a Variation Proposal Request or Variation Order under clause 10 in respect of a Change in Codes and Standards that has been the subject of a notice from the Contractor under clause 6.3(a)(i).

6.4 Change in Law

- (a) (**Notice of change**): If a Change in Law occurs which necessitates a Variation, the Contractor must within ten (10) Business Days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Law taking effect, notify the Principal's Representative in writing, setting out:
- (i) detailed particulars of the reason why the Change in Law necessitates a Variation; and
 - (ii) the information required by clause 10.4(c) as if such notice was a Variation Proposal.
- (b) (**Variation**): If the Contractor gives a notice under clause 6.4(a) and the Principal agrees or it is determined under clause 19 that the Change in Law necessitates a Variation, the Principal will direct a Variation under clause 10.8(a) in respect of the Change in Law.
- (c) (**No Claim**): The Contractor acknowledges and agrees that:
- (i) it must comply with all changes in Law (including all Changes in Law); and
 - (ii) other than as set out in clause 6.4(b) and clause 6.7, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising

out of or in any way in connection with a change in Law (including a Change in Law).

6.5 Changes to Planning Approval

- (a) (**Notice of change**): If a Change in Planning Approval occurs which:
- (i) necessitates a Variation; or
 - (ii) requires a reduction in the permitted working hours, truck movements or truck haulage routes, or noise and vibration limits, specified in the Planning Approval,
- the Contractor must within ten (10) Business Days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Planning Approval taking effect, notify the Principal's Representative in writing, setting out:
- (iii) detailed particulars of the reason why the Change in Planning Approval has the effect described in clause 6.5(a)(i) or clause 6.5(a)(ii); and
 - (iv) the information required by clause 10.4(c) as if this notice was a Variation Proposal.
- (b) (**Variation**): If the Contractor gives a notice under clause 6.5(a) and the Principal agrees or it is determined under clause 19 that the Change in Planning Approval has the effect described in clause 6.5(a)(i) or clause 6.5(a)(ii), the Principal will direct a Variation under clause 10.8(a) in respect of the Change in Planning Approval.
- (c) (**No Claim**): Other than as set out in clause 6.5(a), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
- (i) any Change in Planning Approval;
 - (ii) a change in a Planning Approval after the date of this deed; or
 - (iii) any:
 - (A) assumptions the Contractor makes; or
 - (B) failure by the Contractor to adequately satisfy itself,

as to what work methodologies and Temporary Works might be permissible under the Planning Approval.

6.6 Legal Challenge to Planning Approval

- (a) (**Continue to perform obligations**): 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 under:
- (i) the *Environmental Planning and Assessment Act 1979* (NSW);
 - (ii) the *Protection of the Environment Operations Act 1997* (NSW);
 - (iii) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
 - (iv) any other Law,

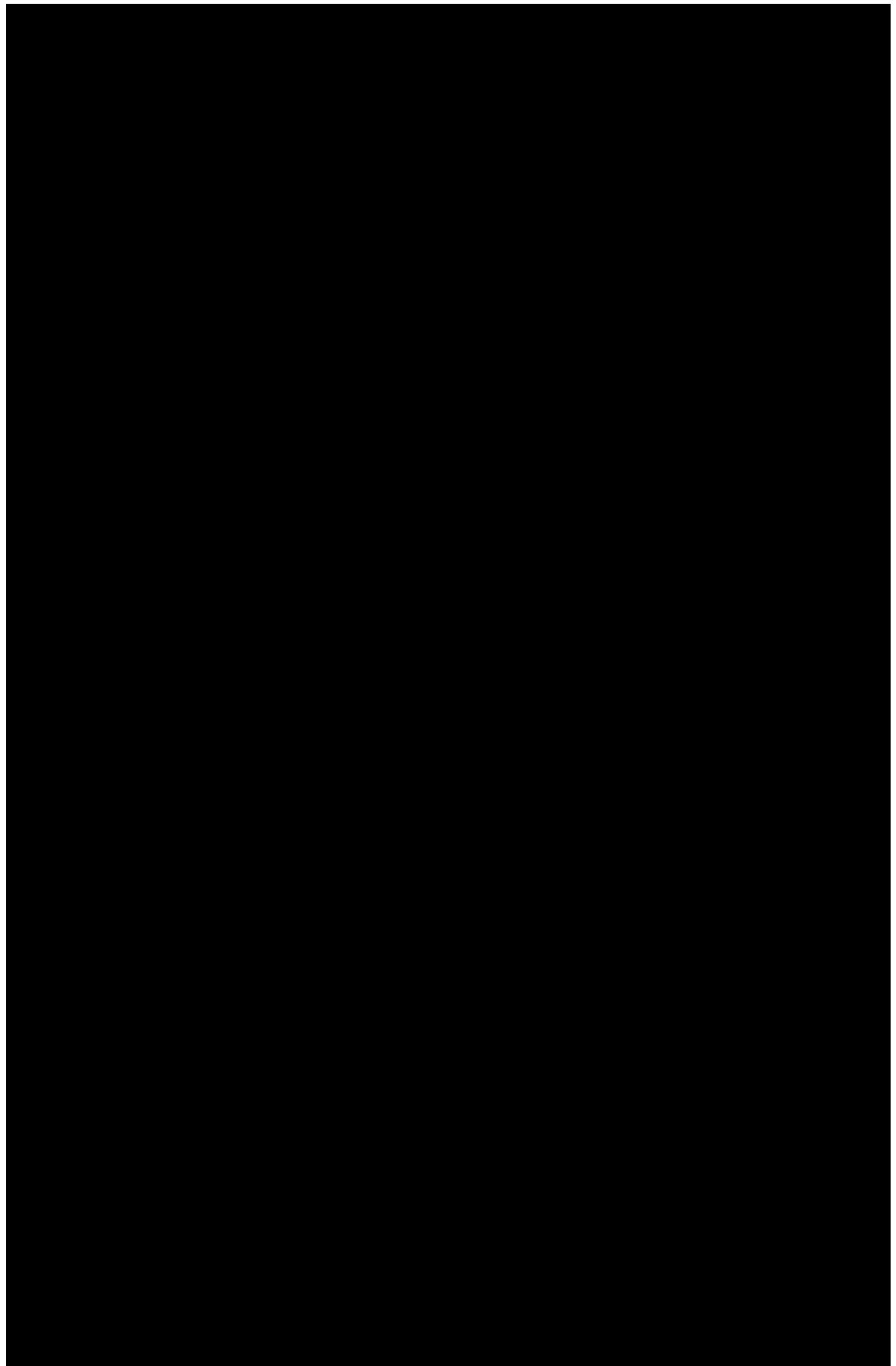
the Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, proceedings or action, it is otherwise:

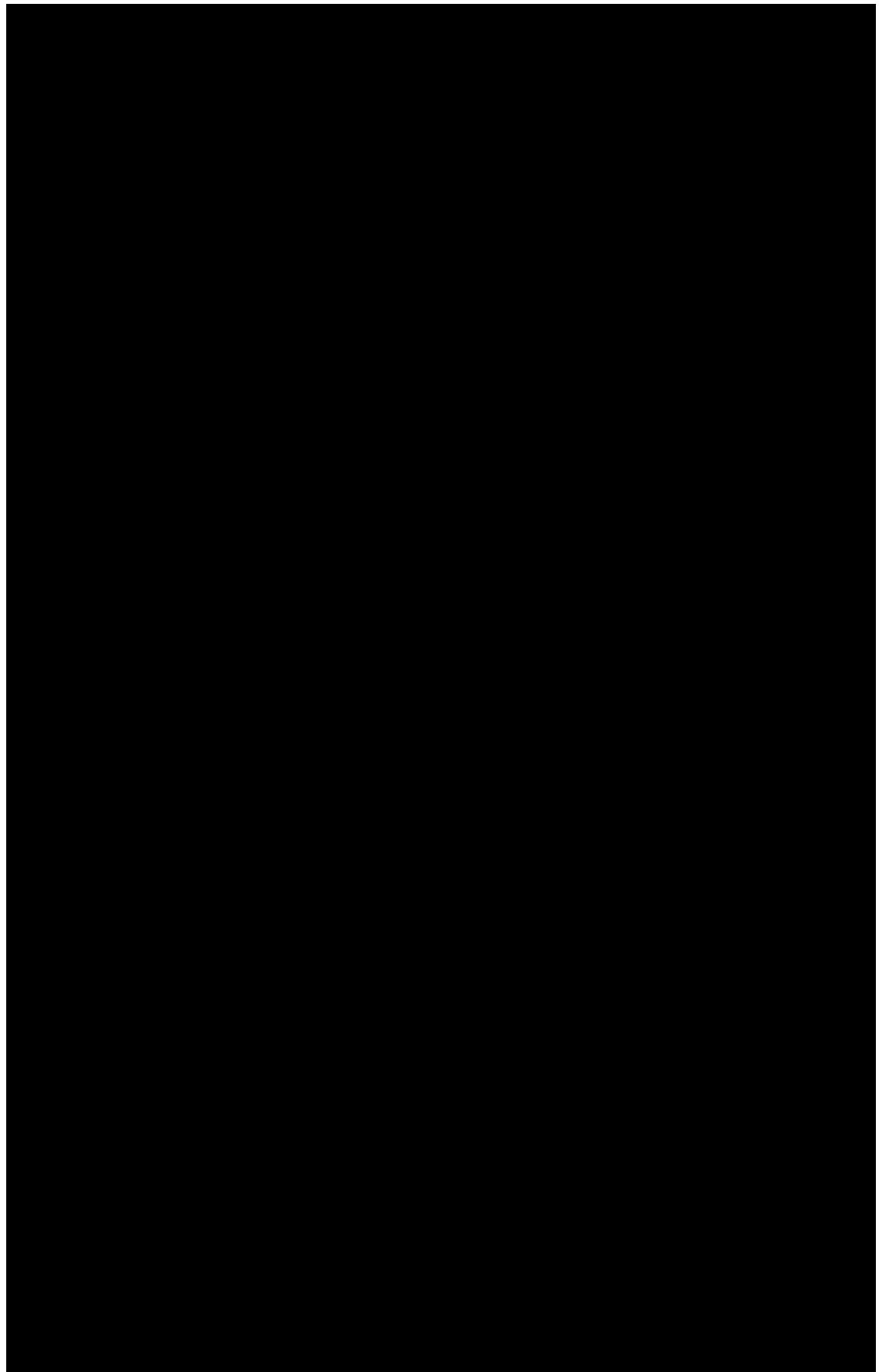
- (v) ordered or directed by an Authority;
- (vi) ordered by a court or tribunal; or
- (vii) directed by the Principal or the Principal's Representative.

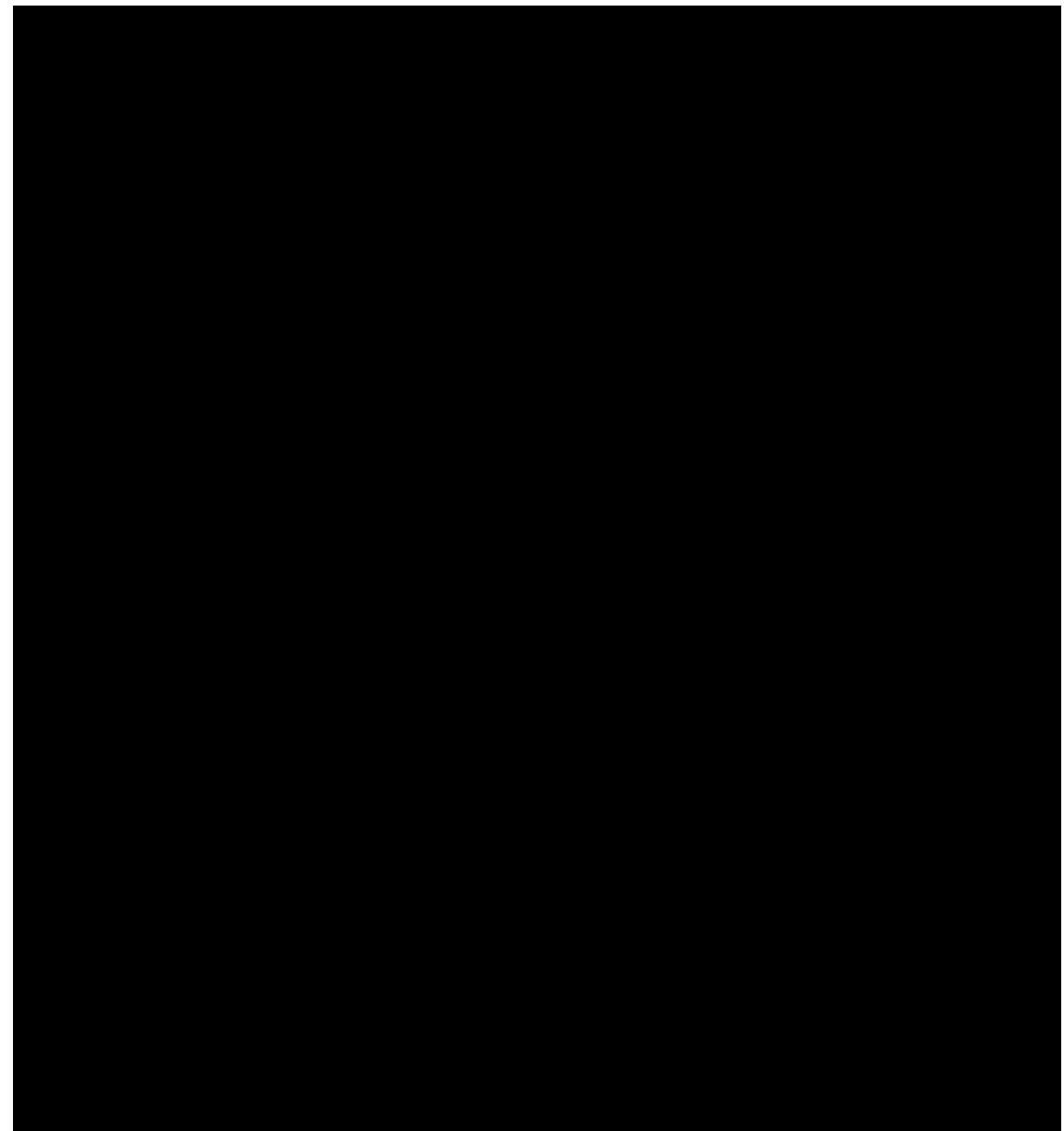
- (b) **(Adjustment to cost):** Subject to clause 6.6(c), if there is:
- (i) an Authority order referred to in clause 6.6(a)(v);
 - (ii) a court or tribunal order referred to in clause 6.6(a)(vi); or
 - (iii) a direction by the Principal or the Principal's Representative referred to in clause 6.6(a)(vii),

which delays the Contractor in achieving Completion of a Portion, it will be a Reimbursable Cost Element Adjustment Event, a Management Fee Adjustment Event and an Extension Event.

- (c) **(Exceptions):** Clause 6.6(b) does not apply to the extent that a legal challenge, proceedings or action of the kind referred to in clause 6.6(a) is brought or upheld due to the Contractor's non-compliance with its obligations under this deed or any Planning Approval.
- (d) **(No Claim):** Other than as set out in this clause 6.6, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the matters set out in clause 6.6(a).
- 







6.8 Crown Building Work

- (a) **(Certification):** The Contractor must, in relation to any part of the Project Works that is Crown Building Work, certify such Project Works (on behalf of the Principal) as required by section 6.28 of the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) **(Effect on rights and Liabilities):** Any certification under clause 6.8(a) will not lessen or otherwise affect:
 - (i) the Contractor's other Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

6.9 Long Service Leave Levy

The Contractor must before commencing any construction work under this deed (including any construction of Temporary Works):

- (a) (**Pay amounts payable**): pay to the Long Service Corporation or that body's agent all amounts payable for the long service leave levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986 (NSW)*; and
- (b) (**Produce documents**): produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 6.9(a).

7. THE SITE AND LOCATION OF THE PROJECT WORKS

7.1 Access

- (a) (**Progressive provision of access**): The Contractor acknowledges and agrees that access to the Construction Site will be provided progressively to the Contractor as set out in the Site Access Schedule and such access is subject to the terms of this clause 7 and any other provision of this deed affecting access.
- (b) (**Access**): Subject to this clause 7 and any other provision of this deed affecting access, the Principal must:
 - (i) give, or ensure the Contractor has, access to the areas specified in paragraph (a) of the definition of Construction Site for the purpose of performing the Contractor's Activities:
 - (A) by the relevant dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Construction Site, then by the last day of that period); and
 - (B) in accordance with this deed including as set out in the Site Access Schedule; and
 - (ii) once access to a part of the Construction Site is provided to the Contractor, thereafter continue to allow, or ensure that the Contractor is continued to be allowed access to that part of the Construction Site in accordance with this deed, and the Site Access Schedule (if applicable).
- (c) (**Non-exclusive licence**): Subject to this clause 7.1, the Principal grants the Contractor a non-exclusive licence to use and occupy, and permit its Subcontractors (of any tier) to use and occupy, the Construction Site for the purposes of performing the Contractor's Activities in accordance with this deed which, in respect of each area of the Construction Site set out in the Site Access Schedule:
 - (i) commences on the date on which the Principal first gives the Contractor access in respect of that part of the Construction Site; and
 - (ii) subject to clause 16.7, terminates on the earlier of:
 - (A) in respect of a Handover Area, the Date of Completion of the Portion that corresponds to that Handover Area as specified in Schedule A2 (*Portions*);
 - (B) in respect of areas of the Construction Site other than the Handover Areas, the Date of Completion of the last Portion that requires the use of that part of the Construction Site; and

- (C) termination of this deed.
- (d) (**No entitlement**): The licence granted under clause 7.1(c) is personal in nature and does not create any entitlement or interest in the Construction Site.
- (e) (**General conditions of access**): The Contractor acknowledges that its access to the Construction Site is subject to:
- (i) any conditions to access set out in the Site Access Schedule;
 - (ii) the remainder of this clause 7, including obtaining any ROLs required pursuant to clause 7.2; and
 - (iii) any other provision of this deed relating to access.
- (f) (**Specific conditions of access**): Without prejudice to the generality of clause 7.1(e), the Contractor acknowledges and agrees that the Contractor's access to the Construction Site is also subject to:
- (i) each Interface Deed;
 - (ii) the conditions of access under the terms of the Third Party Agreements, provided that the Principal's obligation under clause 7.1(a) is not reduced in respect of any failure or delay by a Third Party to grant access, or the suspension or interruption of access, pursuant to a Third Party Agreement except to the extent that any such failure, delay, suspension or interruption arises as a result of the Contractor failing to satisfy any relevant conditions of access under a Third Party Agreement that the Contractor is required to satisfy under Schedule E3 (*Requirements of Third Party Agreements*); and
 - (iii) the appointment and obligations of the Appointed Principal Contractor under clause 8.6.
- (g) (**Acknowledgements**): The Contractor acknowledges and agrees that:
- (i) access to the Construction Site or any part thereof will only confer on the Contractor a right to such management and control of the Construction Site as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor;
 - (ii) the Principal is not obliged to give the Contractor access to a part of the Construction Site until the Contractor has:
 - (A) complied with clauses 5.1(a)(i) and 5.10;
 - (B) submitted the Work Health and Safety Management Plan, the Construction Environmental Management Plan and the Construction Management Plan, as required by the SWTC, to the Principal's Representative under clause 13.13 and the Principal's Representative has not rejected such plans within fifteen (15) Business Days after such submission in accordance with clause 13.13(h)(ii)(C);
 - (C) effected the insurance policies required under clauses 17.5, 17.6, 17.7 and 17.7A; and
 - (D) complied with any preconditions set out in the Site Access Schedule relevant to that part of the Construction Site;

- (iii) consistent with clauses 7.1(b), 7.1(c) and 7.1(f) the Principal is not obliged to provide, and the Contractor may not be given, exclusive access to or possession of any part of the Construction Site;
 - (iv) without limiting clause 7.1(g)(iii), the Contractor:
 - (A) in respect of the Shared Access Road, must permit Other Contractors to access such areas for the purposes of performing their works and accessing their site; and
 - (B) in respect of the other Shared Construction Site Areas, must permit motorists, cyclists and pedestrians to access such areas when they are not subject to a Road Occupancy or otherwise fenced off to the extent required by the SWTC.
 - (v) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain access to any part of the Construction Site or carry out the Contractor's Activities;
 - (vi) the Principal, without limiting its obligations under clause 3.2, has engaged or may engage Other Contractors to work or operate upon or in the vicinity of the Construction Site and Extra Land at the same time as the Contractor; and
 - (vii) it will cooperate with the Other Contractors and coordinate the Contractor's Activities with the work or operations of any Other Contractors in accordance with clauses 3.2 and 3.3.
- (h) (**Failure to grant access**): Failure by the Principal to provide access to the Construction Site as required by clause 7.1(b)(i) will not be a breach of this deed but will be a Reimbursable Cost Element Adjustment Event, Management Fee Adjustment and an Extension Event.
- (i) (**No Claim**): Other than as set out in clause 7.1(h), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's failure to provide access to the Construction Site as required by clause 7.1(b)(i).
- (j) (**Use of Construction Site**): The Contractor must:
 - (i) not use the Construction Site for any purpose other than the Permitted Use without the prior written consent of the Principal's Representative; and
 - (ii) comply with the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Construction Site as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW).

7.2 Traffic Management and Road Occupancy Licences

- (a) (**Contractor responsible for approvals**): Prior to commencing any aspects of the Contractor's Activities which would have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any road, the Contractor must:
 - (i) obtain all relevant Approvals (including Approvals required from any local council);

- (ii) prepare a Construction Traffic Management Plan in accordance with the requirements of this deed and Good Industry Practice for each stage of the Project Works and submit such plans to the CJP, CJM and the Principal in a timely manner, and in any event at least:
- (A) with respect to a Construction Traffic Management Plan that relates to a ROL other than a Major ROL, twenty-five (25) Business Days; or
 - (B) with respect to a Construction Traffic Management Plan that relates to a Major ROL, forty (40) Business Days,
- prior to the commencement of physical works for that stage, so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the Construction Traffic Management Plan prior to the commencement of physical works for that stage;
- (iii) with respect to Construction Traffic Management Plans:
- (A) keep the Principal's Representative fully and promptly informed of the progress of obtaining approval of Construction Traffic Management Plans, including any problems or issues which affect or are likely to affect its ability to obtain an approval of a Construction Traffic Management Plan;
 - (B) proactively liaise and coordinate with the CJP and the CJM in respect of each Construction Traffic Management Plan; and
 - (C) implement the reasonable requirements of the CJP and the CJM prior to submission of a Construction Traffic Management Plan for approval;
- (iv) prepare all required ROL Applications:
- (A) in accordance with the requirements of Appendices B.18, C.4 and C.5 of the SWTC; and
 - (B) in accordance with Good Industry Practice,
- and without limiting the SWTC, submit such ROL Applications to the CJP and the CJM (with a copy to the Principal) in a timely manner, and in any event at least:
- (C) ten (10) Business Days prior to any Road Occupancy that requires a ROL, other than a Major ROL; or
 - (D) twenty (20) Business Days prior to any Road Occupancy that requires a Major ROL,
- (or any shorter period agreed by the Principal in writing) so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the relevant ROL prior to any road occupancy that requires a ROL the subject of such ROL Application;
- (v) in accordance with Good Industry Practice, use all reasonable endeavours to agree and obtain approved Construction Traffic Management Plans and obtain Approved ROLs;
- (vi) comply with road occupancy requirements, including all Construction Traffic Management Plans and ROLs;

- (vii) liaise with, accept and implement the reasonable requirements of the entities who have input into the approval of the Construction Traffic Management Plans and ROLs, including any operator of the relevant road;
 - (viii) where applicable, use best endeavours to apply for and obtain ROLs at times when the relevant road is planned to be closed for maintenance; and
 - (ix) undertake all other matters necessary to carry out such Contractor's Activities.
- (b) **(Compliance with Road Occupancy Licences)**: Without limiting clause 7.2(a), in respect of any ROL:
- (i) the Contractor must not undertake Contractor's Activities on the relevant road, shoulder or lane (or part thereof):
 - (A) outside of the permitted times stated in the relevant ROL;
 - (B) otherwise than in accordance with the terms and conditions of the relevant ROL; or
 - (C) in a manner that is inconsistent with the requirements of the Planning Approval;
 - (ii) a breach of a term or condition of the ROL will constitute a breach of this deed; and
 - (iii) the Contractor acknowledges and agrees that if it breaches a term or condition of any ROL or Construction Traffic Management Plan in connection with the performance of the Contractor's Activities:
 - (A) with respect to the first such breach, if requested by the CJM, the Contractor must provide the CJM with an explanation of the reason for such breach and details of the measures that the Contractor will put in place to ensure such a breach does not re-occur, in each case to the satisfaction of the CJM;
 - (B) with respect to any subsequent breach of any ROL other than a Major ROL:
 - (aa) the CJM may do any of the things specified in paragraphs (a) to (d) of the definition of Baseline ROL Change, or paragraph (a) of the definition of Approved ROL Change, in respect of any ROL, until such time as the CJM determines that the Contractor has put in place measures to ensure breaches of ROLs in connection with the performance of the Contractor's Activities will not re-occur (and clause 7.2(b)(iii)(B) will re-apply to the first breach immediately following such determination); and
 - (bb) any actions taken by the CJM under clause 7.2(b)(iii)(B)(aa) will not constitute a Baseline ROL Change or an Approved ROL Change; and
 - (C) with respect to any subsequent breach of a Major ROL:
 - (aa) the CJM may impose additional conditions on future Major ROLs until such time as the CJM determines that the Contractor has put in place measures to ensure breaches of Major ROLs in

connection with the performance of the Contractor's Activities will not re-occur; and

(bb) any actions taken by the CJM under clause 7.2(b)(iii)(C)(aa) will not constitute a Major ROL Change.

(c) **(Contractor responsible for traffic management):** Without limiting section 2.8.1 of Appendix C5 of the SWTC, the Contractor is responsible for the control, direction and protection of all road, cyclist and pedestrian traffic in any way affected by the carrying out of the Contractor's Activities and must, despite the conditions of Approved ROLs:

(i) manage all such traffic to ensure:

(A) its continuous, safe and efficient movement;

(B) the traffic carrying capacity of Local Areas is maintained; and

(C) that any delays and disruptions to such traffic and the movement of such traffic are kept to the minimum required for the purposes of the Contractor's Activities;

(ii) coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or the operations of Authorities;

(iii) comply with the requirements of the Planning Approval, the SWTC and any Third Party Agreement in respect of road traffic management and safety; and

(iv) comply with the directions of any relevant Authority (including the CJP, the CJM and the Principal in its capacity as an Authority), and the reasonable directions of the Principal, with respect to such management and safety.

(d) **(Notice and minimise disruption):** The Contractor must:

(i) give the public sufficient notice of the arrangements under clause 7.2(a); and

(ii) in designing and implementing the Traffic Management and Safety Plan and Construction Traffic Management Plan for the Project Works and all aspects of the Contractor's Activities, seek to minimise delays and disruption to traffic to the extent consistent with the performance of the Contractor's Activities in accordance with this deed.

(e) **(Principal may re-open):** Despite any ROL issued in respect of any road, lane or shoulder closure:

(i) the Principal may at any time direct the Contractor to temporarily suspend any Contractor's Activities and to re-open the road, lane or shoulder; and

(ii) except as provided in clause 7.2(g)(iv) and clause 7.2A(b), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim against the Principal in respect of such direction.

(f) **(Actions of CJM and CJP):** The Contractor acknowledges and agrees that:

(i) the CJP and the CJM each exercise their own discretion in the exercise of delegated statutory functions and powers of the Principal; and

(ii) nothing that the CJP or the CJM do, fail to do or purport to do pursuant to such delegation (including a decision not to grant a ROL, any Baseline ROL Change or any Major ROL Change) will:

- (A) be considered as an act or omission of the Principal;
- (B) constitute an Act of Prevention; or
- (C) entitle the Contractor to make any Claim, except as provided in clause 7.2(g)(iv) and clause 7.2A(b).

(g) **(Baseline ROL Changes)**: The parties acknowledge and agree that:

(i) the Baseline ROL Schedule sets out the roads and associated lanes, direction, days, and time slots that the Principal has agreed to form the baseline in determining the Contractor's entitlement for relief for Baseline ROL Changes;

(ii) during the delivery of the Works, there are likely to be a number of Baseline ROL Changes;

(iii) the Contractor must maintain a change register which records:

(A) all Baseline ROL Changes, including the following in relation to each Baseline ROL Change:

(aa) the date of the relevant change;

(bb) the Approved ROL to which the change relates; and

(cc) the scope of the change;

(B) any Replacement Baseline Road Occupancy obtained pursuant to clause 7.2(h); and

(C) any ROLs obtained pursuant to clause 7.2(j),

(ROL Change Register); and

(iv) subject to clause 7.2(i), if there is a Baseline ROL Change:

(A) it will be an Extension Event; and

(B) it will be a Reimbursable Cost Element Adjustment Event and a Management Fee Adjustment Event, but only to the extent that:

(aa) the Contractor has been granted an extension of time under clause 14.10 in respect of such Baseline ROL Change;

(bb) the Reimbursable Cost Element Adjustment in respect of an individual Baseline ROL Change is an amount equal to or greater than [REDACTED] (without aggregating with any related Baseline ROL Changes); or

(cc) the aggregate value of Reimbursable Cost Element Adjustments for Baseline ROL Changes in the relevant Contract Year (including Baseline ROL Changes falling within clauses 7.2(g)(iv)(B)(aa) and 7.2(g)(iv)(B)(bb) exceeds [REDACTED]
[REDACTED].

- (h) **(Replacement Baseline Road Occupancies):** If a Baseline ROL Change occurs:
- (i) the Principal (in consultation with the CJM) or the CJM may (in their absolute discretion) offer to make available an alternative Road Occupancy to mitigate the impact of a Baseline ROL Change (**Replacement Baseline Road Occupancy**) either:
 - (A) as the conditions of approval in response to the ROL Application the subject of the Baseline ROL Change; or
 - (B) by separate notice (written or oral) to the Contractor;
 - (ii) the Contractor is entitled to use the Replacement Baseline Road Occupancy without any further application to, or approval from, the CJM if:
 - (A) the Replacement Baseline Road Occupancy is offered as the conditions of approval in response to the ROL Application and is on identical conditions (other than time or date) to a Road Occupancy that was impacted by the Baseline ROL Change; or
 - (B) otherwise approved by the CJM in its absolute discretion; and
 - (iii) to the extent clause 7.2(h)(ii) does not apply, the Contractor must submit an ROL Application in respect of the Replacement Baseline Road Occupancy in accordance with this clause 7.2.
- (i) **(Reduction in entitlement):** Without limiting clauses 4.3(b) or 14.11, the Contractor's entitlement to any Reimbursable Cost Element Adjustment, Management Fee Adjustment or extension of time (as applicable) in respect of a Baseline ROL Change will be reduced to the extent any Replacement Baseline Road Occupancy:
- (i) has reduced the cost or time impact (as applicable) of such Baseline ROL Change; or
 - (ii) where clause 7.2(h)(ii) applies, or the Contractor otherwise obtains an Approved ROL in relation to that Replacement Baseline Road Occupancy, would have reduced such cost or time impact had the Contractor made use of the Replacement Baseline Road Occupancy.
- (j) **(Additional ROLs or Road Occupancies):** The parties acknowledge and agree that at any time prior to the Date of Completion of the last Portion to achieve Completion, the Principal (with the agreement of the CJP and the CJM), may notify the Contractor in writing of:
- (i) additional roads, lanes, directions, days, or time slots that will be added to the Baseline ROL Schedule (**Additional ROL Conditions**), in which case the Baseline ROL Schedule will be deemed to be amended to include the Additional ROL Conditions on and from the date of the Principal's notice; or
 - (ii) one off additional Road Occupancies outside the Baseline ROL Schedule and the Major ROL Schedule that the CJM has offered to make available for an ROL Application by the Contractor.
- (k) **(ROL Application required):** The Contractor acknowledges and agrees that despite the Principal issuing notice under clause 7.2(j)(i) or clause 7.2(j)(ii), the Contractor remains responsible for submitting all required ROL Applications in accordance with this deed.

- (l) **(Meetings):** The Contractor must meet weekly with the Principal and representatives of the CJM and the CJP to:
 - (i) review the ROL Change Register;
 - (ii) discuss potential Replacement Baseline Road Occupancies to mitigate the impact of any Baseline ROL Changes; and
 - (iii) discuss potential Replacement Major Road Occupancies to mitigate the impact of any Major ROL Changes.
- (m) **(Lane Occupancy Fees):** The Contractor acknowledges and agrees that it may be liable to pay Lane Occupancy Fees in accordance with Schedule E6 (*Lane Occupancy Fees*).

7.2A Major ROLs

- (a) **(Major ROL Schedule):** The parties acknowledge and agree that:
 - (i) the Major ROL Schedule sets out the roads, lanes and directions and associated durations, times of the year, days of the week and times of the day (as applicable) that the Principal has agreed to form the baseline in determining the Contractor's entitlement for relief for a Major ROL Change; and
 - (ii) during the delivery of the Works, there may be a number of Major ROL Changes.
- (b) **(Major ROL Change):** Subject to clause 7.2A(f), if there is a Major ROL Change, it will be a Reimbursable Cost Element Adjustment Event, a Management Fee Adjustment Event and an Extension Event.
- (c) **(Limitation on relief):** The Contractor acknowledges and agrees that, in relation to any ROL Application for a Major ROL, if:
 - (i) the Principal considers (acting reasonably) that the conditions specified in the ROL Application and corresponding Construction Traffic Management Plan would not minimise the delay and disruption to traffic and interference to members of the public in connection with the relevant ROL to the extent reasonably practicable, having regard to:
 - (A) the timing of the proposed Road Occupancies within the ROL;
 - (B) the traffic management and staging arrangements, including the extent to which the Contractor has assessed all reasonably practicable traffic management solutions and staging arrangements;
 - (C) the cumulative impact with other existing Approved ROLs; and
 - (D) Good Industry Practice; and
 - (ii) the CJM does any of the things specified in paragraphs (a) to (c) of the definition of Major ROL Change in respect of the relevant ROL,
such action taken by the CJM will not constitute a Major ROL Change.
- (d) **(Consultation period):** The parties acknowledge and agree that, where clause 7.2A(c) applies, the Contractor may amend and resubmit the applicable ROL

Application and Construction Traffic Management Plan and the 6 month consultation period specified in section 3.1(d) of Appendix C.4 of the SWTC will not re-apply.

- (e) **(Replacement Major Road Occupancies):** If a Major ROL Change occurs:
- (i) the Principal (in consultation with the CJM) or the CJM may (in their absolute discretion) offer to make available an alternative Road Occupancy to mitigate the impact of the Major ROL Change (**Replacement Major Road Occupancy**) either:
 - (A) as the conditions of approval in response to the ROL Application the subject of the Baseline ROL Change; or
 - (B) by separate notice (written or oral) to the Contractor;
 - (ii) the Contractor is entitled to use the Replacement Major Road Occupancy without any further application to, or approval from, the CJM if:
 - (A) the Replacement Major Road Occupancy is offered as the conditions of approval in response to the ROL Application and is on identical conditions (other than time or date) to a Road Occupancy that was impacted by the Major ROL Change; or
 - (B) otherwise approved by the CJM in its absolute discretion; and
 - (iii) to the extent clause 7.2A(e)(ii) does not apply, the Contractor must submit an ROL Application in respect of the Replacement Major Road Occupancy in accordance with this clause 7.2.
- (f) **(Reduction in entitlement):** Without limiting clauses 4.3(b) or 14.11, the Contractor's entitlement to any Reimbursable Cost Element Adjustment, Management Fee Adjustment, or extension of time (as applicable) in respect of a Major ROL Change will be reduced to the extent a Replacement Major Road Occupancy:
- (i) is provided with conditions which are consistent with the conditions specified in the Major ROL Schedule Item applicable to the impacted ROL; and
 - (ii) either:
 - (A) has reduced the cost or time impact (as applicable) of such Major ROL Change; or
 - (B) where clause 7.2A(e)(ii) applies, or the Contractor otherwise obtains an Approved ROL in relation to that Replacement Major Road Occupancy, would have reduced such cost or time impact had the Contractor made use of the Replacement Major Road Occupancy.

7.3 Early access and prior access for site investigations

- (a) If:
- (i) the Contractor requests; and
 - (ii) the Principal agrees to give,
- access to any part of the Construction Site earlier than the relevant dates set out in the Site Access Schedule, then:

- (iii) the Contractor accepts the sole risk of such earlier access; and
- (iv) the Contractor will not be entitled to make, and the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - (A) obtaining such earlier access (including a failure of the Principal to grant such earlier access); or
 - (B) any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain such earlier access to the Construction Site.
- (b) The Contractor must not carry out site surveys, investigations or studies on any part of the Construction Site prior to the Contractor being provided access in accordance with clause 7.1 without the Principal Representative's prior written approval (not to be unreasonably withheld).
- (c) The Contractor may request the Principal's consent under clause 7.3(b) by submitting a written notice to the Principal which includes details for the surveys, investigations or studies the Contractor intends to carry out and the Contractor's preferred times for access.
- (d) The Contractor acknowledges and agrees that the Principal is not obliged to provide or facilitate, and the Contractor may not obtain, the access requested by the Contractor in accordance with clause 7.3(c).
- (e) Where the Principal consent's to the Contractor accessing the Construction Site for the purposes referred to in clause 7.3(b), then:
 - (i) the Contractor acknowledges and agrees that:
 - (A) the Principal is not providing the Contractor with possession, management or control of, or a licence to use or occupy, the relevant area;
 - (B) access will not be exclusive and there may be third parties (including Other Contractors and Existing Operators) carrying out works or other activities upon or in the vicinity of the relevant area; and
 - (C) the Contractor is responsible for obtaining any ROLs required to carry out the relevant site surveys, investigations or studies and is not entitled to make a Claim for any Baseline ROL Change or Major ROL Change in relation to such ROLs; and
 - (ii) the Contractor must:
 - (A) only use the Construction Site for the surveys, investigations or studies notified pursuant to clause 7.3(b);
 - (B) comply with clauses 7.1(e)(i), 7.1(e)(iii), 7.1(f), 7.1(g)(v), 7.1(j)(ii), 7.2(a), 7.2(b), 7.2(c), 7.2(d), 7.2(e), 7.2(f), 7.6(d), 7.6(e) and 8.4(d) in respect of the relevant area as if the Contractor has been provided access to the Construction Site in accordance with clause 7.1;
 - (C) comply with any site safety requirements of any entity engaged and authorised as principal contractor in relation to any construction works being carried out in the relevant area (where applicable); and

- (D) not interfere with or restrict the performance of any third parties' (including Existing Operators' and Other Contractors') works or their access; and
- (iii) the Contractor will not be entitled to make, and the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection such access.

7.4 **Temporary Works**

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

7.5 **Property Works**

- (a) **(Obligations):** The Contractor must:

- (i) carry out the Property Works:
 - (A) in accordance with the SWTC; and
 - (B) so that they are fit for their intended purpose upon Completion of the Portion of which the relevant Property Works form part;
- (ii) after completion of the Property Works with respect to a Non-TfNSW Parcel, including the work described in clauses 7.5(d) and 7.5(e), provide to the Principal's Representative:
 - (A) a properly executed certificate in the form of Schedule B2 (*Property Owner's Certificate*) 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 Non-TfNSW Parcel, unless the Principal's Representative confirms such a certificate is not required; or
 - (B) if the Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the Contractor to the effect that such owner or occupier, or other person having an interest in the Non-TfNSW Parcel, has failed or refused to execute such a release within fifteen (15) Business Days after it being provided by the Contractor to the owner, occupier or other person following completion of the work on the Non-TfNSW Parcel, including the work described in clause 7.5(d); and
- (iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or owners of any part of an Non-TfNSW Parcel in circumstances where:
 - (A) such owner or owners have not duly signed a certificate in the form of Schedule B2 (*Property Owner's Certificate*); and
 - (B) the claim or Loss arises out of or in any way in connection with the Contractor's breach of a term of this deed or the Contractor's negligence or Wilful Misconduct or Reckless Misconduct.

- (b) **(Approval):** The acceptance of a certificate or statement provided by the Contractor under clause 7.5(a)(ii) by the Principal's Representative does not constitute approval

by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this clause 7.5.

- (c) (**Minimise disruption**): Upon being given access to any Non-TfNSW Parcel for the purpose of carrying out any Property Works, the Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Non-TfNSW Parcel.
- (d) (**Rehabilitation**): The Contractor must:
 - (i) rehabilitate any part of a Non-TfNSW Parcel to the state agreed with the owner of such Non-TfNSW Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the Contractor obtaining access; and
 - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 7.5.
- (e) (**Conditions precedent**): The following are conditions precedent to Completion of a Portion involving Property Works:
 - (i) completion of all Property Works under this clause 7.5 that form part of the Portion, including all relevant work under clause 7.5(d); and
 - (ii) provision of all certificates or statements (as applicable) to the Principal's Representative as required under clause 7.5(a)(ii) in respect of Property Works that form part of the Portion.

7.6 Management and Control of the Construction Site

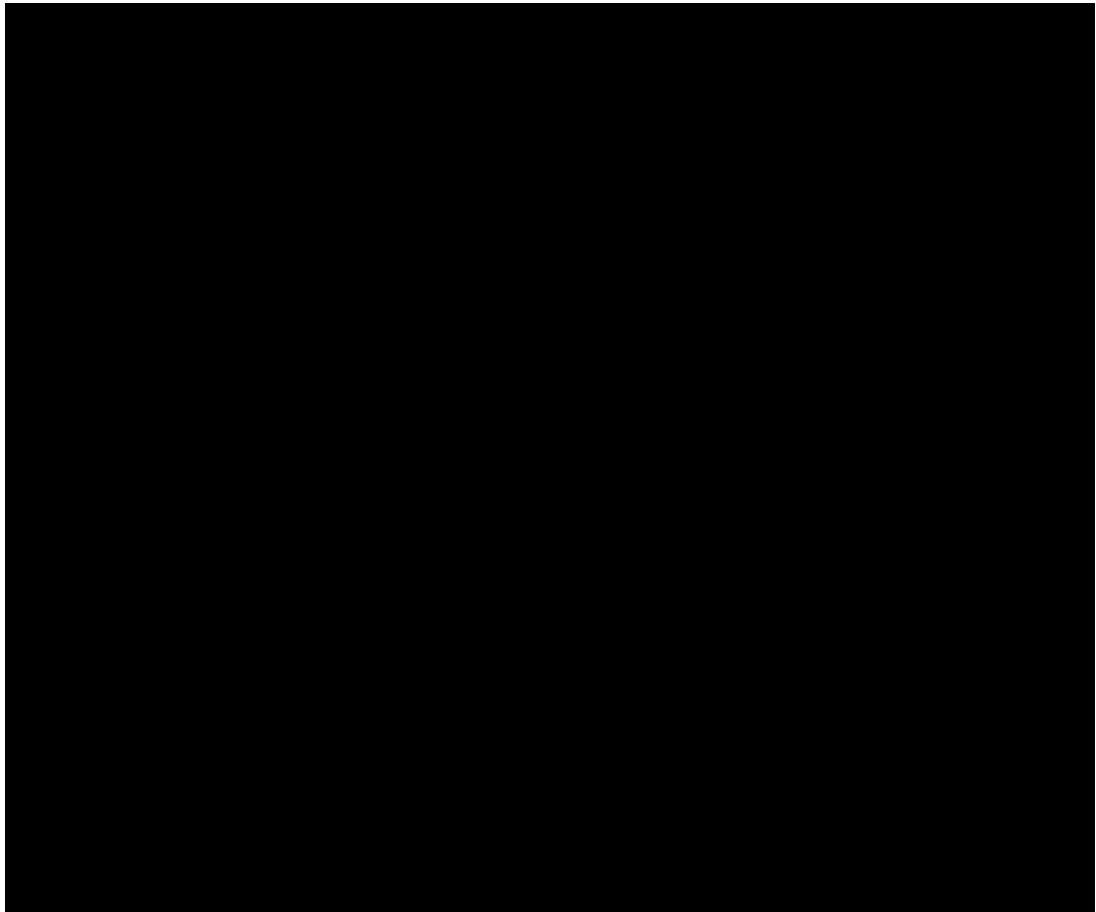
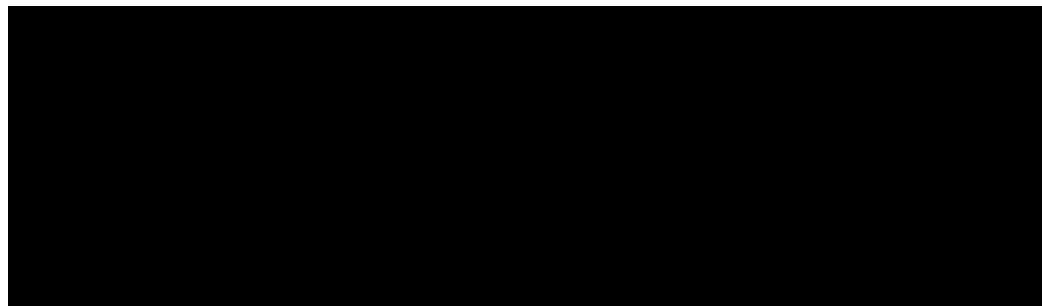
- (a) (**Management and control**): Subject to:
 - (i) the terms of the relevant Approved ROLs; and
 - (ii) clauses 7.6(b), 8.6(c), 8.6(d), 8.6(f), 8.6(j)(vii) and 8.6(k),
but without limiting any right of the Principal or the Principal's Representative under this deed, the Contractor will be responsible for the management and control of the Construction Site at all times after being given access to the Construction Site or a part of the Construction Site under clause 7.1 until the Date of Completion of the last Portion to achieve Completion which requires the use of that part of the Construction Site.
- (b) (**Shared Construction Site Areas**): In respect of the Shared Construction Site Areas, the Contractor will be responsible for the management and control of a Shared Construction Site Area only:
 - (i) during such periods as the Appointed Principal Contractor is principal contractor for the relevant Works being carried out on such Shared Construction Site Area in accordance with clauses 8.6(d) and 8.6(f)(ii); and
 - (ii) for those parts of the Shared Construction Site Area where such Works are being carried out.
- (c) (**Access and maintenance**): The Contractor must:
 - (i) subject to clause 7.1(g)(iv), control access to and the security of the Construction Site; and

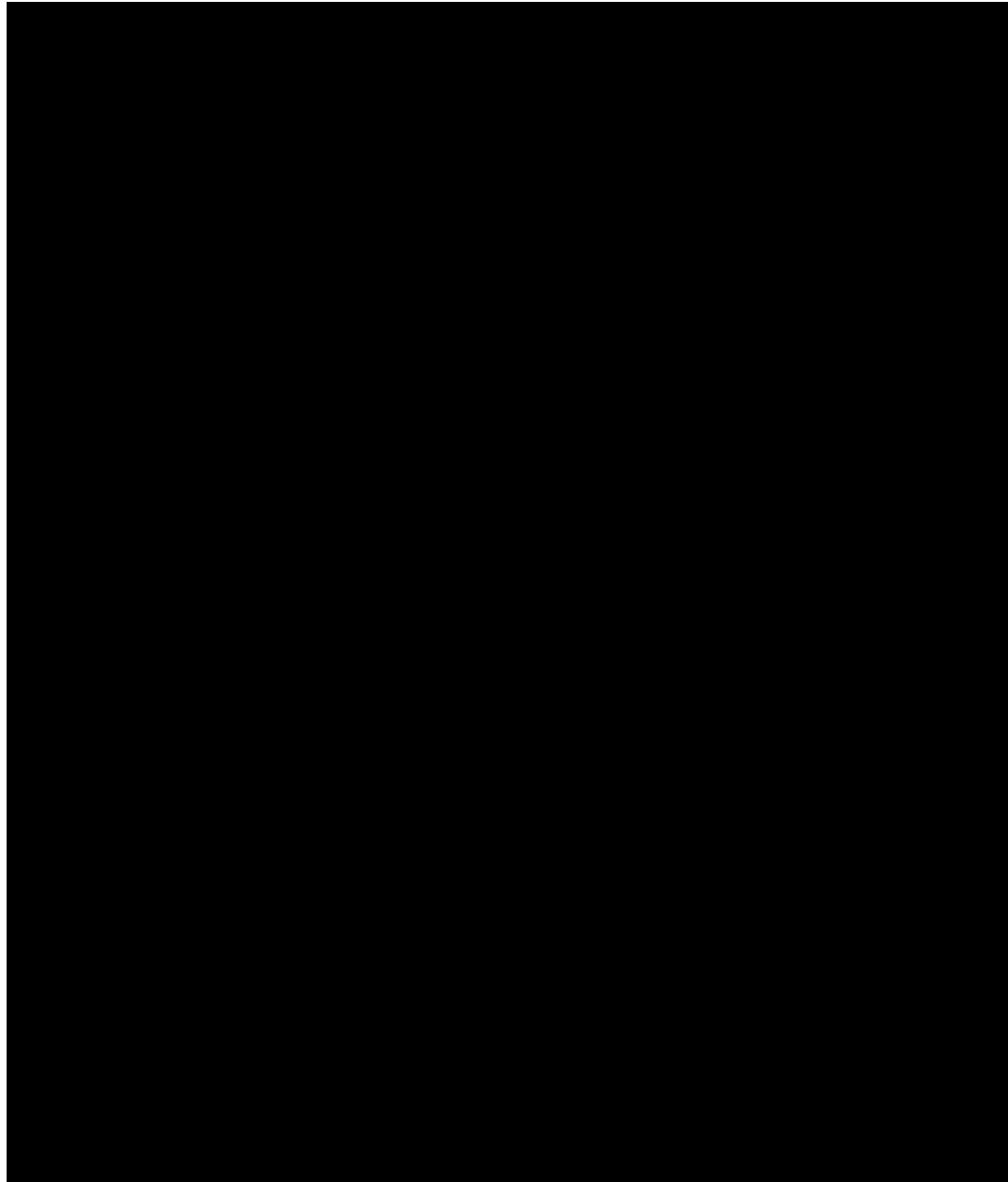
- (ii) without limiting clause 3.16, maintain the Construction Site or that part of the Construction Site,

except where the Principal's Representative advises otherwise.

- (d) **(Further access requirements):** The Contractor must:

- (i) ensure public safety on and adjacent to the Construction Site or that part of the Construction Site;
- (ii) provide for the continuous safe passage of the public, road users on existing roads, footpaths access ways and cycleways affected by the Contractor's Activities in accordance with this deed;
- (iii) subject to clauses 3.2(b)(i), 7.1 and 7.18 and the SWTC, and any relevant Law, limit access to the Construction Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Construction Site as part of the Contractor's Activities; and





7.7 Extra Land and Temporary Areas

(a) **(Obligations):** The Contractor must:

- (i) procure for itself the occupation or use of, or relevant rights over, any land or buildings in addition to the Construction Site which is necessary or which it may require for the purposes of carrying out the Contractor's Activities (**Extra Land**);
- (ii) carry out all activities and procure all Utility Services necessary to make the Extra Land suitable for use by the Contractor; and
- (iii) as a condition precedent to Completion of any Portion:
 - (A) rehabilitate any Extra Land which is no longer required for the purposes of any Portion that has not achieved Completion with the requirements

of all relevant Authorities and other relevant persons with an interest in such Extra Land;

(B) unless not required by the Principal's Representative, provide to the Principal's Representative:

(aa) a properly executed certificate in the form of Schedule B2 (*Property Owner's Certificate*) 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; or

(bb) if the Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the Contractor to the effect that such owner or occupier, or other person having an interest in the Extra Land, has failed or refused to execute such a release within fifteen (15) Business Days after it being provided by the Contractor to the owner, occupier or other person following completion of the work on the Extra Land.

(b) (**Indemnity**): The Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal arising out of or in any way in connection with a claim arising out of or in connection with the Contractor's Activities by the owner or occupier of, or any other person having any interest in any Extra Land, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or Loss.

(c) (**Reinstating Temporary Area**): The Contractor must, as a condition precedent to Completion of any Portion where the Contractor has occupied or made use of a Temporary Area in connection with that Portion, reinstate the Temporary Area to a condition at least equivalent to the condition existing before that occupation or use except for such parts of the Temporary Area:

- (i) that are required by this deed (including the SWTC) to contain any Project Works;
- (ii) which this deed (including the SWTC) specifies need not be reinstated; or
- (iii) that are required for the purposes of any Portion that has not achieved Completion.

7.8 Condition of the Construction Site

(a) (**Acceptance of condition**): Subject to clauses 4, 7.9 to 7.16 (inclusive) and 14.10, the Contractor:

(i) accepts:

- (A) the Construction Site and any Extra Land; and
- (B) any structures or other thing on, above or adjacent to, or under the surface of, the Construction Site and any Extra Land;

in their present condition subject to all defects and Site Conditions;

- (ii) acknowledges that:
- (A) prior to the handover to the Contractor of the various parts of the Construction Site pursuant to clause 7.1, some or all of the Early Utilities Work has been carried out on the Construction Site; and
 - (B) after the handover to the Contractor of the various parts of the Construction Site pursuant to clause 7.1, some of the Early Utilities Work may continue to be carried out on the Construction Site; and
- (iii) agrees that it is not entitled to make, and the Principal will not be liable upon, any Claim in relation to:
- (A) any Loss, delay or disruption it suffers or incurs; and
 - (B) any adverse effect on the Project Works or the Temporary Works, arising out of, or in any way in connection with the Site Conditions or any other condition of the Construction Site or Extra Land encountered in performing the Contractor's Activities.
- (b) (**No representation or warranty**): Despite any other provision of this deed, the Principal makes no representation and gives no warranty to the Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
 - (A) the Construction Site, Extra Land or their surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the Construction Site or Extra Land; or
 - (ii) the existence, location, condition or availability of any Utility Service on, under, above, adjacent to or related to the Construction Site or Extra Land.
- (c) (**Obligations under deed**): The Contractor must investigate, design and construct the Works in accordance with this deed and will not be relieved of its obligations under this deed, irrespective of:
- (i) the Site Conditions encountered in performing the Contractor's Activities;
 - (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - (A) the Construction 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 Construction Site or any Extra Land, the Environment or their surroundings; and
 - (iii) any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 7.8(c)(ii), in particular given that prior to the handover to the Contractor of the various parts of the Construction Site pursuant to clause 7.1, various Interface Works will be carried out or will continue to be carried out on the Construction Site.

- (d) (**Warranties**): Subject to clause 7.8(a) and without limiting clause 7.17(c), the Contractor warrants that, and for all purposes it will be deemed to be the case that, prior to the date of this deed, the Contractor:
- (i) examined, and relied solely upon its own assessment, skill, expertise and inquiries:
 - (A) in respect of all information relevant to the risks, contingencies and other circumstances having an effect on the Target Cost or other amounts in this deed; and
 - (B) carefully checked and acquired actual knowledge of the contents of the documents which constitute this deed,
 - made available in writing by the Principal, or any other person on the Principal's behalf, to the Contractor for the purpose of submitting a proposal for the Contractor's Activities or entering this deed;
 - (ii) satisfied itself that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of the Contractor's Activities and the Works;
 - (iii) informed itself of:
 - (A) the risks and contingencies and other circumstances which might have an effect on the execution of the Contractor's Activities and the Works or the cost of executing the Contractor's Activities;
 - (B) all matters relevant to the employment of labour at the Construction Site; and
 - (C) all industrial matters relevant to the Construction Site;
 - (iv) was given the opportunity to itself undertake, and to request others to undertake, desktop and visual enquiries and investigations:
 - (A) relating to the subject matter of Information Documents; and
 - (B) for design purposes and otherwise;
 - (v) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, each Deed of Disclaimer, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances which might have an effect on the performance of its obligations and its potential Liabilities under this deed; and
 - (vi) undertook desktop and visual enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and Liabilities which it imposes on the Contractor.
- (e) (**No limitation**): Nothing in clause 7.8 limits the operation of clauses 7.9 to 7.16 (inclusive), clause 4 or clause 14.10.

7.9 Unknown Site Conditions

- (a) **(Written notice):** Unless clause 7.15(c)(i)(D) applies, if during the execution of the Contractor's Activities, the Contractor becomes aware of an Unknown Site Condition, the Contractor must:
- (i) promptly; and
 - (ii) where possible before the physical conditions are disturbed,
- give written notice of such Unknown Site Condition to the Principal's Representative.
- (b) **(Notice requirements):** The Contractor must provide in any notice issued pursuant to clause 7.9(a) a statement specifying:
- (i) the location, type and nature of the conditions encountered and detailed particulars on why the Contractor considers they constitute an Unknown Site Condition;
 - (ii) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Unknown Site Condition;
 - (iii) the information required by clause 10.4(c) as if such notice was a Variation Proposal; and
 - (iv) other details reasonably required by the Principal's Representative,
(Unknown Site Condition Notice).
- (c) **(Principal to respond):** Within ten (10) Business Days after receiving:
- (i) the Unknown Site Condition Notice; and
 - (ii) any additional information requested by the Principal pursuant to clause 7.9(b)(iv),
- whichever is later, the Principal must notify the Contractor whether it believes that the Unknown Site Condition Notice identifies an Unknown Site Condition.
- (d) **(Variation):** Subject to clause 7.9(f), if the Contractor gives an Unknown Site Condition Notice and the Principal agrees or it is determined under clause 19 that there is an Unknown Site Condition, the Principal must either:
- (i) direct a Variation under clause 10.8(a) in respect of the Unknown Site Condition; or
 - (ii) take such other action as is necessary to deal with the Unknown Site Conditions.
- (e) **(Determination of cost adjustment):** In making a determination under clause 4 in respect of a Variation directed in accordance with clause 7.9(d), regard will not be had to any Contractor's Activities or additional costs incurred more than ten (10) Business Days before the date on which the Contractor gives the written notice required by clause 7.9(a).

- (f) **(Exclusion for specific conditions):** Despite any other provision of this deed:
- (i) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal for any extension of time to the Date for Completion of any Handover Portion as a result of a Latent Condition; and
 - (ii) if the Contractor discovers an Unknown Utility:
 - (A) in respect of any additional work necessary to deal with the relevant Unknown Utility that is Non-Contestable Work:
 - (aa) the Contractor will be entitled to be paid in accordance with clause 11.16(d)(i) as if such work was Non-Contestable Utilities Work;
 - (bb) such costs will not form part of the Reimbursable Costs for the purposes of calculating the Outturn Cost; and
 - (cc) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim for a Reimbursable Cost Element Adjustment or a Management Fee Adjustment; and
 - (B) in respect of any additional work necessary to deal with the relevant Unknown Utility that is not Non-Contestable Work (including Preliminaries), clause 7.9(d) applies.
 - (g) **(No Claim):** Other than as set out in this clause 7.9 and clause 7.15, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any Unknown Site Condition.

7.10 Contamination

- (a) **(Contractor Contamination):** The Contractor must remediate all Contamination:
- (i) on, in, over, under or about the Construction Site or any Extra Land which is disturbed by or interfered with in the carrying out of the Contractor's Activities;
 - (ii) which migrates:
 - (A) on to the Construction Site or any Extra Land as a result of the Contractor's Activities; or
 - (B) from the Construction Site or any Extra Land as a result of the Contractor's Activities;
 - (iii) which must be remediated for the Project Works to comply with this deed; or
 - (iv) which otherwise arises out of or in connection with the Contractor's Activities,
- (Contractor Contamination), provided that:**
- (v) in respect of clause 7.10(a)(i), the Contractor's risk and obligation to remediate is limited to that part of such Contamination which is actually disturbed by or interfered with in the carrying out of the Contractor's Activities (and not 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 or interfered with in the carrying out of the Contractor's Activities); and

- (vi) in respect of clause 7.10(a)(ii)(A), the Contractor is not required to trace to the source of such Contamination.
- (b) (**Standard of Remediation**): The Contractor must undertake Remediation of any Contractor Contamination in accordance with Law, all guidelines made or approved by the EPA and any applicable Remediation Action Plan submitted under clause 7.12 which has not been the subject of a notice under clause 7.12(c)(ii) so that:
- (i) the Construction Site and any Extra Land is suitable for the performance of the Contractor's Activities and the further construction, operation and maintenance of the WHTBL Program; and
 - (ii) whole of life costs associated with the further construction, operation and maintenance of the WHTBL Program at the relevant parts of the Construction Site where the Remediation is undertaken are minimised.
- (c) (**Contamination caused by Contractor**): Despite anything to the contrary in this deed, to the extent any Contractor Contamination on, in, over, under or about the Construction Site is caused by the Contractor (or its Associates):
- (i) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal in connection with such Contractor Contamination; and
 - (ii) the costs incurred in remediating such Contamination will not be Reimbursable Costs.
- (d) (**Indemnity**): Except to the extent prohibited by Law, the Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this deed in connection with Contamination.

7.11 Disposal of Contamination and Waste

- (a) (**Disposal**): The Contractor must:
- (i) remove from the Construction Site and any Extra Land; and
 - (ii) dispose of,
- any Contamination or Waste pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals.
- (b) (**Approvals**): The Contractor must:
- (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or Waste from the Construction Site or Extra Land holds all relevant Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Approvals to the Principal's Representative upon request.
- (c) (**Sorting Contamination**): The Contractor must:
- (i) except where it is not possible in the circumstances, sort all Contamination and Waste (including separating Unknown Contamination from clean material and any other type of Contamination or Waste); and

- (ii) except to the extent that it is an unavoidable consequence of performing the Works:
 - (A) not contaminate clean material by intermixing any Contamination or Waste; and
 - (B) not intermix Unknown Contamination with clean material or any other type of Contamination or Waste.
- (d) (**Training**): The 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 and Approvals.
- (e) (**Records**): The Contractor must:
 - (i) keep complete, accurate and up to date records of all materials that are disposed of or otherwise removed from the Construction Site or any Extra Land (including all Contamination and other wastes) including classification certificates and tip dockets for all loads; and
 - (ii) if requested, provide a copy of any such records to the Principal's Representative.
- (f) (**Rates for Contamination**): Despite anything else in this deed, the parties acknowledge and agree that for the purposes of valuing Reimbursable Cost Element Adjustments under clauses 4.2 and 4.3 with respect to Unknown Contamination, costs in connection with the disposal and transportation of Contamination must be calculated on the basis of the relevant rates set out in the Schedule of Rates.

7.12 Remediation Action Plans

- (a) (**Remediation of Contamination**): Without limiting the requirements of the Planning Approval or the SWTC, prior to commencing Remediation of any Contamination, the Contractor must prepare and submit to the Principal's Representative a Remediation Action Plan for the relevant area.
- (b) (**Preparation of plan**): Each Remediation Action Plan must:
 - (i) describe the manner in which the Contractor will remediate the relevant area in accordance with the requirements of this deed (including the SWTC); and
 - (ii) be prepared:
 - (A) using Good Industry Practice; and
 - (B) in accordance with the requirements of Law, all guidelines made or approved by the EPA and any other requirements of this deed.
- (c) (**Review of plan**): The Principal's Representative may:
 - (i) review any Remediation Action Plan submitted under clause 7.12(a); and
 - (ii) if the Remediation Action Plan submitted does not comply with this deed, notify the Contractor within fifteen (15) Business Days of the initial submission of the Remediation Action Plan providing reasons for the non-compliance.

- (d) **(Non-compliance):** If the Contractor receives a notice under clause 7.12(c)(ii), the Contractor must promptly submit an amended Remediation Action Plan, or relevant part or component of it, to Principal's Representative and the process in this clause 7.12 will reapply.
- (e) **(Precondition to Remediation of Contamination):** The Contractor may not commence Remediation of Contamination in any area of the Construction Site unless and until the Remediation Action Plan for the relevant area has been submitted to the Principal's Representative and have not been the subject of a notice under clause 7.12(c)(ii).
- (f) **(No duty):** The Principal's Representative owes no duty to the Contractor to review any Remediation Action Plan submitted by the Contractor for Errors, omissions or compliance with this deed.
- (g) **(Rights and Liability unaffected):** No review of, comments upon, notice in respect of any Remediation Action Plan or any other act or omission of the Principal's Representative (including a notice under clause 7.12(c)) in relation to any Remediation Action Plan will lessen or otherwise affect:
 - (i) the Contractor's Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

7.13 Artefacts

- (a) **(Property of the Principal):** As between the Contractor and the Principal, 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 Construction Site (all **Artefacts**) are, and will remain, the property of the Principal.
- (b) **(Obligations):** The Contractor must:
 - (i) without limiting clause 7.9(a), immediately notify the Principal's Representative if it discovers an Artefact;
 - (ii) ensure the Artefact is protected and not lost, removed, disturbed or damaged;
 - (iii) comply with all requirements of Authorities and Law in relation to the Artefact (noting compliance with Law is a contractual requirement and does not constitute a direction of the Principal); and
 - (iv) comply with any directions of the Principal's Representative in relation to the Artefact.
- (c) **(Not a direction):** The Contractor acknowledges and agrees that compliance with clause 7.13(b)(iii) does not constitute a direction of the Principal's Representative for the purposes of clause 7.13(d).
- (d) **(Determination of adjustment):** Clause 7.9(e) will apply to any Unknown Artefact in addition to this clause 7.13(d), and the costs incurred by the Contractor in complying with:
 - (i) requirements of Authorities or Law in accordance with clause 7.13(b)(iii); or
 - (ii) the Principal's Representative's directions under clause 7.13(b)(iv),

in respect of an Unknown Artefact will form part of the determination of any Reimbursable Cost Element Adjustment.

7.14 Utility Services

- (a) **(Obligations):** The Contractor must:
- (i) investigate, relocate, remove, modify, support, protect, reinstate and provide all Utility Services necessary for the Contractor to comply with its obligations under this deed;
 - (ii) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under this deed, including any such devices reasonably required by the Principal's Representative;
 - (iii) except to the extent expressly required by this deed, ensure that no Utility Services are:
 - (A) damaged or destroyed; or
 - (B) disconnected, disrupted, interfered with or interrupted during normal operating hours,by reason of the performance of the Contractor's Activities;
 - (iv) cooperate and coordinate with the owners of all Utility Services, and implement their requirements as part of the Contractor's Activities; and
 - (v) unless a disconnection, interference with, interruption or disruption to any Utility Service is an unavoidable result of carrying out and completing the Contractor's Activities in accordance with this deed, indemnify the Principal from and against any claim against the Principal, or Loss suffered or incurred by the Principal arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to any Utility Service arising out of or in any way in connection with the Contractor's Activities, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or Loss.
- (b) **(Non-Contestable Utilities Works):** Without limiting clause 7.14(a), the parties acknowledge and agree that clause 11.16 applies to Non-Contestable Utilities Works.
- (c) **(Early Utilities Works):** The Contractor's obligations under this clause 7.14 are not limited or otherwise affected by:
- (i) the fact that the Early Utilities Works have been, or will be, carried out; or
 - (ii) the information provided by the Principal in Schedule C4 (*Early Utilities Works*).

7.15 Unknown Pavement Faults

- (a) **(Existing Pavement Assessment):** The Contractor must, as part of the development of the Design Documentation for the Project Works and as part of the

detailed condition assessment of all Existing Assets and existing pavements required by section 5.8.2(d) of the SWTC:

- (i) without limiting clause 7.19, or section 4.4.2 of the SWTC, carry out a condition assessment of existing pavements for the purposes of identifying potential Unknown Pavement Faults by way of:
 - (A) visual inspections; and
 - (B) review of relevant as-built documentation, maintenance and resurfacing records, and other relevant condition or dilapidation reports provided by TfNSW after the date of the deed (if any); and
- (ii) undertake pavement investigations as required in order to prepare the Design Documentation,

and include the outcome of those pavement inspections, reviews and investigations into the "Retained Existing Assets Report" required by section 5.8.2(d) of the SWTC.

- (b) **(Unknown Pavement Fault during design development):** If the Contractor discovers or otherwise becomes aware of an Unknown Pavement Fault during the development of the Design Documentation as contemplated by clause 7.15(a), the Contractor must:

- (i) submit the notice required under clause 7.9 in relation to the relevant Unknown Pavement Fault; and
- (ii) unless otherwise directed by the Principal under clause 7.9(d)(ii), incorporate the rectification of the Unknown Pavement Fault into the Design Documentation in a manner that minimises the time and cost impact of such rectification.

- (c) **(Unknown Pavement Fault during construction):** If the Contractor discovers or otherwise becomes aware of an Unknown Pavement Fault during the physical construction of the Project Works, then:

- (i) where:

- (A) the Contractor is required to re-open the section of road where the Unknown Pavement Fault is located to live traffic on the expiry of the Road Occupancy applicable to the relevant section of road; and
- (B) the Independent Certifier or the Principal's Surveillance Officer considers (acting reasonably) that the Unknown Pavement Fault is likely to cause an immediate risk to the safety of road users if not made safe prior to re-opening,

then:

- (C) the Contractor must:

- (aa) prior to re-opening the road at the expiry of the relevant ROL, carry out all work required in order to ensure the road is safe for re-opening to traffic; and
- (bb) during the relevant ROL or subsequent Approved ROLs, carry out all work required in order to rectify the Unknown Pavement Fault in accordance with the applicable treatment specified in Schedule C5 (*Unknown Pavement Faults*), unless otherwise

directed by the Principal's Surveillance Officer (provided that such direction may only be given where the rectification is not required in order for the Project Works to be completed in accordance with the requirements of this deed); and

- (D) the Contractor is not required to submit the notice required under clause 7.9 in relation to the relevant Unknown Pavement Fault; and
 - (E) the work required under clause 7.15(c)(i)(C) to make safe and rectify the relevant Unknown Pavement Fault will be deemed to be a Variation; and
- (ii) to the extent clause 7.15(c)(i) does not apply to the relevant Unknown Pavement Fault, the Contractor must:
- (A) submit the notice required under clause 7.9 in relation to the relevant Unknown Pavement Fault; and
 - (B) not carry out any work in respect of the relevant Unknown Pavement Fault unless and until the Principal issues a Variation Order under clause 7.9(d) in respect of such work.
- (d) **(Reduction in entitlement):** Without limiting clause 4.3(b) or clause 14.11, the Contractor's entitlement to a Reimbursable Cost Element Adjustment, Management Fee Adjustment or extension to any Date for Completion in connection with:
- (i) an Unknown Pavement Fault first discovered during physical construction of the Project Works will be reduced to the extent that the Contractor failed to comply with clause 7.15(b)(i); and
 - (ii) any other Unknown Pavement Fault encountered during physical construction of the Project Works will be reduced to the extent that the Contractor failed to comply with clause 7.15(b)(ii) (if applicable).
- (e) **(Unknown Pavement Fault Hold Points):** Clause 13.11(e) applies with respect to the Unknown Pavement Fault Hold Points.
- (f) **(Further notification):** If the total value of Reimbursable Costs incurred by the Contractor in complying with clause 7.15(c)(i) is likely to exceed [REDACTED] in a calendar month, the Contractor must provide a written notice to the Principal setting out the Contractor's estimate of the Reimbursable Cost Element Adjustment and Management Fee Adjustment required to reflect the cost of the measures necessary to deal with the relevant Unknown Pavement Faults for that calendar month.
- (g) **(Claims):** Despite anything else in this deed, in respect of Unknown Pavement Faults referred to in clause 7.15(c)(i), the Contractor is only entitled to make (and is only required to make) one Claim per month under clause 4 and one Claim per month under clause 14.8 in respect of such Unknown Pavement Faults and such claim must be made on the date that is five (5) Business Days after the end of each calendar month, in respect of Unknown Pavement Faults corrected in the previous calendar month.
- (h) **(Records):** The Contractor must:
- (i) keep complete, accurate and up to date records of all Unknown Pavement Faults discovered while carrying out the Contractor's Activities and the

rectification works undertaken in relation to such Unknown Pavement Faults, including:

- (A) photographs demonstrating the scope and nature of all Unknown Pavement Faults prior to rectification and the rectification works completed; and
 - (B) evidence of the release of any Unknown Pavement Fault Hold Points; and
- (ii) provide a copy of any such records to the Principal's Representative as part of any relevant Claim under clause 4 and clause 14.8.
- (i) **(Fitness for purpose)**: The parties acknowledge and agree that:
- (i) subject to clause 7.15(i)(ii), the Contractor is not required to and does not warrant the fitness for purpose of any existing pavement within the Construction Site; and
 - (ii) without limiting clause 3.1(a)(v), the Contractor warrants that all aspects of the Works carried out by the Contractor which involve:
 - (A) alterations to any pavements; or
 - (B) the correction of any faults in any pavement,will:
 - (C) upon Completion, be fit for their intended purposes; and
 - (D) thereafter be capable of remaining at all relevant times fit for their intended purposes, including meeting any minimum specified design life criteria and durability requirements set out in the SWTC.

- (j) **(Rectification of negative impact)**: To the extent the Works negatively impact the condition, durability, performance, function or safety of any existing pavement (including by exacerbating an existing defect or causing damage to any pavement), the Contractor must carry out all work required so that the affected existing pavement is in equivalent or better condition than it was in immediately prior to the first Site Access Date, as a condition precedent to Completion of the applicable Portion.

7.16 Existing Assets

- (a) **(Required Existing Asset Works)**: The parties acknowledge and agree that:
- (i) the Works involve impacting on various Existing Assets;
 - (ii) the Contractor must carry out any work or activities in respect of Existing Assets which:
 - (A) expressly form part of the Contractor's scope of works under the SWTC or are necessary in order to carry out the Works in accordance with the SWTC;
 - (B) are required to comply with the Planning Approval conditions (to the extent such conditions are allocated to the Contractor under Schedule E2 (*Planning Approval*)); or

- (C) are required in order to put an Existing Asset in equivalent or better condition than it was in immediately prior to the commencement of physical Works affecting that Existing Asset, but only to the extent the Works:
- (aa) change the loading on the Existing Asset;
 - (bb) negatively impact the condition, durability, performance, function, safety or maintainability of the Existing Asset, including by exacerbating an existing defect or by damaging the Existing Asset; or
 - (cc) structurally rely on the Existing Asset,
- which may include modifying such Existing Asset, or upgrading the condition, performance or standard of, such Existing Asset (**Required Existing Asset Works**); and
- (iii) the Contractor is not required to carry out any work in respect of Existing Assets other than the Required Existing Asset Works, unless the Principal issues a Variation Order as contemplated by clause 7.16(e)(i).
- (b) **(Written notice):** If during the execution of the Contractor's Activities (including during the execution of any Required Existing Asset Work):
- (i) the Contractor first becomes aware of an Existing Asset Fault; and
 - (ii) the work required to rectify or overcome the Existing Asset Fault is not part of the Required Existing Asset Works,
- the Contractor must provide a written notice to the Principal's Representative within ten (10) Business Days (or such longer period as is agreed by the Principal, acting reasonably) of the Contractor first becoming aware (or when it ought reasonably to have first become aware) of the Existing Asset Fault.
- (c) **(Notice requirements):** The Contractor must provide in a notice issued pursuant to clause 7.16(b) a statement specifying:
- (i) the details of the relevant Existing Asset Fault;
 - (ii) an explanation of why the work required to rectify or deal with such Existing Asset Fault is not part of the Required Existing Asset Work;
 - (iii) the additional work and additional resources which the Contractor estimates to be necessary to rectify or deal with the Existing Asset Fault;
 - (iv) the effect (if any) which the proposed Existing Asset Fault will have (if not rectified or otherwise dealt with) on the Contractor's ability to satisfy its obligations under this deed (including the Contractor's fitness for purpose obligations in this deed and any warranties given by the Contractor under this deed);
 - (v) the other information required by clause 10.4(c) as if such notice was a Variation Proposal; and
 - (vi) other details reasonably required by the Principal's Representative.

- (d) **(Principal to respond):** Within:
- (i) twenty (20) Business Days, if the Existing Asset Fault is discovered by the Contractor while undertaking the detailed condition assessment of all Existing Assets and existing pavements as required by section 5.8.2(d) of the SWTC; or
 - (ii) ten (10) Business Days, if the Existing Asset Fault is discovered by the Contractor at any other time,
- after receipt of:
- (iii) the Contractor's notice under clause 7.16(b); and
 - (iv) any additional information requested by the Principal pursuant to clause 7.16(c)(vi),
- whichever is later, the Principal must notify the Contractor whether it believes that the Existing Asset Fault requires work that is not part of the Required Existing Asset Works.
- (e) **(Principal's direction):** If the Contractor provides a notice under clause 7.16(b) and the Principal agrees or it is determined under clause 19 that there is an Existing Asset Fault that requires work that is not part of the Required Existing Asset Works, the Principal must either:
- (i) issue a Variation Order under clause 10 in respect of the work required to rectify or deal with the Existing Asset Fault; or
 - (ii) notify the Contractor that it is not required to rectify or otherwise deal with the Existing Asset Fault, in which case the Contractor will be relieved of its obligations under this deed to the extent reasonably determined by the Principal (having regard to the Contractor's notice under clause 7.16(b)), or as otherwise determined under clause 19.
- (f) **(Fitness for purpose):** The parties acknowledge and agree that:
- (i) subject to clauses 7.16(f)(ii) and 7.16(f)(iii), the Contractor is not required to and does not warrant the fitness for purpose of any Existing Asset;
 - (ii) without limiting clause 3.1(a)(v), the Contractor warrants that the Required Existing Asset Works and any work required to correct Existing Asset Faults (if directed by the Principal under clause 7.16(e)(i)) will:
 - (A) upon Completion, be fit for their intended purposes; and
 - (B) thereafter be capable of remaining at all relevant times fit for their intended purposes, including meeting any minimum specified design life criteria and durability requirements set out in the SWTC; and
 - (iii) the Contractor warrants that in relation to an Existing Asset or part of an Existing Asset on which the Contractor is not required to perform either:
 - (A) any Required Existing Asset Works; or
 - (B) any work required to correct Existing Asset Faults,pursuant to this deed, the Works will not:

- (C) change the loading on such Existing Asset;
 - (D) negatively impact the condition, durability, performance, function, safety or maintainability of such Existing Asset, including by exacerbating an existing defect or damaging the Existing Asset; or
 - (E) structurally rely on such Existing Asset.
- (g) **(No Claim):** Other than as set out in this clause 7.16, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any Existing Asset Fault, the Required Existing Asset Works or the condition of any Existing Asset.

7.17 Information Documents

- (a) **(Not part of this deed):** Whether or not any Information Documents or any part thereof form any schedule to this deed, the Contractor acknowledges that:
 - (i) the Information Documents or part thereof do not form part of this deed and that clause 7.17(c) applies to the Information Documents or part thereof; and
 - (ii) where Information Documents or any part thereof form a schedule to this deed, they do so only for the purposes of identification of that document or part thereof.
- (b) **(Acknowledgements):** Without limiting clause 7.17(c):
 - (i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents, and the Information Documents do not form part of this deed; and
 - (ii) subject to clause 7.17(f), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the Contractor or any other person to whom the Information Documents are disclosed; or
 - (B) a failure by the Principal to provide any other information, data or documents to the Contractor.
- (c) **(Warranties):** The Contractor:
 - (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document (including the Information Documents) made by, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
 - (B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

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

- (ii) warrants that it:
 - (A) has carefully reviewed the Information Documents provided to the Contractor by the Principal as at the date of this deed;
 - (B) enters into this deed based on its own investigations, interpretations, deductions, information and determinations;
 - (C) has examined and will continue to examine all other relevant information available on reasonable enquiry;
 - (D) has obtained and considered all necessary information relevant to the risks, contingencies and other circumstances having an effect on the Contractor's Activities;
 - (E) has satisfied itself as to the correctness and sufficiency of this deed having regard to the risks referred to in clause 7.17(c)(ii)(D); and
 - (F) has taken such professional advice as is appropriate for projects of the type contemplated by this deed;
 - (iii) agrees that it will carefully review any Information Documents provided to the Contractor by the Principal after the date of this deed, and will, on request by the Principal, provide written confirmation of such review; and
 - (iv) acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties, acknowledgements and agreements in clauses 7.17(c)(i), 7.17(c)(ii) and 7.17(c)(iii).
- (d) **(Release and indemnity):** Subject to clause 7.17(e), the Contractor irrevocably releases and indemnifies the Principal (and any of its officers, employees, consultants and agents) from and against:
- (i) any Claim against them by, or Liability of them to, any person; or
 - (ii) (without being limited by clause 7.17(d)(i)) Losses suffered or incurred by them,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance upon, or use of the Information Documents, as referred to in clauses 7.17(b) and 7.17(c)(i), to or by the Contractor or any other person to whom the Information Documents are disclosed by the Contractors or its Associates or a failure by the Principal to provide any information, data or documents to the Contractor (other than any information, data or documents which the Principal is required to provide to the Contractor by the terms of this deed);
 - (iv) any breach by the Contractor of this clause 7.17; or
 - (v) the Information Documents being relied upon or otherwise used by the Contractor or its Associates or any other person to whom the Information Documents are disclosed by the Contractor or its Associates in the preparation of any information or document.

- (e) (**Benefit of release and indemnity**): The releases and indemnities under clause 7.17(d) benefit the Principal and its officers, employees, consultants and agents, and the Principal may enforce each release and indemnity in its own right and on behalf of its officers, employees, consultants and agents.
- (f) (**Contractor's rights unaffected**): The acknowledgements, warranties, releases and indemnities referred to in clauses 7.17(a) to 7.17(d) do not affect the Contractor's rights under clauses 7.9 to 7.16 (inclusive)

7.18 **Principal's Right to Access and Inspect**

The Contractor must:

- (a) (**Minimise disruption**): without limiting clauses 7.6 and 7.7, minimise disruption or inconvenience to:
 - (i) the Principal, occupiers, tenants and potential tenants of the Construction Site, Extra Land or any other land or buildings above or adjacent to the Construction Site or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Construction Site or Extra Land, including any occupation or use of the Project Works, a Portion or a part thereof under clause 16.4;
 - (ii) others having a right of access to the Construction Site, Extra Land or any other land or buildings on or adjacent to the Construction Site or any Extra Land; and
 - (iii) the occupants of any other land adjoining the Construction Site or located in the vicinity of the Construction Site.
- (b) (**Access**): at all times:
 - (i) give the Principal's Representative, the Principal, the Other Contractors, the Acoustics Advisor, the Environmental Representative, the Principal's Surveillance Officers and any person authorised by either the Principal's Representative or the Principal safe, prompt and unimpeded access to:
 - (A) the Works;
 - (B) the Design Documentation and any other documentation created for the purposes of the Contractor's Activities; and
 - (C) the Construction Site and Extra Land, including where required, reasonable vehicular access through the Construction Site or Extra Land; and
 - (D) any other areas where the Contractor's Activities are being carried out, for the purposes of:
 - (E) observing progress in and inspecting the Contractor's Activities and monitoring compliance by the Contractor of its obligations under this deed;
 - (F) seeking comments from others in respect of the Contractor's Activities;
 - (G) exercising any right or performing any obligation the relevant party has under any this deed or any other Project Document; and

(H) performing any work or activities authorised by the Principal,

and for this purpose allow such persons to attend site inductions prior to the relevant Site Access Date for an area of the Construction Site; and

- (ii) provide the Principal, the Principal's Representative, the Independent Certifier, the Acoustics Advisor, the Environmental Representative, the Principal's Surveillance Officers and any person authorised by either the Principal's Representative or the Principal with every reasonable facility necessary for the Inspection of the Contractor's Activities, including the Contractor's compliance with the Approvals.

7.19 Condition Surveys

The Contractor must:

- (a) (**Condition survey**): identify and prepare a condition survey of all property or assets that could be affected or damaged by the Contractor's Activities and as required by the Planning Approval and in accordance with the SWTC;
- (b) (**Prior to commence any work**): prepare this condition survey a minimum of two weeks prior to commencing any work on the Construction Site, or on any Extra Land, where that work could damage property or assets on or off the Construction Site;
- (c) (**Experienced personnel**): in preparing this condition survey, use suitably skilled, qualified, and experienced personnel or Subcontractors; and
- (d) (**Rectification of damage**): without limiting clauses 7.4, 7.5 and 7.7(c), prior to Completion of a Portion, rectify any damage to property or assets relating to the Contractor's Activities for that Portion caused by the Contractor's Activities.

7.20 Setting Out

- (a) (**Carrying out surveys**): The Contractor must:

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

- (b) (**Notification of error**): If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Project Works, the Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor must rectify the error.

7.21 Construction of WFU Works

- (a) Unless otherwise expressly provided in the SWTC or where otherwise approved in writing by the Principal, the Contractor must ensure that the WFU Works are

constructed within the relevant boundaries of the Construction Site, excluding the Temporary Areas.

- (b) Notwithstanding clause 7.21(a), the Contractor is permitted to install permanent substratum ground anchors as part of the WFU Works within the area of the Construction Site labelled "82a" in the Site Access Schedule for the purpose of supporting the Cut and Cover Structure and Tunnel Approach/Exit Structure (each as defined in the SWTC), provided that the ground anchors:
 - (i) do not encroach a distance of more than six (6) metres beyond the eastern boundary of this area, when viewed in plan; and
 - (ii) are not located at a depth of less than four (4) metres below ground surface level within this area existing at the relevant Site Access Date.
- (c) The Contractor must notify the Principal's Representative in writing of the substratum land required for the installation of the ground anchors referred to in clause 7.21(b), and provide the Principal with all information in relation to the substratum land requirements requested by Principal (and to the satisfaction of the Principal), by no later than the date which is eighteen (18) months after the date of this deed.

7.22 Survey

- (a) (**Completion**): The Contractor must, as a condition precedent to Completion of a Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:
 - (i) for its review under clause 13.13 a Survey Plan for the relevant Portion that:
 - (A) has regard to the setback requirements in the Building Code of Australia;
 - (B) has regard to any stratum lots whether above or below ground;
 - (C) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
 - (D) shows all internal title boundaries;
 - (E) shows all easements; and
 - (F) shows the location of the Project Works and all Utility Services that the Contractor relocates, modifies, supports, protects or reinstates; and
 - (ii) 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:
 - (A) the whole of the Portion has been constructed within the relevant boundaries of the Construction Site stipulated in this deed, except only for parts of the Project Works or Portion specifically required by this deed to be outside those boundaries;
 - (B) the elements of the Portion are in the positions and within the tolerances required by Law and this deed;
 - (C) the survey information complies with the requirements of this deed; and

- (D) any other matter identified by the Principal's Representative, complies with the requirements of this deed.

7.23 Principal not in Control

The Contractor and Principal acknowledge that nothing in this deed, including the right to inspect pursuant to clause 7.18 or any audit by the Principal or the Principal's Representative, at any time will be construed to mean or imply that:

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

8. COMPLIANCE

8.1 Quality of Work

- (a) (**Compliance with deed**): The Contractor must in carrying out the Contractor's Activities use the Materials and standard of workmanship required by this deed, and otherwise comply with this deed in the execution of the Contractor's Activities.
- (b) (**Fit for purpose**): In the absence of any other requirement, the Contractor must use suitable new Materials and ensure that all workmanship and Materials are fit for their intended purpose.

8.2 Compliance with SWTC

The Contractor must comply with the requirements of the SWTC in accordance with this deed.

8.3 Environmental Management

The Contractor must:

- (a) (**Environmental management system**): hold and maintain an environmental management system which complies with AS/NZS ISO 14001 (Environmental Management Standards Set) for so long as any Contractor's Activities are carried out;
- (b) (**CEMP**): as part of the Project Plans, document, implement and maintain a project-specific Construction Environmental Management Plan for the management of environmental matters in accordance with Law and Approvals;
- (c) (**Compliance with CEMP**): carry out the Contractor's Activities in accordance with the Construction Environmental Management Plan;
- (d) (**Subcontractor's activities**): supervise Subcontractor's activities and ensure that they are complying with all relevant Law and Approvals in relation to environmental management on the Construction Site and Extra Land; and
- (e) (**Ecological sustainability**): use, and be able to demonstrate the use of, ecologically sustainable development principles in the design and construction of the Works and the Contractor's Activities.

8.4 Health and Safety Management

The Contractor must:

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

8.5 Safety

- (a) (**Safety and property**): The Contractor must ensure that the Contractor's Activities are carried out:
 - (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.
- (b) (**Principal's Representative may direct**): If the Principal's Representative or the Principal's Surveillance Officers reasonably consider there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities:
 - (i) the Principal's Representative or the Principal's Surveillance Officers may direct the Contractor to change its manner of working or to cease working; and
 - (ii) the Contractor must comply with any direction by the Principal's Representative or the Principal's Surveillance Officers under clause 8.5(b)(i).
- (c) (**Legislative requirements**): The Contractor must:
 - (i) ensure that in carrying out the Contractor's Activities:
 - (A) it complies with all Law, including the WHS Legislation, Heavy Vehicle National Law and other requirements of this deed for work health, safety and rehabilitation management (including, but not limited to, those requirements set out in the WHS Guidelines);
 - (B) the Contractor, all Subcontractors, contractors or consultants engaged by the Contractor comply with the requirements referred to in this clause 8.5 and their respective obligations under the WHS Legislation; and

- (C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a 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, chain of responsibility and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities, unless otherwise directed by the Principal;
- (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
- (iv) provide the Principal's Representative with the written assurances obtained pursuant to clause 8.5(c)(iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
- (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 13.7, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 8.5), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
- (vi) consult, cooperate and coordinate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
- (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Project 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 8.5.
- (d) **(Risk mitigation)**: Without limiting clause 21.12, the Principal may take any action necessary to protect or to prevent or minimise risks to, the Project Works, the Environment, other property or the health or safety of people.
- (e) **(Failure to take action)**: If the action taken by the Principal under clause 8.5(d) is action which the Contractor was required to take under this deed but did not take, the amount of any Loss that the Principal suffers or incurs arising out of or in any way in connection with:
- (i) taking the action contemplated in this clause 8.5(d); or
- (ii) the Contractor's failure to take that action,
- will, except to the extent prohibited by Law, be a debt due from the Contractor to the Principal.
- (f) Not used

- (g) (**Compliance with WHS obligations**): Without limiting the Contractor's obligations under any other clause of this deed, insofar as the Contractor, in carrying out the Contractor's Activities, is a person conducting a business or undertaking that:
- (i) designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011 (NSW)* applies;
 - (ii) manufactures plant, substances or structures to whom section 23 of the *Work Health and Safety Act 2011 (NSW)* applies;
 - (iii) imports plant, substances or structures to whom section 24 of the *Work Health and Safety Act 2011 (NSW)* applies;
 - (iv) supplies plant, substances or structures to whom section 25 of the *Work Health and Safety Act 2011 (NSW)* applies; or
 - (v) installs, constructs or commissions plant or structures to whom section 26 of the *Work Health and Safety Act 2011 (NSW)* applies,

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

- (h) (**Qualified personnel**): Without limiting the Contractor's obligations under any other clause of this deed, the Contractor must:
- (i) ensure that, if any Law, including in the State or Territory in which the Project Works are situated or the Project Works are carried out, requires that:
 - (A) a person:
 - (aa) 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; or
 - (bb) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (B) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (ii) not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of clause 8.5(h)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
 - (iii) if requested by the Principal's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety to the satisfaction of the Principal's Representative before the Contractor or Subcontractor (as applicable) commences such work.

8.6 Principal Contractor

- (a) (**Meaning of terms**): In this clause 8.6 the terms construction project, construction work, notifiable incident, place of work, person conducting a business or undertaking (PCBU), principal contractor and workplace have the same meanings assigned to those terms under the WHS Legislation.
- (b) (**Same construction project**): Subject to clause 8.6(d), for the purpose of the WHS Legislation and this deed, the construction work involved in the Contractor's Activities and any Other Contractor Work is taken to be part of the same construction project, other than in circumstances where the Other Contractor Works are:
 - (i) carried out on the Shared Construction Site Area when the relevant area is not the subject of an ROL obtained by the Contractor; or
 - (ii) the Early Utilities Works or any other works carried out by the Sydney Program Alliance.
- (c) (**Appointment**): Subject to clause 8.6(d), the Principal:
 - (i) engages the Appointed Principal Contractor as the principal contractor in respect of the construction work involved in the Contractor's Activities and any Other Contractor Work, other than the construction works involved in Other Contractor Works in circumstances where such works are:
 - (A) on any Shared Construction Site Area but including the construction of the Shared Access Road; or
 - (B) Early Utilities Works or any other works carried out by the Sydney Program Alliance; and
 - (ii) authorises the Appointed Principal Contractor to have management and control over the Construction Site (other than on any Shared Construction Site Area but including the Shared Access Road while it is being constructed), including each workplace at which the Contractor's Activities are to be carried out, and to discharge the duties of a principal contractor under the WHS Legislation.
- (d) (**Shared Construction Site Area**): With respect to the Shared Access Road (once constructed) and the other Shared Construction Site Areas, the Principal:
 - (i) engages the Appointed Principal Contractor as the principal contractor in respect of the construction work:
 - (A) involved in the Contractor's Activities carried out on that Shared Construction Site Area; and
 - (B) involved in any Other Contractor Work carried out on that Shared Construction Site Area when the relevant area is the subject of an ROL obtained by the Contractor (other than any construction work involved in the Early Utilities Works or any other works carried out by the Sydney Program Alliance); and
 - (ii) authorises the Appointed Principal Contractor to have such management and control over that Shared Construction Site Area as required to discharge the duties of a principal contractor under the WHS Legislation.

- (e) **(Acceptance of appointment):** The Appointed Principal Contractor:
- (i) accepts the engagement as principal contractor referred to in clauses 8.6(c) and 8.6(d) and agrees to discharge all the duties imposed on a principal contractor by the WHS Legislation and this deed;
 - (ii) must exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
 - (A) ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and
 - (B) enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Construction Site.
- (f) **(Term of engagement):** The parties acknowledge and agree that the Appointed Principal Contractor's engagement and authorisation as principal contractor commences from the date on which the Contractor is given access to a part of the Construction Site in accordance with clause 7.1 and continues:
- (i) subject to clause 8.6(f)(ii), until the earlier of:
 - (A) the termination of this deed;
 - (B) in respect of each Portion, the day after the Date of Completion of the Portion;
 - (C) in respect of any part of the Construction Site for a which a Site Access Expiry Date is specified in the Site Access Schedule, the date on which the Contractor vacates that area of the Construction Site;,
unless sooner revoked by the Principal; and
 - (ii) in respect of any construction work:
 - (A) involved in the Contractor's Activities carried out on any part of a Shared Construction Site Area; or
 - (B) involved in any Other Contractor Works carried out on any part of a Shared Construction Site Area when the relevant area is the subject of an ROL obtained the Contractor,
- during the period any such construction work is carried out.
- (g) **(Indemnity):** To the extent not prohibited by Law, the Contractor must indemnify the Principal from and against all claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure of:
- (i) the Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of a principal contractor under the WHS Legislation that the Appointed Principal Contractor is required to discharge in accordance with this clause 8.6; or
 - (ii) the Contractor to otherwise comply with the WHS Legislation, Heavy Vehicle National Law or other Law concerning work health and safety or clauses 8.4, 8.5 and this clause 8.6.

- (h) **(Discharging of responsibilities):** Where the Principal is not otherwise able to validly engage the Appointed Principal Contractor as principal contractor pursuant to clauses 8.6(c) and 8.6(d), the Appointed Principal Contractor must exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if the Appointed Principal Contractor had been validly engaged as the principal contractor under the WHS Legislation so as to ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged, and for this purpose the Principal authorises the Appointed Principal Contractor to exercise such authority of the Principal as is necessary to enable the Contractor to discharge the responsibilities imposed on a principal contractor under the WHS Legislation.
- (i) **(Extra Land):** Without limiting anything else in this clause 8.6, the Contractor must, in respect of any construction work carried out on all or part of the Extra Land, ensure that the Appointed Principal Contractor discharges the duties of a principal contractor under the WHS Legislation in respect of such construction work.
- (j) **(Other obligations):** Without limiting any other provision of this deed, the Contractor:
- (i) must discharge all applicable obligations under the WHS Legislation and under any plan or any other Laws relating to WHS;
 - (ii) accepts that it is a PCBU:
 - (A) carrying out the construction work; and
 - (B) in respect of the Works,
for the purposes of the WHS Legislation;
 - (iii) is not entitled to make, and the Principal will not be liable upon, any Claim in connection with the performance of the role of principal contractor;
 - (iv) must comply with any direction on safety issued by a relevant Authority;
 - (v) must immediately notify the Principal of any notifiable incident in connection with the Works or the Construction Site;
 - (vi) must provide to the Principal all notices and correspondence concerning WHS issued in connection with the Works within five (5) Business Days after the dispatch or receipt of any such notice or correspondence;
 - (vii) acknowledges that the Appointed Principal Contractor has control and management of the Construction Site for the purposes of the WHS Legislation to the extent specified in clause 8.6;
 - (viii) must itself comply, and ensure that all subcontractors engaged by the Contractor in connection with the Works, comply with their respective obligations under the WHS Legislation;
 - (ix) must ensure that it carries out the Works in a manner which ensures that the Principal satisfies its obligations under the WHS Legislation;
 - (x) must display signs that are clearly visible from outside the place of work identifying the Appointed Principal Contractor as the principal contractor and stating the contact telephone numbers of the Appointed Principal Contractor and the Contractor (including an after-hours emergency telephone number of the Appointed Principal Contractor) and the location of the Contractor's main site administration facilities for the construction project; and

- (xi) must comply 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.
- (k) (**Notification of termination**): The Principal may notify the Contractor that it has terminated the Appointed Principal Contractor's engagement as principal contractor and advise the Contractor of the new principal contractor for the Works.
- (l) (**Termination**): If the Appointed Principal Contractor's appointment and engagement as principal contractor is terminated under clause 8.6(k), then the Contractor must (and must ensure that its Associates also):
 - (i) comply with all requirements of the new principal contractor in executing the Project Works and its other obligations under this deed so as to enable the new principal contractor to meet its obligations under the WHS Legislation; and
 - (ii) refrain from doing anything that may impede upon the new principal contractor from complying with its obligations under the WHS Legislation.

8.7 No Relief from obligations

The Contractor will not be relieved from any of its Liabilities or responsibilities under this deed (including under clause 12 or otherwise according to Law) nor will the rights of the Principal whether under this deed or otherwise according to Law be limited or otherwise affected, by:

- (a) (**Quality Management System or plan**): the implementation of, and compliance with, any Quality Management System or Quality Management Plan by the Contractor;
- (b) (**Project Plans**): compliance with the Project Plans by the Contractor;
- (c) (**Hold points**): 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 (including the Principal's Surveillance Officers), particularly those concerning or relating to the Contractor proceeding past any Hold Point or Witness Point identified in the SWTC or otherwise directed by the Principal's Representative or a Principal's Surveillance Officer;
- (d) (**Failure to detect Defect**): 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;
- (e) (**Inspections**): any Inspections arranged by the Principal's Representative or a Principal's Surveillance Officer under this deed or any related discussions between the Contractor's Representative, the Principal's Representative and a Principal's Surveillance Officer; or
- (f) (**Monitoring or audit**): any monitoring or audit arranged by the Principal, or any discussions between the Quality Manager and the Principal as contemplated under Appendix C.7 of the SWTC.

8.8 Australian Government Requirements

- (a) **(Compliance with code):** The Contractor:
- (i) declares as at the date of this deed; and
 - (ii) must ensure during the term of this deed,
- that, in relation to the Project Works, 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;
 - (vi) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
 - (vii) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government.
- (b) **(No relief):** The Contractor acknowledges and agrees that compliance with the Building Code does not relieve the Contractor from any responsibility or obligation under this deed, or from liability for any Defect in the Project Works arising from compliance with the Building Code.
- (c) **(Notify the ABCC):** The 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 two (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 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 8.8(c)(i)(A); and
 - (ii) give the Principal a copy of any notification given by the Contractor to the ABCC under clause 8.8(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) **(Powers of ABCC):** The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIP Act and the Building Code and must ensure that it (and must procure that its Subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
- (i) for entry under section 72 of the BCIIP Act;
 - (ii) to interview any person under section 74 of the BCIIP Act;
 - (iii) to produce records or documents under sections 74 and 77 of the BCIIP Act; and

- (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (e) (**Subcontracting**): The 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 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 8.8.
- (f) (**Subcontractor's declaration**): The Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 8.8(e) promptly upon request.
- (g) (**Records**): The Contractor must maintain adequate records of the compliance with the Building Code by:
 - (i) the Contractor;
 - (ii) the Subcontractors;
 - (iii) the Contractor's consultants; and
 - (iv) any related entity of the Contractor.
- (h) (**Related entity**): For the purposes of this clause 8.8, related entity has the meaning given to that term in subsection 3(2) of the Building Code.

8.9 NSW Guidelines

- (a) (**NSW Guidelines**): In addition to terms defined in this deed, terms used in this clause 8.9 have the same meaning as is attributed to them in the NSW Industrial Relations Guidelines: Building and Construction Procurement (**NSW Guidelines**) (as published by the NSW Treasury in July 2013, and updated in September 2017). The NSW Guidelines are available at <https://www.industrialrelations.nsw.gov.au/assets/Uploads/files/New-South-Wales-Industrial-Relations-Guidelines-Building-and-Construction-Procurement.pdf>.
- (b) (**Primary Obligation**): The Contractor must:
 - (i) at all times comply with, and meet any obligations imposed by, the NSW Guidelines;
 - (ii) 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;
 - (iii) where the Contractor engages a Subcontractor, ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 8.9, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines; and

(iv) not appoint or engage another party in relation to the Project Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

(c) (**Access and information**): The Contractor must:

(i) maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors and related entities;

(ii) allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

(A) enter and have access to sites and premises controlled by the Contractor, including but not limited to the Construction Site;

(B) inspect any work, material, machinery, appliance, article or facility;

(C) access information and documents;

(D) inspect and copy any record relevant to the Project Works;

(E) have access to personnel; and

(F) interview any person,

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

(iii) 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, and ensure its related entities do the same.

(d) (**Sanctions**): The Contractor:

(i) warrants that at the time of entering into this deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply;

(ii) acknowledges that: if the 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; and

(iii) acknowledges and agrees that where a sanction is imposed:

(A) it is without prejudice to any rights that would otherwise accrue to the parties; and

(B) the State of NSW (through its agencies, Ministers and the CCU) may:

(aa) record and disclose details of non-compliance with the NSW Guidelines and the sanction; and

(bb) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.

(e) **(Compliance):** The Contractor:

- (i) must comply with the NSW Guidelines, including by taking any positive steps it is obliged to take to meet its obligations under the NSW Guidelines;
- (ii) acknowledges and agrees that compliance with the NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities and any other obligation under this deed, or from liability for any Defect in the Project Works or from any other legal Liability, whether or not arising from its compliance with the NSW Guidelines; and
- (iii) where a change in this deed or the Project Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, must immediately notify the Principal (or nominee) of the change, or likely change and specify:
 - (A) the circumstances of the proposed change;
 - (B) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
 - (C) what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan),

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

8.10 **TfNSW's Statement of Business Ethics**

- (a) **(Compliance):** The Contractor must at all times comply with TfNSW's Statement of Business Ethics, a copy of which is available at https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/statement-business-ethics_0.pdf.
- (b) **(Subcontractor acknowledgement):** Prior to the engagement of any Subcontractor by the Contractor, the Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with TfNSW's Statement of Business Ethics.

8.11 **Independent Advisers**

- (a) **(Independent Estimator):** The Principal may engage an Independent Estimator to provide advice, as and when requested by the Principal, in respect of any adjustments to the Target Cost in order to determine if such adjustments offer Value for Money.
- (b) **(Financial Auditor):** The Principal will until the date of expiry of the final Defects Correction Period, engage a Financial Auditor to provide a quarterly report to the Principal's Representative in which the Financial Auditor provides the following:
 - (i) certify whether payments have been made to Subcontractors in accordance with requirements of this deed;
 - (ii) reconcile the Project Bank Accounts; and

- (iii) undertake sample audits, using a risk-based approach, of the costs claimed as reimbursable by the Contractor to confirm if were correctly incurred and are actual costs exclusive of margins.
- (c) (**Cooperation**): The Contractor acknowledges and agrees that:
- (i) the Independent Estimator and the Financial Auditor will require full access to all accounts, subcontracts and financial information in connection with the performance of the Contractor's Activities and this deed;
 - (ii) it will cooperate in facilitating any functions of the Independent Estimator and the Financial Auditor including by making available all necessary accounts, subcontracts and financial information to the Principal's Representative, the Independent Estimator and the Financial Auditor to enable an audit to be conducted; and
 - (iii) the Principal is under no obligation to proceed on the basis of the advice and reports provided by the Independent Estimator or the Financial Auditor under this clause 8.11.

8.12 Asset Management Information

- (a) (**Asset Management Information**): The Contractor must prepare and submit Asset Management Information for the relevant Portion in accordance with the requirements of the SWTC, including in Appendix C.8 of the SWTC.
- (b) (**Compliance with deed**): All Asset Management Information must comply with the requirements of this deed, including the SWTC.
- (c) (**Review by Principal's Representative**): The Principal's Representative may, within fifteen (15) Business Days of the submission of the Asset Management Information for a Portion, either:
 - (i) reject the Asset Management Information for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Asset Management Information is required (together with reasons) and a time within which this must occur; or
 - (ii) advise in writing that the Asset Management Information is not rejected.
- (d) (**Update and resubmit**): If the Asset Management Information for a Portion is rejected by the Principal's Representative, the Contractor must update and resubmit the Asset Management Information and clause 8.12(c) will re-apply.
- (e) (**Comments from others**): The Principal's Representative may:
 - (i) provide copies of any Asset Management Information to; and
 - (ii) seek comments in respect of any Asset Management Information, from, the Independent Certifier and any Interface Contractor that will take over any Handover Portion to which the Asset Management Information relates.
- (f) (**No duty**): The Principal's Representative owes no duty to the Contractor to review any Asset Management Information submitted by the Contractor for errors, omissions or compliance with this deed.
- (g) (**Liabilities and rights unaffected**): No review of, comments upon, non-rejection or rejection of any Asset Management Information by the Principal's Representative,

nor any other direction by the Principal's Representative in respect of any Asset Management Information, will lessen or otherwise affect:

(i) the Contractor's Liabilities or responsibilities under this deed or otherwise according to Law; or

(ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

(h) (**Fit for intended purpose**): The Contractor warrants that on the Date of Completion of a Portion, the Asset Management Information for that Portion will be fit for its intended purposes.

9. DESIGN, DESIGN DOCUMENTATION AND COST PLANNING

9.1 Design obligations

(a) (**Design of the Works**): The Contractor must develop the design of the Works so that if the Works are constructed in accordance with the IFC Design Documentation, the Works will comply with:

(i) the SWTC;

(ii) any Variation directed pursuant to a Variation Order, any Variation agreed or determined following a Claim under clause 22.1, and any Pre-Agreed Variation instructed under clause 10.10(a);

(iii) the Contractor's fitness for purpose obligations in this deed; and

(iv) the other requirements of this deed.

(b) (**Design-only scope**): The Contractor acknowledges and agrees that:

(i) part of the Contractor's Activities includes developing Design Documentation pursuant to section 5.32(a) of the SWTC for the scenario contemplated by the Pre-Agreed Variation labelled "PAV 4" in Schedule A3 (*Pre-Agreed Variations*);

(ii) the Principal may issue a Variation Proposal Request or direct the Contractor to implement a Variation that relates to the preparation of Design Documentation only; and

(iii) aspects of such Design Documentation will be used for the Works and other aspects may:

(A) not be used for the Project or WHTBL Program at all;

(B) be used for the Works if the Principal directs the relevant Pre-agreed Variation or otherwise directs a relevant Variation; or

(C) without limiting the rights of the Principal contemplated by clause 9.12 to use the Design Documentation, be used for the procurement and design and development of other parts of the WHTBL Program.

9.2 Changes to the Concept Design

(a) (**Compliance with deed**): The Contractor:

(i) warrants that the Concept Design complies with this deed and is fit for purpose; and

- (ii) acknowledges that the Principal has not approved the Concept Design and no review, comments or approval of the Principal or Principal's Representative in relation to the Concept Design (whether made before or after entry into this deed) will impact the Contractor's obligations under this deed.
- (b) (**No Claim**): The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in relation to or arising out of the Concept Design, including to the extent that a direction by the Principal's Representative results in a change to the Concept Design which is required as a result of the Concept Design not being fit for purpose.
- (c) (**Changes**): The Contractor may make changes to the Concept Design but only to the extent that:
 - (i) the changes will comply with the Contractor's fitness for purpose obligations in this deed and the changes will not adversely impact the:
 - (A) durability;
 - (B) whole of life performance;
 - (C) environment and sustainability performance;
 - (D) functional performance and ease of operation;
 - (E) safety; or
 - (F) whole of life costs associated with any part of the Project Works including the costs of operation and maintenance,
 - to the extent depicted in or achieved by the Concept Design;
 - (ii) the Contractor has notified the Principal's Representative of the proposed change setting out in the notice the reason for the change and a detailed analysis of the impact on the matters referred to in this clause 9.2(c); and
 - (iii) the Contractor has obtained the consent in writing of the Principal's Representative to the proposed change.

9.3 Design and SWTC Liability

- (a) (**SWTC fit for purpose**): The Contractor warrants that:
 - (i) it has carefully reviewed the SWTC;
 - (ii) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC (including in respect of the constructability of the Works) to enable the Contractor to carry out and fulfil its obligations under this deed; and
 - (iii) the SWTC is:
 - (A) fit for the purpose of specifying the scope, quality, extent, design life and intended purpose of the Works;
 - (B) contains a level of detail and specificity of requirements which a contractor exercising Good Industry Practice would consider to be appropriate for a project of similar nature, scope value and complexity as the Project; and

- (C) without limitation, will result in the achievement of all of the functional and performance requirements specified in the SWTC.
- (b) (**No Claim**): Subject to clause 1.3, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in relation to:
- (i) the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC to carry out the Contractor's Activities; and
 - (ii) any ambiguities, discrepancies or inconsistencies in or between the SWTC and the Approvals.
- (c) (**Fit for purpose**): The Design Documentation must:
- (i) satisfy the requirements of the SWTC and the other requirements of this deed; and
 - (ii) be and remain at all relevant times fit for its intended purpose.
- (d) (**Obligations and warranties unaffected**): Subject to clause 10.8(c), the Contractor's obligations under and the warranties given in this deed will remain unaffected and it continues to be responsible for the construction, Commissioning, testing and completion of the Works notwithstanding any Variation directed by the Principal's Representative.

9.4 Preparation and submission of Design Documentation

The Contractor must develop, complete and submit all Design Documentation in accordance with this deed (including the Contractor Documentation Schedule) and the Design Management Plan.

9.5 Third Party Agreements

The Contractor acknowledges and agrees that:

- (a) Design Documentation that must be provided under or in connection with any Third Party Agreement must comply with the requirements of the relevant Third Party Agreement; and
- (b) comments provided by the Principal on Design Documentation may include comments from the counter-parties to the Third Party Agreements.

9.6 Certification of Design Documentation

The parties acknowledge and agree that Design Documentation with respect to the Final Design Documentation Stage must be certified in accordance with the requirements of the Contractor Documentation Schedule.

9.7 Explanation of Design Documentation

The Contractor must, whenever it submits any Design Documentation for review, if required by the Principal's Representative or the Independent Certifier, make available the appropriate design personnel to:

- (a) (**Explain**): explain the Design Documentation; and
- (b) (**Additional information**): provide such information regarding the Design Documentation as the Principal's Representative or the Independent Certifier reasonably requests.

9.8 **Review of Design Documentation**

The parties acknowledge and agree that the Design Documentation submitted by the Contractor will be reviewed in accordance with the Contractor Documentation Schedule.

9.9 **Interface Contractors**

The Contractor acknowledges and agrees that the Principal's Representative and Independent Certifier may, in respect of Design Documentation submitted by the Contractor at Substantial Detailed Design Stage or Final Design Documentation Stage:

- (a) (**Copies**): provide copies of such Design Documentation to; and
- (b) (**Comments**): seek comments from and take into account the views of,

Interface Contractors or the tenderers for any Interface Works or any operation and maintenance services, including any Authority (including any Third Party).

9.10 **Design Documentation for construction**

Unless otherwise agreed in writing by the Principal, the Contractor must only use for construction purposes parts of the Design Documentation which:

- (a) (**Submitted**): have been submitted to the Principal and the Independent Certifier in accordance with the Contractor Documentation Schedule; and
- (b) (**Permitted to use**): the Contractor Documentation Schedule permits the Contractor to use for the purposes of construction.

9.11 **No duty to review**

The Principal and the Contractor acknowledge and agree that:

- (a) (**No duty to review**): neither the Principal nor the Principal's Representative assume a duty or owe any duty to the Contractor to review the Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the Contractor or make any comments regarding any Design Documentation; and
- (b) (**Warranties and rights not affected**): none of:
 - (i) any review or rejection of, or consultation or comments by the Principal, the Principal's Representative or the Independent Certifier, nor any failure by the Principal, the Principal's Representative or the Independent Certifier regarding, any Design Documentation or any other direction by the Principal's Representative in respect of any Design Documentation; or
 - (ii) the non-rejection of any Design Documentation by the Principal's Representative or the Independent Certifier; or
 - (iii) the certification of any Design Documentation by the Independent Certifier, will lessen or otherwise affect:
 - (iv) any of the Contractor's Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (v) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

9.12 Ownership of documentation

- (a) (**Principal's property**): Documents (including Design Documentation) supplied by or on behalf of the Contractor will be the Principal's property.
- (b) (**Transfer to Principal**): The Contractor (irrevocably for all time and despite any termination of this deed for any reason):
 - (i) to the fullest extent permitted by Law, assigns to the Principal all of the Contractor's right, title and interest in the Intellectual Property Rights in or relating to:
 - (A) the Works;
 - (B) the Design Documentation; and
 - (C) the materials, documents, images, photographs and software relevant to the Contractor's Activities (other than processes and methods of working),
(collectively called the **Contract Documentation and Materials**) prepared or created (whether before or after the date of the deed) by the Contractor or on behalf of the Contractor for or in connection with this deed, the Contractor's Activities or the Project Works, which assignment is effective immediately from the time it is prepared or created; and
 - (ii) in respect of all other Intellectual Property Rights in or relating to:
 - (A) the Contract Documentation and Materials; and
 - (B) the Temporary Works and the processes and methods of working relevant to the Contractor's Activities (collectively called the **Contract Processes**),
grants to the Principal, and the Principal accepts, an irrevocable, royalty free, perpetual and fully assignable licence to use (and to sublicense others to use) the same for:
 - (C) the purposes of completing the construction, Commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the Contractor's Activities or the Works;
 - (D) any purpose associated with further development of the Construction Site; and
 - (E) any other purpose connected with transport projects in New South Wales,

which licence is effective immediately on creation, or on the date of this deed (whichever is the later) and will survive termination of this deed on any basis.

- (c) (**Moral rights**): The Contractor:

- (i) warrants that the Principal's use of the Contract Documentation and Materials, Contract Processes, or any other work provided by the Contractor under this deed, will not infringe any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction; and

- (ii) must indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with the Project Works, the Temporary Works, the Contractor's Activities or the Contract Documentation and Materials.
- (d) (**Right to reproduce**): For the purposes of clause 9.12(c), the Principal's right to use the Contract Documentation and Material and 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, Contract Process, or part of the Project Works or Temporary Works to which the Contract Documentation and Materials or any other work provided by the Contractor under this deed relates:
- (i) with or without attribution of authorship;
 - (ii) in any medium; and
 - (iii) in any context and in any way it sees fit.
- (e) (**Third parties**): The Contractor agrees to, and agrees to procure the cooperation of any third parties to, execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against the Principal or its licensees, assignees or successors and their licensees, or any other person authorised by it) as reasonably requested by the Principal to give full effect to the provisions of this deed and to:
- (i) allow or assist the Principal (and its licensees, assignees and successors and their licensees, and any other person authorised by it) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as applicable) or any adaptation of it, or any part of the assigned or licensed Intellectual Property Rights (as applicable) or of any such adaptation; or
 - (ii) prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.
- (f) (**Appointment as attorney**): The Contractor irrevocably appoints the Principal as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 9.12 if the Contractor fails to execute the document or do the relevant act or thing within five (5) Business Days of a written request by the Principal's Representative.
- (g) (**Licence back to Contractor**): The Principal grants to the Contractor a royalty free licence to use the Intellectual Property Rights assigned to the Principal under clause 9.12(b)(i) solely to the extent necessary to enable the Contractor to perform the Contractor's Activities.
- (h) (**Warranties**): The Contractor warrants that:
- (i) the:
 - (A) assignment to the Principal and any use of the Intellectual Property Rights assigned under this clause 9.12; and
 - (B) use of the Intellectual Property Rights licensed under this clause 9.12 pursuant to the terms of this deed,

- does not and will not infringe the Intellectual Property Rights of any party;
- (ii) were it not for the assignments effected by this deed, the Contractor would be the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 9.12(b)(i); and
- (iii) the Contractor is either:
- (A) the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 9.12(b)(i); or
- (B) able to grant the licence granted in clause 9.12(b)(ii).
- (i) (**Remedial action**): Without limiting clause 9.12(h), where any action or claim for infringement or alleged infringement of any Intellectual Property Rights results in the use or enjoyment by the Principal or its licensees, assignees or successors or their licensees, or other person authorised by it, of the Contract Documentation and Materials, the Contract Processes, the Contractor's Activities or the Project Works or any part of them, being disrupted, impaired or adversely affected, the Contractor must at its own expense and at the Principal's option (acting reasonably):
- (i) procure for the benefit of the Principal and its licensees, assignees and successors and their licensees and any other person authorised by it the right to continue to use and exploit the Intellectual Property Rights assigned or licensed pursuant to this clause 9.12, in accordance with this deed; or
- (ii) modify or replace the Contract Documentation and Materials, the Contract Processes, the Contractor's Activities or the Project Works or relevant part of them, in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 9.12, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, the Contract Processes, the Contractor's Activities or the Project Works or relevant part of them in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 9.12 will:
- (A) comply with the requirements of this deed; and
- (B) not limit or otherwise affect the Principal's rights, or the Contractor's ability to comply with its obligations, under this deed or otherwise according to Law.
- (j) (**Contractor to indemnify**): The Contractor indemnifies the Principal from and against any claims against the Principal, or loss suffered or incurred by the Principal, arising out of or in any way in connection with:
- (i) a breach by the Contractor of any warranty set out in this clause 9.12; or
- (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Materials, the Contract Processes, the Contractor's Activities or the Project Works or any part of them.
- (k) (**Interface Contractors**): The Contractor:
- (i) acknowledges that the Principal may provide any Interface Contractor with copies of any documents (including Design Documentation) provided to the Principal or the Independent Certifier by or on behalf of the Contractor in any way in connection with this deed, the Project Works, the Temporary Works or the Contractor's Activities; and

- (ii) must, upon request by the Principal's Representative, provide to the Principal's Representative copies of any Contract Documentation and Materials that any Interface Contractor may reasonably require.

9.13 **Delivery up of Design Documentation**

If this deed is terminated, whether pursuant to clause 18 or otherwise at Law:

- (a) **(Deliver up):** the Contractor must:
 - (i) subject to clause 9.13(b), immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not and including any Design Documentation stored electronically) then in existence to the Principal; and
 - (ii) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Design Documentation; and
- (b) **(Contractor may retain):** the Contractor and each Subcontractor may retain a copy of all such Design Documentation.

9.14 **Design Life**

- (a) **(Waiver of rights):** The Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 6.20 of the EP&A Act in respect of the design lives of the asset components referred to in Appendix B.13 of the SWTC where those design lives are for periods longer than those provided for in those Acts.
- (b) **(Indemnity):** If the waiver referred to in clause 9.14(a) is held to be without effect or otherwise unenforceable, or if it is severed from this deed, the Contractor must indemnify the Principal from and against all Loss that the Principal may suffer or incur arising out of or in connection with the Principal's loss of the benefit of the waiver.
- (c) **(Term of indemnity):** The indemnity in clause 9.14(b) is to continue and remain in full force and effect until the expiration of the last of the design lives referred to in Appendix B.13 of the SWTC.
- (d) **(Action on indemnity):** The parties agree that any action by the Principal on the indemnity in clause 9.14(b) is not a civil action for the purposes of sections 6.19 and 6.20 of the EP&A Act.
- (e) **(Other indemnity unaffected):** Nothing in this clause 9.14 limits the operation of any other indemnity in this deed.

9.15 **Value Engineering**

- (a) **(Value engineering process):** If required by the Principal, the relevant personnel of the Contractor (including as a minimum the Contractor's design manager, construction manager and a project engineer) and the Designers must participate in a value engineering process, including participation in a series of workshops, to identify and eliminate any unnecessary costs and optimise whole of life costs of the Project Works, while ensuring that all other requirements for the Project Works are satisfied.

- (b) (**Invitations**): The Contractor must invite and permit the Principal or its nominees to attend and participate in any value engineering workshops referred to in clause 9.15(a).

9.16 **Cost Planning**

The Contractor must:

- (a) (**Estimates of costings**): plan the Works and Contractor's Activities in consultation with the Principal's Representative and provide estimates of and costings for the construction and Commissioning phase of the Project Works;
- (b) (**Cost breakdown structure**): within ten (10) Business Days of the date of this deed (or any longer period agreed by the Principal's Representative in writing), prepare for the approval of the Principal's Representative a cost breakdown structure which must, at a minimum, include all of the items from the cost breakdown structure in the Initial Cost Plan (unless otherwise approved by the Principal's Representative);
- (c) (**Approval of cost plan**): within thirty (30) Business Days of the date of this deed (or any longer period agreed by the Principal's Representative in writing), prepare for the approval of the Principal's Representative a cost plan which meets the requirements of Part 1 of Schedule F7 (*Cost Plan*) and is not inconsistent with the Initial Cost Plan set out in Part 2 of Schedule F7 (*Cost Plan*) (and once this cost plan is approved by the Principal's Representative it will be referred to as the **Cost Plan**);
- (d) (**No change to cost breakdown structure**): not make any changes to the cost breakdown structure or cost codes without the Principal's prior written approval;
- (e) (**Provision of information**): if requested at any time by the Principal's Representative, the Contractor must provide to the Principal's Representative (or any person authorised by the Principal's Representative):
 - (i) all information necessary to corroborate the Cost Plan on an Open Book Basis and must co-operate in respect of any audit of the information concerning the Cost Plan undertaken by the Principal or an external auditor appointed by the Principal; and
 - (ii) read only access to all components of the Contractor's cost system that relate to the Contractor's Activities and/or the Project Works including:
 - (A) links to all underlying documents in sufficient detail to allow the Principal to evaluate any of the Contractor's cost planning obligations; and
 - (B) if multiple reports are required to be provided, the Contractor must ensure such reports utilise consistent information; and

9.17 Cost Control

The Contractor must:

- (a) (**Outturn Cost**): use its best endeavours to ensure that it achieves Completion of all Portions so that the Outturn Cost does not exceed the Target Cost;
- (b) (**Review of Cost Plan**): without limiting clause 9.17(a), review the Cost Plan with the Principal's Representative as the preparation of the Design Documentation proceeds:
 - (i) against the cost of construction of the design; and
 - (ii) to advise the Principal's Representative how the design should or can be modified so that the cost of the construction of the Works in accordance with the design is in accordance with the Cost Plan;
- (c) (**Forecast cost to complete**): provide monthly reports to the Principal setting out the cost to date, forecast cost to complete by month, forecast cost at completion and any amounts received by the Contractor from the sale of material salvaged from the Construction Site in performing the Contractor's Activities, each on an Open Book Basis;
- (d) (**Alternative steps**): without limiting clause 9.17(a), institute a system of cost control and, together with the Principal's Representative, review and, where approved by the Principal's Representative, amend the Cost Plan to take account of any item affecting or likely to affect any component of the Cost Plan, and advise the Principal's Representative as to the alternative steps available where:
 - (i) the tenders for any part of the Reimbursable Work exceed the amount included for that work in the Cost Plan;
 - (ii) no tenders are received for any part of the Reimbursable Work;
 - (iii) the Reimbursable Costs incurred under any Approved Subcontract exceed (or appear likely to exceed) the amount allowed for that particular Approved Subcontract in the Cost Plan; or
 - (iv) the Reimbursable Costs incurred in respect of Self-Performed Reimbursable Work exceed (or appear likely to exceed) the amount allowed for that particular Self-Performed Reimbursable Work in the Cost Plan; and
- (e) (**Cost Change Report**): provide to the Principal's Representative a monthly cost change report, as part of its monthly submission of the Cost Plan as required in Part 1 of Schedule F7 (*Cost Plan*), which identifies:
 - (i) all changes that have been made to the Cost Plan since submitting the Cost Plan in the previous month; and
 - (ii) any transfers of scope or costs between cost codes in the Cost Plan since the previous month and the reasons for the changes, including any budget transfers between cost codes which have been identified in the "budget movement report" required by section 1.2.16 of Appendix C.2 of the SWTC.

10. VARIATIONS

10.1 Purpose

Each party acknowledges and agrees that:

- (a) (**Facilitate changes**): the purpose of this clause 10 is to facilitate and efficiently give effect to Variations by incorporating a number of processes for the implementation of Variations and structuring each process to minimise transaction time and cost; and
- (b) (**Purpose of clause**): it must seek to give effect to the purpose stated in clause 10.1(a) in complying with its obligations under this clause 10.

10.2 Variations Managers

- (a) (**Variations Managers**): The parties acknowledge and agree that:
 - (i) the Principal has appointed the Principal's Variations Manager and the Contractor has appointed the Contractor's Variations Manager to co-operate and collaborate to facilitate the meeting of all time periods and obligations under this clause 10 and, to the extent possible, to ensure that each party has early notification of a potential Variation; and
 - (ii) neither the Principal's Variations Manager nor the Contractor's Variation Manager have the authority to make decisions that bind either party.
- (b) (**Instructions and directions**): Notwithstanding clause 10.2(a)(ii), an instruction or direction given to the Contractor Variations Manager by the Principal under this clause 10 is deemed to be given to the Contractor.
- (c) (**Obligations**): The Contractor must:
 - (i) ensure that the Contractor Variations Manager is available for consultation with the Principal's Variations Manager, as the Principal's Variations Manager reasonably requires;
 - (ii) prepare and regularly update (at intervals no less than fortnightly) a running schedule of all Variations that have been proposed or implemented; and
 - (iii) make available to the Principal, on request, any records relating to any Variation that has been proposed or implemented (including the running schedule referred to in clause 10.2(c)(ii)).

10.3 Variations Working Group

- (a) (**Constituents**): The Variations Working Group comprises the Principal's Variations Manager, the Contractor's Variations Manager and any other persons agreed by the parties from time to time.
- (b) (**Purpose**): The purpose of the Variations Working Group is to provide a collaborative forum to discuss the status of all Variations that have been agreed, proposed or that either party is planning to propose and any issues in connection with any Variation or proposed Variation.
- (c) (**Frequency of meetings**): The Variations Working Group must meet fortnightly, unless the parties otherwise agree.

- (d) **(Agenda and minutes):** The Contractor Variations Manager must prepare and provide to each member of the Variations Working Group:
 - (i) an agenda for each meeting of the Variations Working Group, prepared in consultation with the Principal's Variations Manager, no less than 48 hours prior to each meeting; and
 - (ii) minutes of each meeting within 48 hours after the meeting.
- (e) **(Attendance of meetings):** The Contractor:
 - (i) must procure the attendance at Variations Working Group meetings of representatives of the Contractor or any Subcontractor that the Principal's Variations Manager reasonably requires; and
 - (ii) may, with the Principal's consent, have one or more representatives of the Contractor or any Subcontractor attend a Variations Working Group meeting if the Contractor considers it appropriate given the nature of the Variation(s) to be discussed at the relevant meeting.
- (f) **(Invitation from Principal):** The Principal may, in its absolute discretion, invite any persons to attend a Variations Working Group meeting that the Principal considers appropriate given the nature of the Variation(s) to be discussed at the relevant meeting.

10.4 Principal Proposed Variations

- (a) **(Variation Proposal Request):** The Principal may at any time prior to the expiry of the final Defects Correction Period issue a Variation Proposal Request to the Contractor setting out details of a proposed Variation that the Principal is considering.
- (b) **(Actions under Subcontract):** The Contractor must promptly take all action required under any relevant Subcontract in order to allow the Contractor to respond to a Variation Proposal Request.
- (c) **(Variation Proposal):** As soon as practicable, and in any event within fifteen (15) Business Days of the receipt of a Variation Proposal Request (or such longer period as is agreed by the Principal, acting reasonably and having regard to the size and complexity of the proposed Variation and any consultation required with Interface Contractors in accordance with clause 10.13), the Contractor must provide the Principal's Variations Manager with a Variation Proposal setting out:
 - (i) any proposed Reimbursable Cost Element Adjustment or Management Fee Adjustment to carry out the proposed Variation, including sufficient evidence to support the proposal on an Open Book Basis;
 - (ii) the effect (if any) that the proposed Variation will have on the Contractor's Program (including any extension of time required to a Date for Completion and the measures the Contractor proposes to take to avoid, mitigate or minimise the effect of the proposed Variation on the Contractor's Program), including sufficient evidence on an Open Book Basis;
 - (iii) any Approvals required to implement the proposed Variation, and the effect of the proposed Variation on any existing Approvals or the Contractor's ability to comply with those Approvals;
 - (iv) the effect (if any) which the proposed Variation will have on the Contractor's ability to satisfy its obligations under this deed (including the Contractor's

fitness for purpose obligations in this deed and any warranties given by the Contractor under this deed) or exercise its rights under this deed; and

- (v) any other information requested by the Principal in the Variation Proposal Request.

(d) (**Validity**): The Variation Proposal must remain valid for acceptance by the Principal for the period stated in the Variation Proposal which must be not less than twenty-five (25) Business Days after the date of the Variation Proposal (**Validity Period**).

(e) (**No obligation**): The Principal will not be obliged to proceed with any proposed Variation that is the subject of a Variation Proposal Request.

10.5 Cost of preparing Variation Proposals

(a) (**Reimbursement**): Subject to clauses 10.5(b), 10.5(c), 10.5(d) and 10.5(e), the reasonable costs incurred by the Contractor in preparing a Variation Proposal will be Reimbursable Costs.

(b) (**Minimise Costs**): The Contractor must use reasonable endeavours to minimise costs incurred by the Contractor in preparing Variation Proposals.

(c) (**Cap on reimbursement**): The Contractor's entitlement to reimbursement of the costs it incurs in preparing a Variation Proposal will be capped at the amount specified in Schedule A1 (*Contract Particulars*) (or such higher amount as is approved beforehand by the Principal taking into account the scale and complexity of the Variation Proposal), subject to the Contractor providing evidence of the amounts claimed on Open Book Basis.

(d) (**Adjustment where Variation is directed**): If the Principal issues a Variation Order in respect of a Variation Proposal, the costs under clause 10.5(a) for the relevant Variation Proposal will be included in the cost of the relevant Reimbursable Cost Element Adjustment Event.

(e) (**Adjustment where Variation is not directed**): If the Principal does not issue a Variation Order in respect of the Variation Proposal, the Principal's Representative may determine whether any Reimbursable Cost Element Adjustment will apply.

10.6 Election by the Principal

Within the Validity Period, the Principal may by written notice to the Contractor, do one of the following:

- (a) (**Request further information**): advise the Contractor that the Principal:
 - (i) requires further information or clarification with respect to the Variation Proposal; or
 - (ii) has altered the scope of the Variation Proposal Request,

in which case the Contractor must provide the Principal with an updated Variation Proposal addressing the issues raised by the Principal within ten (10) Business Days of receiving the Principal's notice and this clause 10.6 will reapply to the updated Variation Proposal;

- (b) (**Accept**): issue a notice titled "Variation Order" which accepts the Variation Proposal and directs the Contractor to carry out the Variation as specified in the Variation Proposal;

- (c) (**Reject or negotiate**): notify the Contractor that it rejects, or wishes to negotiate, the Variation Proposal, in which case clause 10.7 will apply; or
- (d) (**Withdraw**) withdraw the proposed Variation, in which case the Contractor must not carry out the Variation.

10.7 Rejection or negotiation of the Variation Proposal

- (a) (**Negotiation or resubmission**): If the Principal rejects or wishes to negotiate the Variation Proposal in accordance with clause 10.6(c), if requested by the Principal:
 - (i) the parties must, within five (5) Business Days after the date of the Principal's notice under clause 10.6(c), commence consultation in good faith, and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Variation Proposal which are in dispute; or
 - (ii) if the Variation Proposal does not accurately set out the Contractor's entitlements in accordance with the requirements of this deed or comply with the requirements of the Variation Proposal Request, the Contractor must amend and resubmit the Variation Proposal.
- (b) (**Variation Order where agreed**): If the parties reach agreement on the disputed matters in the Variation Proposal, the Principal may issue a notice titled "Variation Order" which directs the Contractor to carry out the Variation as specified in the Variation Proposal, as varied by the parties' agreement.
- (c) (**Dispute resolution**): If the parties are unable to reach agreement under clause 10.7(a) within fifteen (15) Business Days after Principal's notice of rejection or negotiation under clause 10.6(c), the Principal may refer the matter for dispute resolution, and in resolving the dispute the parties must, and must direct any Expert or arbitrator to determine all matters required to enable the relevant Variation to be implemented in accordance with this deed.
- (d) (**Principal election**): Following resolution of the dispute referred for dispute resolution under clause 10.7(c), the Principal may (unless it has already exercised its right under clause 10.8(a)) elect to do either of the following:
 - (i) require the Contractor to proceed to implement the Variation by issuing a notice titled "Variation Order" which directs the Contractor to carry out the Variation as specified in the Variation Proposal as varied by the resolution; or
 - (ii) withdraw the proposed Variation.

10.8 Variation Orders

- (a) (**Variation Order**): Whether or not:
 - (i) the Principal has issued a Variation Proposal Request under clause 10.4(a);
 - (ii) the Contractor has issued a Variation Proposal under clause 10.4(c); or
 - (iii) a Variation Proposal has been referred to dispute resolution in accordance with clause 10.7(c),

the Principal may at any time prior to the expiry of the final Defects Correction Period direct the Contractor to carry out a Variation by issuing a notice titled "Variation Order".

(b) (**Contractor notice**): Unless the Contractor has already provided a Variation Proposal in respect of the Variation the subject of a Variation Order under clause 10.8(a), if requested by the Principal in the Variation Order, the Contractor must provide a notice to the Principal setting out the information specified in clause 10.4(c) in respect of the Variation within:

- (i) ten (10) Business Days after receipt of the Variation Order; or
- (ii) such longer period as is agreed by the Principal (acting reasonably, taking into account the size and complexity of the Variation and the information to be included in a Variation Proposal),

but the notice under this clause 10.8(b) is not a Variation Proposal.

(c) (**Determination by Principal**): If the Principal issues a Variation Order under clause 10.8(a):

- (i) the Reimbursable Cost Element Adjustment and the Management Fee Adjustment (if any);
- (ii) any extension to any Date for Completion;
- (iii) the extent to which the Contractor will be relieved of any of its obligations under this deed; and
- (iv) the other matters set out in clause 10.4(c),

will, until the Principal and the Contractor otherwise agree or a determination is made under clause 19, be reasonably determined by the Principal in accordance with clause 10.8(d).

(d) (**Requirements for Principal's determination**): In making its determination under clause 10.8(c), the Principal must:

- (i) determine the Reimbursable Cost Element Adjustment and Management Fee Adjustment (if any) in accordance with clause 4;
- (ii) determine the extension of time to any Date for Completion in accordance with clause 14.10; and
- (iii) determine all other matters required to enable the relevant Variation to be implemented, and issue a written notice of such determination,

in each case either:

- (iv) as part of, and included within, the relevant Variation Order; or
- (v) otherwise, within:
 - (A) twenty (20) Business Days of issue of the relevant Variation Order referred to in clause 10.8(a); or
 - (B) where clause 10.8(b) applies, twenty (20) Business Days of receiving the Contractor's notice under that clause.

- (e) **(Dispute resolution):** If the Contractor disagrees with a matter determined by the Principal under clause 10.8(c):
- (i) the Contractor may notify the Principal in writing that it wishes to negotiate the relevant matter (including reasons for the disagreement, and supporting evidence), and the parties must meet within five (5) Business Days after such notice and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Principal's determination which are in dispute;
 - (ii) if the parties are unable to reach agreement under clause 10.8(e)(i) within fifteen (15) Business Days after the Contractor's notice under clause 10.8(e)(i), either party may refer the matter for resolution in accordance with clause 19; and
 - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.

10.8A Implementation of Variations

- (a) **(Acknowledgements):** The Contractor acknowledges and agrees that:
 - (i) there is no limitation on the power of the Principal's Representative to issue a Variation Order, and no Variation or Variation Order will invalidate this deed;
 - (ii) a Variation may include the creation of a new Portion in which case clause 16.4(d) will apply.
- (b) **(Contractor to implement):** If the Principal directs the Contractor to implement a Variation by issuing a Variation Order under this clause 10:
 - (i) the Contractor must promptly implement the Variation on the basis of the Variation Order irrespective of:
 - (A) the nature, extent or value of the work the subject of the Variation;
 - (B) the location or timing (including the impact on any Date for Completion) of the work involved in the Variation; or
 - (C) any Dispute related to the Variation;
 - (ii) any applicable Dates for Completion will be extended as specified in the Variation Order (or as subsequently agreed or determined under clause 19);
 - (iii) any Reimbursable Cost Element Adjustment and Management Fee Adjustment will be as specified in the Variation Order (or as subsequently agreed or determined under clause 19); and
 - (iv) the Contractor will be relieved of its obligations under this deed to the extent specified in the Variation Order (or as subsequently agreed or determined under clause 19).
- (c) **(Multiple Variations to implement single physical change):** Nothing in this clause 10 prevents the Principal from issuing several Variation Proposals or Variation Orders (or both) in order to implement a single physical change to the Works in stages.

10.9 Omissions

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

- (a) (**Principal may perform work**): 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) (**No Claim**): the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with any work being omitted or deleted from the Contractor's Activities; and
- (c) (**Value of omission**): the adjustment to the Target Cost arising from the work that has been omitted or deleted will be valued in accordance with clause 4.

10.10 Pre-Agreed Variations

- (a) (**Written notice**): The Principal's Representative may, in its absolute discretion and without being under any obligation to do so, instruct any Pre-Agreed Variation by giving written notice to the Contractor at any time prior to the relevant Election Date.
- (b) (**Deemed amendment**): Upon the issue of a notice by the Principal's Representative under clause 10.10(a), this deed will be deemed to be amended as set out in Schedule A3 (*Pre-Agreed Variations*) for the relevant Pre-Agreed Variation.
- (c) (**No relief**): If the Principal's Representative instructs a Pre-Agreed Variation under this clause 10.10, such exercise will not (other than as set out in Schedule A3 (*Pre-Agreed Variations*)):
 - (i) relieve the Contractor from its Liabilities or obligations (including those arising out of any warranties given under this deed);
 - (ii) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this deed); or
 - (iii) entitle the Contractor to an extension of time,whether under this deed or otherwise according to any Law.
- (d) (**No Claim**): The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in relation to or arising out of a Pre-Agreed Variation instructed by the Principal's Representative other than:
 - (i) the adjustments to the Reimbursable Cost Element and Management Fee (if any) provided for in Schedule A3 (*Pre-Agreed Variations*) for the relevant Pre-Agreed Variation; and
 - (ii) in respect of PAV 1 only, an extension of time to any Date for Completion (if any) provided for in Schedule A3 (*Pre-Agreed Variations*) and any corresponding adjustment to the LDs Step-up Date and Early Completion Date as contemplated in Schedule A2 (*Portions*).
- (e) (**No limitation**): Nothing in this clause prevents the Principal's Representative from:
 - (i) issuing a Variation Proposal Request as referred to in clause 10.4(a); or
 - (ii) directing a Variation by issue of a Variation Order under clauses 10.6 or 10.8,

that involves the same (or similar) changes to the Project Works as a Pre-Agreed Variation after the relevant Election Date.

10.11 Contractor may propose Variation

- (a) (**Purpose of delivery method**): The Principal and the Contractor acknowledge that the project delivery method chosen is intended, among other things, to allow the Contractor to identify:
- (i) Variations which may enhance the quality of the Contractor's Activities; and
 - (ii) Variations which may permit project cost savings while maintaining or enhancing the quality of the Contractor's Activities.



- (b) (**Notice from Contractor**): The Contractor may propose a Variation by giving written notice to the Principal setting out:
- (i) details of:
 - (A) the proposed Variation;
 - (B) the reason for the proposed Variation;
 - (C) the time within, and the manner in which, the Contractor proposes to implement the proposed Variation;
 - (D) the effect (if any) of the proposed Variation on the Contractor's Activities, including the Contractor's Program and the Dates for Completion of the Portions;
 - (E) the cost effect of assessing and carrying out the proposed Variation, including:
 - (aa) any proposed Reimbursable Cost Element Adjustment and Management Fee Adjustment to carry out the proposed Variation; and
 - (bb) the effect the proposed Variation will have on operating and maintenance costs;
 - (F) the effect (if any) that the proposed Variation will have on any Interface Works, including whether a variation to the work under any Interface Works Contract is likely to, be required to enable the proposed Variation to be implemented, or as a consequence of the proposed Variation; and
 - (G) the Value for Money for the Principal arising from the Variation, including any cost savings that the Contractor expects to arise from the Variation;

- (ii) a written statement stating that the proposed Variation:
 - (A) will not adversely affect:
 - (aa) the functional integrity of any of the elements of the Contractor's Activities; or
 - (bb) the satisfaction of:
 - (a) any performance standards required by this deed; or
 - (b) the Contractor's fitness for purpose obligations in this deed; and
 - (B) is consistent with and complies with the conditions and requirements of the Planning Approval.
- (c) (**Request for information**): On receiving a notice under clause 10.11(b), the Principal may give written notice to the Contractor requesting any other information and supporting documentation the Principal reasonably requires, and the Contractor must provide the requested information or documentation within ten (10) Business Days of receiving the request.
- (d) (**Principal's Representative's discretion**): The Principal's Representative:
 - (i) (in its absolute discretion) may either:
 - (A) approve (with or without conditions) the proposed Variation by issuing a notice titled "Variation Order" to the Contractor which directs the Contractor to carry out the Variation as specified in the Contractor's notice under clause 10.11(b), or as otherwise approved by the Principal; or
 - (B) reject the proposed Variation; and
 - (ii) will be under no obligation to approve any such Variation for the convenience of, or to assist, the Contractor.
- (e) (**Negotiation of cost adjustment**): Prior to issuing a Variation Order under clause 10.11(d)(i)(A), the Principal may seek to negotiate with the Contractor in relation to the proposed Reimbursable Cost Element Adjustment or Management Fee Adjustment to carry out the proposed Variation or any conditions that may be attached to the Variation Order.
- (f) (**Implementation**): If the Principal issues a Variation Order under clause 10.11(d)(i)(A):
 - (i) without conditions, the Contractor must perform its obligations under this deed in accordance with the approved Variation; and
 - (ii) with conditions, the Contractor may either:
 - (A) proceed to implement the Variation on the basis set out in the Variation Order; or
 - (B) withdraw the proposed Variation if the Contractor, acting reasonably, does not accept any of the conditions attached to the approval of the proposed Variation.

- (g) **(Target Cost adjustment):** If the Principal's Representative approves a proposed Variation by issuing a Variation Order under clause 10.11(d)(i)(A) and the Contractor has not withdrawn the proposed Variation under clause 10.11(f)(ii)(B), the Principal will notify the Contractor that the Reimbursable Cost Element Adjustment or Management Fee Adjustment (if any) will be:
 - (i) as set out in the Contractor's notice under clause 10.11(b); or
 - (ii) as agreed under clause 10.11(e); or
 - (iii) as determined under clause 4.
- (h) **(Costs of proposing Variation):** Clause 10.5 applies to the costs incurred by the Contractor in proposing a Variation under this clause 10.11 as if the Contractor's proposal under this clause 10.11 were a Variation Proposal.
- (i) **(No Claim):** Except as provided for in clauses 10.11(g) and 10.11(h), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of, or in any way in connection with, a Variation proposed by the Contractor.
- (j) **(Assessment costs for Variation):** The Principal will bear its own costs incurred in assessing a Variation proposed by the Contractor.
- (k) **(Interface Contractors):** The Principal and the Contractor acknowledge that it is intended that each Interface Contractor will bear their own costs in assessing the proposed Variation.

10.12 Contractor's entitlements

The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, any Variation, except where:

- (a) **(Direction):** the Contractor is directed to implement a Variation by a Variation Order;
- (b) **(Notice from Principal):** the Principal issues a notice under clause 10.10(a) instructing a Pre-Agreed Variation; or
- (c) **(Notice of Variation):** clause 22.1 applies.

10.13 Consultation with Interface Contractors

- (a) **(Impact on Interface Contractor):** Without limiting clause 3.2, if the Contractor becomes aware that a proposed Variation will, or is likely to, impact on any Interface Works, and in any case prior to:
 - (i) submitting a Variation Proposal in accordance with clause 10.4(c); or
 - (ii) proposing a Variation in accordance with clause 10.11(b),

the Contractor must:

 - (iii) notify the relevant Interface Contractor(s) of the proposed Variation; and
 - (iv) work closely and iteratively with the relevant Interface Contractor(s) in good faith regarding the scope and design of the proposed Variation (and, where applicable, the corresponding variation under the Interface Works Contract)

in order to remove or reduce the impact that the proposed Variation will or may have on the relevant Interface Works.

- (b) (**Contractor to assist**): Where a variation is proposed under an Interface Works Contract, the Contractor agrees to work closely and iteratively with the relevant Interface Contractor in relation to the scope and design of the proposed variation under the Interface Works Contract in order to remove or reduce the impact that the proposed variation will or may have on the Works.

11. REIMBURSABLE WORK AND PROVISIONAL SUM WORK

11.1 Restrictions on Reimbursable Work

- (a) (**Performance of Reimbursable Work**): Unless otherwise agreed by the Principal's Representative in writing, Reimbursable Work must be either:
- (i) performed by Subcontractors under Approved Subcontracts entered in accordance with the procedure in this clause 11; or
 - (ii) performed by the Contractor in accordance with clause 11.14.
- (b) (**Restriction**): The Contractor must not enter into any Subcontract with a Prohibited Subcontractor.
- (c) (**Value for money**): The Contractor must ensure that all Subcontract Tender Documentation is prepared and all tender processes for Reimbursable Work are conducted:
- (i) on terms which maximise Value for Money for the Principal; and
 - (ii) with the highest standards of probity, fairness and equal opportunity and in accordance with the Procurement Management Plan.
- (d) (**Pre-Approved Subcontractors**): The parties acknowledge and agree that clauses 11.2 to 11.6, 11.7(a), 11.7(b) and 11.8 do not apply to Pre-Approved Subcontractors.

11.2 Subcontract Proposal

- (a) (**Packages**): The Contractor must:
- (i) prior to inviting any tenders for Subcontractors, obtain the Principal's prior written approval with respect to how the Reimbursable Work will be divided into packages for the purposes of calling of tenders for Subcontractors; and
 - (ii) each time the Contractor proposes to change how the Reimbursable Work is divided into packages for the purposes calling of tenders for Subcontractors, obtain the Principal's prior written approval for the change prior to calling any further tenders for Subcontractors.
- (b) (**Subcontract Proposal**): Prior to inviting tenders for the performance of Reimbursable Work:
- (i) for which the forecast final value of the relevant Subcontract (in the reasonable opinion of the Contractor) will be equal to or above:
 - (A) [REDACTED] in relation to the supply of Materials or Construction Plant by a Subcontractor;

- (B) [REDACTED] in relation to all other Reimbursable Work by a Subcontractor;
- (ii) in relation to the supply of the items listed in Schedule A1 (*Contract Particulars*) as items for which a Subcontract Proposal is required;

[REDACTED]

the Contractor must issue a document titled "Subcontract Proposal" to the Principal's Representative for approval which satisfies the requirements of clause 11.2(d) (**Subcontract Proposal**), unless the Principal agrees that a Subcontract Proposal is not required.

- (c) **(Multiple Subcontracts for the same Reimbursable Work)**: For the purposes of the thresholds specified in clause 11.2(b)(i), if the Contractor splits the same type of Reimbursable Work across multiple Subcontracts with the same Subcontractor, the aggregate value of such Subcontracts must be used to determine whether a Subcontract Proposal is required.
- (d) **(Particulars)**: The Subcontract Proposal must include:
- (i) the part of the Reimbursable Work to be the subject of the tender;
 - (ii) the amount included for this work in the Cost Plan;
 - (iii) how the Contractor will ascertain the tender list for the part of the Reimbursable Work to be the subject of the tender;
 - (iv) how the Contractor will select the preferred tenderer including details of the evaluation criteria (with weightings) for the assessment of tenders;
 - (v) the method of delivery for the work;
 - (vi) the proposed terms and conditions of Subcontract which the Contractor proposes to use to enter into the Subcontract, including details about the pricing structure (which may include details regarding payment terms, a detailed breakdown of the price, and any schedule of rates items) and pricing notes (such as working hours and shift durations, waiting times allowances, price escalation and traffic control arrangements);
 - (vii) the proposed date for calling of tenders and for tender responses; and
 - (viii) a statement as to whether or not the Subcontract would fall within the requirement under clause 11.7(c)(v)(B) to procure that the Subcontractor executes a deed in the form of Schedule A7 (*Form of Subcontractor Deed*), and if so whether the Contractor is seeking the Principal's approval to not comply with this requirement (including reasons).
- (e) **(EOI)**: For the purposes of clause 11.2(d)(iii), if the tender list is to be ascertained by an expression of interest process, the Contractor must:
- (i) include in its Subcontract Proposal details of the criteria, including weightings for the assessment of each expression of interest;

- (ii) do all things necessary to carry out the expression of interest process;
 - (iii) prepare and arrange advertising and briefing documents, subject to obtaining the prior written consent of the Principal's Representative in relation to advertising and briefing documents;
 - (iv) evaluate responses from prospective tenderers; and
 - (v) make a recommendation to the Principal's Representative for the purposes of clause 11.4.
- (f) (**Rate of submission**): The Contractor must submit the Subcontract Proposals to the Principal in a manner and at a rate which, having regard to the quantity of the Subcontract Proposals submitted, will give the Principal a reasonable opportunity to review the submitted Subcontract Proposals in accordance with this deed.
- (g) (**Principal to review**): Subject to the Contractor complying with clause 11.2(f), the Principal's Representative must review each Subcontract Proposal and within fifteen (15) Business Days of receipt of the Subcontract Proposal must either:
- (i) approve the Subcontract Proposal; or
 - (ii) provide comments in relation to the Subcontract Proposal.
- (h) (**Amendments**): The Contractor must amend the Subcontract Proposal as required to reflect any comments from the Principal's Representative under clause 11.2(g)(ii).

11.3 Subcontract Tender Documentation

In relation to any tenders for Reimbursable Work to which clause 11.2(b) applies, after the Principal's Representative has approved a Subcontract Proposal:

- (a) (**Prepare and submit**): the Contractor must prepare the Subcontract Tender Documentation and submit a copy to the Principal's Representative for approval at least fifteen (15) Business Days before tenders are to be invited;
- (b) (**Rate of submission**): the Contractor must submit the Subcontract Tender Documentation for the relevant tenders to the Principal in a manner and at a rate which, having regard to the quantity of the Subcontract Tender Documentation submitted, will give the Principal a reasonable opportunity to review the submitted Subcontract Tender Documentation in accordance with this deed;
- (c) (**Principal to review**): the Principal's Representative must review the Subcontract Tender Documentation and within twelve (12) Business Days of receipt of the Subcontract Tender Documentation must either:
 - (i) approve the Subcontract Tender Documentation; or
 - (ii) provide comments in relation to the Subcontract Tender Documentation; and
- (d) (**Amendments**): the Contractor must amend the Subcontract Tender Documentation as required to reflect any comments from the Principal's Representative under clause 11.3(c)(ii).

11.4 Tendering

In relation to all Reimbursable Work to be performed by a Subcontractor, whether or not a Subcontract Proposal is required under clause 11.2, the Contractor must:

- (a) **(Recommendation of candidates)**: subject to clause 11.4(c)(ii), recommend to the Principal's Representative at least three persons which in the Contractor's opinion are suitable for inclusion in the tender list for the part of the Reimbursable Work to be subcontracted;
- (b) **(Finalise tender list)**: subject to clause 11.4(c)(ii), subsequently finalise the tender list in consultation with the Principal's Representative who may remove or add any person from or to the tender list;
- (c) **(Tender process)**: call tenders from:
 - (i) subject to clause 11.4(c)(ii), the persons in the tender list finalised with the Principal's Representative; or
 - (ii) for the persons, activities or items listed as trade packages in Schedule A14 (*Nominated Subcontract Packages*), the relevant persons, service providers or suppliers listed in Schedule A14 (*Nominated Subcontract Packages*) only,
 in sufficient time to avoid delays or disruption to the progress of the Project Works; and
- (d) **(Provide copies)**: if so requested by the Principal's Representative, promptly provide a copy of each tender to the Principal's Representative.

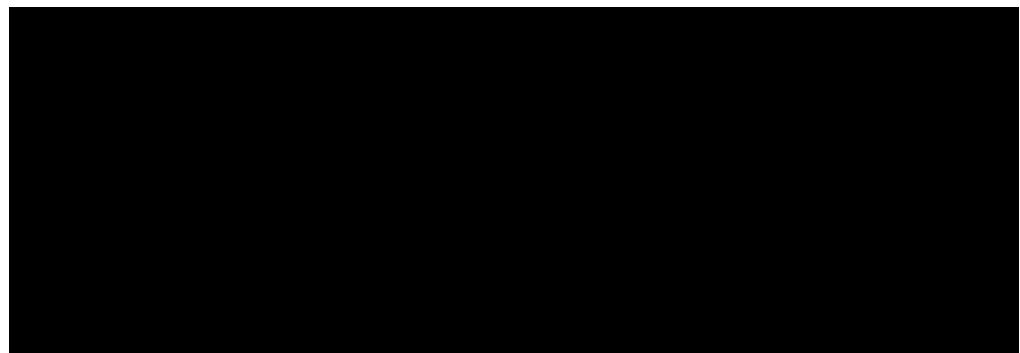
11.5 Consideration of Tenders

The Contractor must:

- (a) **(Consideration of tenders)**: examine and analyse all tenders received for Reimbursable Work;
- (b) **(Recommendation)**: recommend to the Principal's Representative which tenderer, if any, should be accepted by the Contractor, which recommendation will be deemed to include a warranty by the Contractor that the Contractor has undertaken appropriate due diligence of the tenderer (having regard to the nature and size of the relevant scope being tendered), has reviewed and considered the suitability of the recommended tenderer and knows of no reason why that tenderer's tender should not be accepted; and
- (c) **(Details to include)**: submit together with any such recommendation:
 - (i) an evaluation report detailing the Contractor's assessment of tenders against the evaluation criteria;
 - (ii) a description of the work to be undertaken under the proposed Subcontract;
 - (iii) the time for commencement and completion of that work and confirmation that these times are in accordance with the Contractor's Program;
 - (iv) the proposed subcontract price and pricing structure details (which may include details regarding payment terms, a detailed breakdown of the price, and any schedule of rates items) compared to the amount included in the Cost Plan for the relevant Reimbursable Work (including any amounts the Contractor has allowed for contingency) and the amounts tendered by other tenderers;
 - (v) any proposed amendments to the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 (where applicable), including pricing notes and qualifications,

special conditions and any proposed amendments to the payment terms, entitlements to delay related costs and/or extensions of time and any risk related provisions;

- (vi) the recommended tenderer's contact details;
- (vii) if any Law in the State or Territory in which the Project Works are situated requires that a person be registered or licensed to carry out that part of the work, evidence to the satisfaction of the Principal's Representative that the recommended tenderer is so registered or licensed;
- (viii) any other details which may be required by the Principal's Representative, including the draft subcontract;



11.6 Post Tender Negotiations

If required by the Principal's Representative, the Contractor must conduct post-tender negotiations with the tenderers, which must, if the Principal's Representative so requires, be held in the presence of the Principal's Representative.

11.7 Subcontracts

- (a) (**Principal's Representative's discretion**): Following receipt of the Contractor's recommendation pursuant to clause 11.5(b), the Principal's Representative will consider the recommended tenderer and must, within ten (10) Business Days:
 - (i) approve or disapprove the Contractor's recommendation;
- (b) (**Enter into agreement**): Subject to clause 11.7(c)(i), if the Principal's Representative approves the Contractor's recommended tenderer, the Contractor must promptly enter into an agreement with the approved tenderer on the basis of:
 - (i) the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 (if applicable) with only such amendments as the Principal's Representative may have approved in writing; and
 - (ii) the subcontract price approved by the Principal's Representative.

(c) **(Obligations of Contractor):** The Contractor must:

- (i) include the provisions required by Part A of Schedule A16 (*Subcontractor Requirements*) in all Subcontracts;
- (ii) not enter into any Subcontract in respect of the categories of work set out in Part B of Schedule A16 (*Subcontractor Requirements*) (regardless of contract value), unless the Subcontractor is pre-qualified or registered to the appropriate level under the Principal's pre-qualification and registration procedures;
- (iii) if required by the Principal's Representative, provide the Principal's Representative with a copy of any executed Subcontract, together with all documentation (including Design Documentation) relevant to that agreement within five (5) Business Days of such request;
- (iv) ensure that each Subcontractor executes a Confidentiality Undertaking in the form of Schedule B3 (*Form of Confidentiality Undertaking*) and provides this to the Principal's Representative within five (5) Business Days of the engagement of that Subcontractor;
- (v) procure that each Subcontractor:
 - (A) in respect of any element of Design Work or other professional services (regardless of subcontract price); or
 - (B) under a Subcontract that has an initial subcontract price equal to or greater than [REDACTED] (unless otherwise approved by the Principal),

executes a deed in the form of Schedule A7 (*Form of Subcontractor Deed*) and provides this to the Principal's Representative within five (5) Business Days of being engaged by the Contractor.

(d) **(Compliance with Law):** The Contractor must 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).

(e) **(Novation):** Without limiting clause 11.7(b)(i), the Contractor must ensure that each Subcontract contains provisions which bind the Subcontractor to participate in any novation required by the Principal under clause 18.5(a)(iv)(A) at no cost to the Principal.

(f) **(Restriction):** The Contractor must not cause, instruct, permit, request or consent to:

- (i) a variation or amendment to the Subcontract or the work under the Subcontract other than a Permitted Subcontract Variation;
- (ii) any increase in the amount payable to the Subcontractor under, or for the performance of, the Subcontract works other than the cost of Permitted Subcontract Variations; or
- (iii) the termination of any Subcontract,

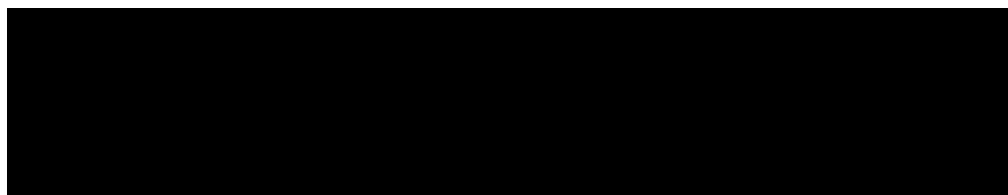
without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

11.8 Procedure on Disapproval

If the Principal's Representative:

- (a) (**Decision**): disapproves:

- (i) the Contractor's recommended tenderer;



pursuant to clause 11.7(a); and

- (b) (**Direction**): the Principal's Representative directs the Contractor:

- (i) to accept the tender of another tenderer;



the Contractor must:

- (c) (**Enter into agreement**): promptly enter into an agreement with the approved tenderer on the basis of:

- (i) the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 with only such amendments as the Principal's Representative may have approved in writing; and

- (ii) the subcontract price approved by the Principal's Representative;

- (d) (**Provide copy of Subcontract**): if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed Subcontract including the Design Documentation relevant to that agreement within five (5) Business Days of such request; and



11.9 Subcontractor Warranties

- (a) (**Condition precedent**): As a condition precedent to Completion of a Portion, the Contractor must procure and provide the Principal with the warranties described in Schedule A4 (*List of Warranties Required from Subcontractors*) or elsewhere in this deed that are relevant to that Portion:

- (i) from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty;

- (ii) in favour of, and directly enforceable by, the Principal and any other entity nominated by the Principal's Representative from time to time against the relevant Subcontractor; and
 - (iii) in the form set out in Schedule A5 (*Form of Subcontractor Warranty*).
- (b) (**Warranty**): No warranty from a Subcontractor will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Contractor whether under this deed or otherwise.
- (c) (**Failure to provide warranty**): If the Contractor is unable to or fails for any reason to provide any warranty from a Subcontractor required by this deed:
- (i) the Contractor is deemed to have provided the Subcontractor warranty itself on like terms and is deemed to have satisfied the condition precedent for Completion set out in clause 11.9(a);
 - (ii) the Principal will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights against the Subcontractor in relation to the Contractor's Activities; and
 - (iii) for the purpose of clause 11.9(c)(ii), the Contractor irrevocably appoints the Principal as its lawful attorney to execute any instrument necessary to give effect to the assignment.
- (d) (**Assignment**): No assignment under this clause will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Contractor whether under this deed or otherwise.

11.10 Coordination of Subcontractors

The Contractor must:

- (a) (**Supervision**): administer, supervise, inspect, coordinate and control the work of all Subcontractors engaged by it;
- (b) (**Provision of personnel**): provide and direct all necessary personnel to administer, supervise, inspect, coordinate and control the Approved Subcontracts and all Subcontractors engaged by it;
- (c) (**Contractor's Representative**): appoint a duly qualified person to exercise the functions of the Contractor's Representative under the Approved Subcontracts and otherwise ensure the Approved Subcontracts are administered in accordance with:
 - (i) the terms of the Approved Subcontracts; and
 - (ii) the reasonable directions of the Principal's Representative; and
- (d) (**Coordination of activities**): at all times coordinate the Contractor's Activities and ensure execution and completion of the Approved Subcontracts in a proper and workmanlike manner according to:
 - (i) the Design Documentation which the Contractor is entitled to use for construction purposes under clause 9.10; and
 - (ii) the obligations of the respective Subcontractors.

11.11 Disputes with Subcontractors

If the Contractor has a dispute with a Subcontractor in respect of any aspect of the Contractor's Activities and either the Contractor or the Subcontractor pursues any court action, arbitration, or adjudication application under the SOP Act, then the Contractor will be responsible for carriage of the dispute, provided it must:

- (a) keep the Principal's Representative fully informed of all aspects of the dispute; and
- (b) act in accordance with the reasonable instructions of the Principal's Representative (including in respect of lodging any appeals against any decisions made in respect of the dispute).

11.12 Responsibility for Subcontractors

- (a) **(Liability):** The Contractor will:

- (i) not be relieved from any of its Liabilities or obligations under this deed; and
- (ii) remain responsible for all Subcontractors and for all work which is or may be subcontracted as if it was itself executing the work, whether or not any Subcontractors default or otherwise fail to observe or comply with the requirements of the relevant Subcontract,

despite:

- (iii) subcontracting any part of the Reimbursable Work;
- (iv) any comments upon, consent to or review, approval or disapproval of:
 - (A) a Subcontract Proposal under clause 11.2;
 - (B) Subcontract Tender Documentation under clause 11.3; or
 - (C) a tenderer recommended by the Contractor under clause 11.5(b),
- by the Principal or the Principal's Representative;
- (v) the Principal listing the persons from whom tenders are to be obtained under clause 11.4(c)(ii) for the trade packages listed in Schedule A14 (*Nominated Subcontract Packages*);
- (vi) any direction by the Principal's Representative under clause 11.8 to accept the tender of a tenderer other than that recommended by the Contractor; or
- (vii) any other act or omission of the Principal or the Principal's Representative in connection with the subcontracting of any part of the Reimbursable Work.

- (b) **(Termination of agreement):** Subject to clause 11.13 but otherwise without limitation, if an Approved Subcontract is terminated by the Contractor or a Subcontractor, the Contractor must:

- (i) complete the work the subject of the terminated Approved Subcontract by entering into another Approved Subcontract; and
- (ii) bear the extra costs incurred by the Contractor in completing this work when compared to the contract price under the terminated Approved Subcontract (including the costs incurred by the Contractor in engaging another person as Subcontractor under clause 11.12(b)(i)), and such extra costs will not form

part of the Reimbursable Costs except to the extent the Principal's Representative determines that such costs should be Reimbursable Costs.

11.13 Subcontractor Insolvency

Where an Insolvency Event occurs in relation to a Subcontractor, the Contractor must:

- (a) (**Notice**): promptly notify the Principal's Representative of this fact; and
- (b) (**Termination of agreement**): if the Contractor terminates the Approved Subcontract:
 - (i) promptly notify the Principal's Representative of this; and
 - (ii) engage another person as Subcontractor in accordance with this clause 11 to complete the work the subject of the terminated Approved Subcontract
- (c) (**Costs**): The extra costs incurred by the Contractor in completing this work when compared to the contract price under the terminated Approved Subcontract (including the costs incurred by the Contractor in engaging another person as Subcontractor under clause 11.13(b)(ii)) will not form part of the Reimbursable Costs, except to the extent the Principal's Representative determines that such costs should be Reimbursable Costs.

11.14 Reimbursable Work by Contractor or Related Body Corporate

- (a) (**Written approval**): Other than in respect of the Self-Performed Reimbursable Work set out in Schedule F8 (*Self-Performed Reimbursable Work*), the Contractor must not itself, and must ensure that its Related Body Corporates do not, carry out any part of the Contractor's Activities unless written approval is received from the Principal's Representative that the relevant Contractor's Activities may be carried out as Self-Performed Reimbursable Work.
- (b) (**Particulars**): In order to request written approval from the Principal's Representative pursuant to clause 11.14(a), the Contractor must provide to the Principal's Representative the following particulars in writing and on an Open Book Basis:
 - (i) a detailed scope of the proposed work to be undertaken as Self-Performed Reimbursable Work;
 - (ii) a detailed methodology addressing the following:
 - (A) a description of the resource methodology that will be used to undertake the proposed works;
 - (B) details of how the Contractor will ensure that the quality of the proposed works complies with this deed;
 - (C) a statement as to how the Contractor will ensure the proposed works are carried out in an efficient manner; and
 - (D) a description of the information and particulars the Contractor will provide to the Principal's Representative supporting any Payment Claim made by the Contractor for carrying out the proposed works;
 - (iii) the fixed price or (where rates are agreed to apply to the work) estimate (including contingency) for the proposed works broken down into sufficient detail and reconciled against the Cost Plan, including details of the applicable

rates and formula from Schedule F2 (*Schedule of Rates and Labour Costs*) or if there are no applicable rates or formula, explaining why the rates and formula in Schedule F2 (*Schedule of Rates and Labour Costs*) do not apply and providing details of its proposed rate (which must be exclusive of any margin for overheads or profit) and formula;

- (iv) the cash flow for the proposed works;
 - (v) the Value for Money for the Principal if the proposed works are undertaken as Self-Performed Reimbursable Work;
 - (vi) the time for commencement and completion of the proposed works and confirmation that these times are in accordance with the Contractor's Program;
 - (vii) the proposed project team to undertake the proposed works, including all construction workers, managerial and technical personnel;
 - (viii) the number of resources (man power) and the anticipated total hours to carry out the proposed works onsite and offsite;
 - (ix) the cost of any Materials and equipment the Contractor intends to purchase as part of the Self-Performed Reimbursable Work for use in the proposed works and the proposed rate proposed to be charged for use of such equipment for the purposes of demonstrating that the purchase represents Value for Money; and
 - (x) the type and number of Construction Plant and the anticipated total hours/days the Construction Plant will be used to carry out the proposed works.
- (c) **(Further particulars):** If required by the Principal's Representative the Contractor must provide further particulars prior to the Principal's Representative giving approval for the proposed works to commence.
- (d) **(Obligations):** In carrying out the Self-Performed Reimbursable Work, the Contractor must:
- (i) carry out the Self-Performed Reimbursable Work in an efficient manner;
 - (ii) carry out the Self-Performed Reimbursable Work so as to avoid interfering with, disrupting or delaying the work of Subcontractors and Other Contractors;
 - (iii) not vary the work which is the subject of the Self-Performed Reimbursable Work unless the Principal's Representative has directed a Variation under clause 10 and that Variation relates directly to the work the subject of the Self-Performed Reimbursable Work; and
 - (iv) with each Payment Claim, provide the Principal's Representative with details of all resources, labour and construction plant, used by the Contractor in the execution of the Self-Performed Reimbursable Work since the previous Payment Claim, which identifies as a minimum:
 - (A) the part of the Self-Performed Reimbursable Work being performed by the Contractor;
 - (B) the name of each person performing the work for each part of the Self-Performed Reimbursable Work with details of their labour category, the

time when the person started and finished work, the number of hours being claimed for each person and whether those hours are at normal time, time and a half or double time; and

- (C) details of the type of plant being used for each part of the Self-Performed Reimbursable Work and the number of hours being claimed.
- (e) (**Direction**): The Principal's Representative may direct the manner in which the matters described in clause 11.14(d)(iv) are to be recorded.
- (f) (**Relevant licences**): The Contractor represents and warrants to the Principal that it holds and will continue to hold all relevant licences to legally execute the Self-Performed Reimbursable Work.
- (g) (**Open Book Basis**): The Reimbursable Work (including Self-Performed Reimbursable Work) is to be undertaken on an Open Book Basis and may be subject to an independent third party audit as required by the Principal's Representative.
- (h) (**Audits**): The Contractor must cooperate in facilitating any audit under clause 11.14(g), including by making available all necessary records and documents to the Principal's Representative and the auditor to enable an audit to be conducted of the amount properly incurred and payable pursuant to this clause 11.14.
- (i) (**Principal will not object**): The Principal's Representative will not object to the Contractor itself or the Related Body Corporate of the Contractor performing the Reimbursable Work provided that:
 - (i) in the Principal's Representative's opinion doing so represents Value for Money to the Principal, and for the purposes of forming such opinion the Principal's Representative may take into account whether:
 - (A) the Contractor has followed the procurement process in clauses 11.2(b), 11.2(d) and 11.2(e) for supply of Materials and Construction Plant or other Reimbursable Work over the applicable thresholds specified in clause 11.2(b); and
 - (B) where a fixed price applies, the Contractor's price is consistent with the Schedule of Rates; and
 - (ii) the Principal is satisfied that the Self-Performed Reimbursable Work is to be undertaken on an Open Book Basis in accordance with clause 11.14(g).
- (j) (**Subcontracting**): Despite the Self-Performed Reimbursable Work set out in Schedule F8 (*Self-Performed Reimbursable Work*), the Contractor may choose to subcontract any of the work set out in Schedule F8 (*Self-Performed Reimbursable Work*), in which case clauses 11.1 to 11.13 will apply.

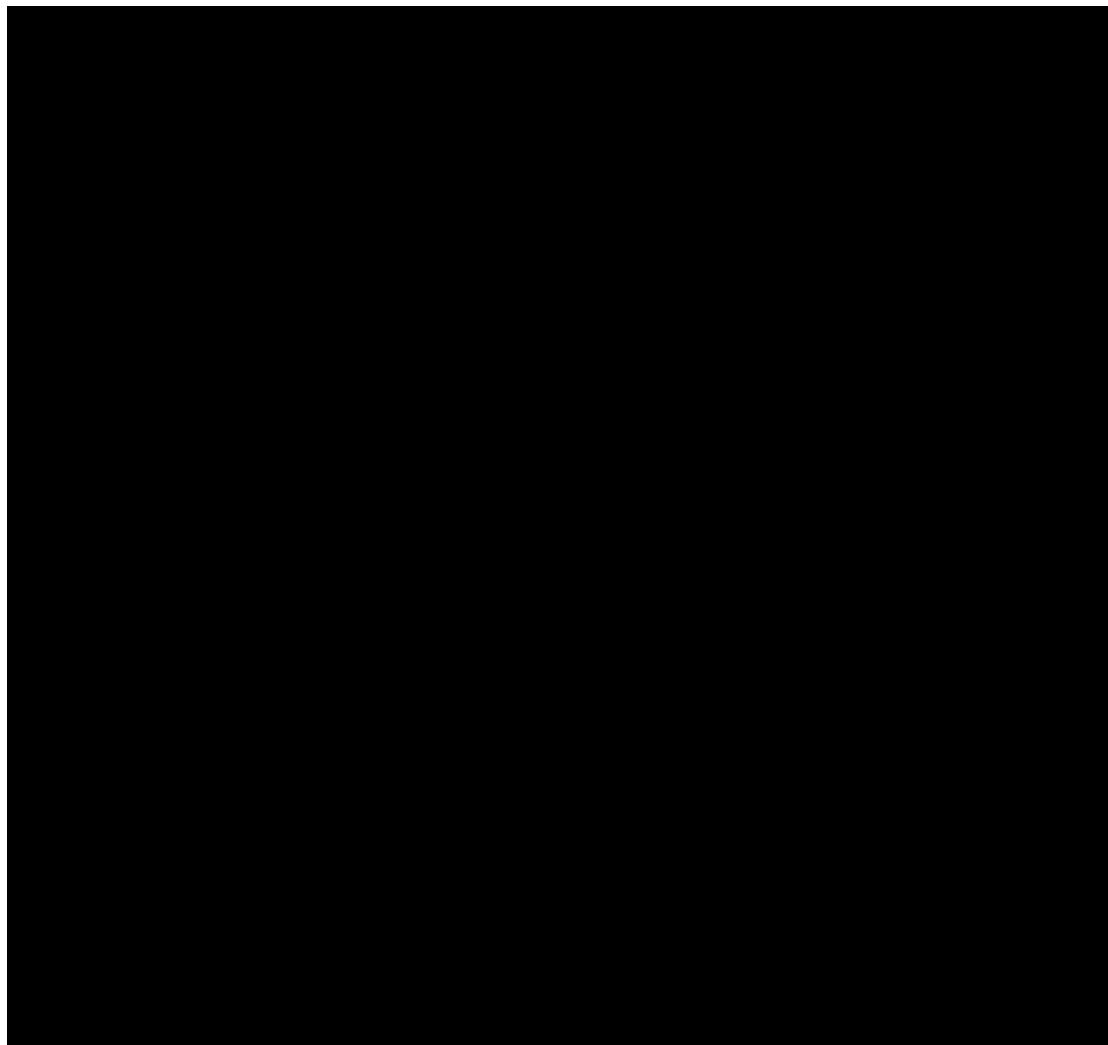
11.15 Procurement Management

- (a) (**Procurement Management Plan**): The Contractor must:
 - (i) prepare the Procurement Management Plan in accordance with clause 13.13;
 - (ii) carry out the tender processes for Reimbursable Work to be subcontracted:
 - (A) so as to ensure the probity and competitiveness of the tender process; and

- (B) in accordance with the Procurement Management Plan; and
- (iii) comply with any direction by the Principal's Representative concerning the probity and competitiveness of the tender processes for Reimbursable Work.
- (b) (**No relief**): The Contractor will not be relieved from compliance with any of its obligations or from any of its Liabilities whether under this deed or otherwise according to Law as a result of any direction of the Principal's Representative or the Principal's probity auditor concerning the probity and competitiveness of the tender process for Reimbursable Work.

11.16 Provisional Sum Work

- (a) (**Carry out work**): The Contractor must perform or procure the performance of Provisional Sum Work where such work is necessary in order to comply with its obligations under this deed.
- (b) (**Estimate**): In respect of the Provisional Sum Work described as "PS1" and "PS2" in Schedule C2 (*Provisional Sum Work*), the Principal's Representative may, at any time during the performance of those Provisional Sum Work items, request the Contractor to provide a reasonable estimate of the amount payable for the Provisional Sum Work, including sufficient information to support such estimate on an Open Book Basis.



(d) **(Payment):** The Contractor will be entitled to be paid:

(i) in respect of Non-Contestable Utilities Works:

- (A) the actual costs incurred by the Contractor which are paid to the relevant owner, operator or controller of the Utility Service in respect of the Non-Contestable Utilities Works; and
- (B) an amount calculated by multiplying the amount payable under clause 11.16(d)(i)(A) by the Management Fee Percentage;

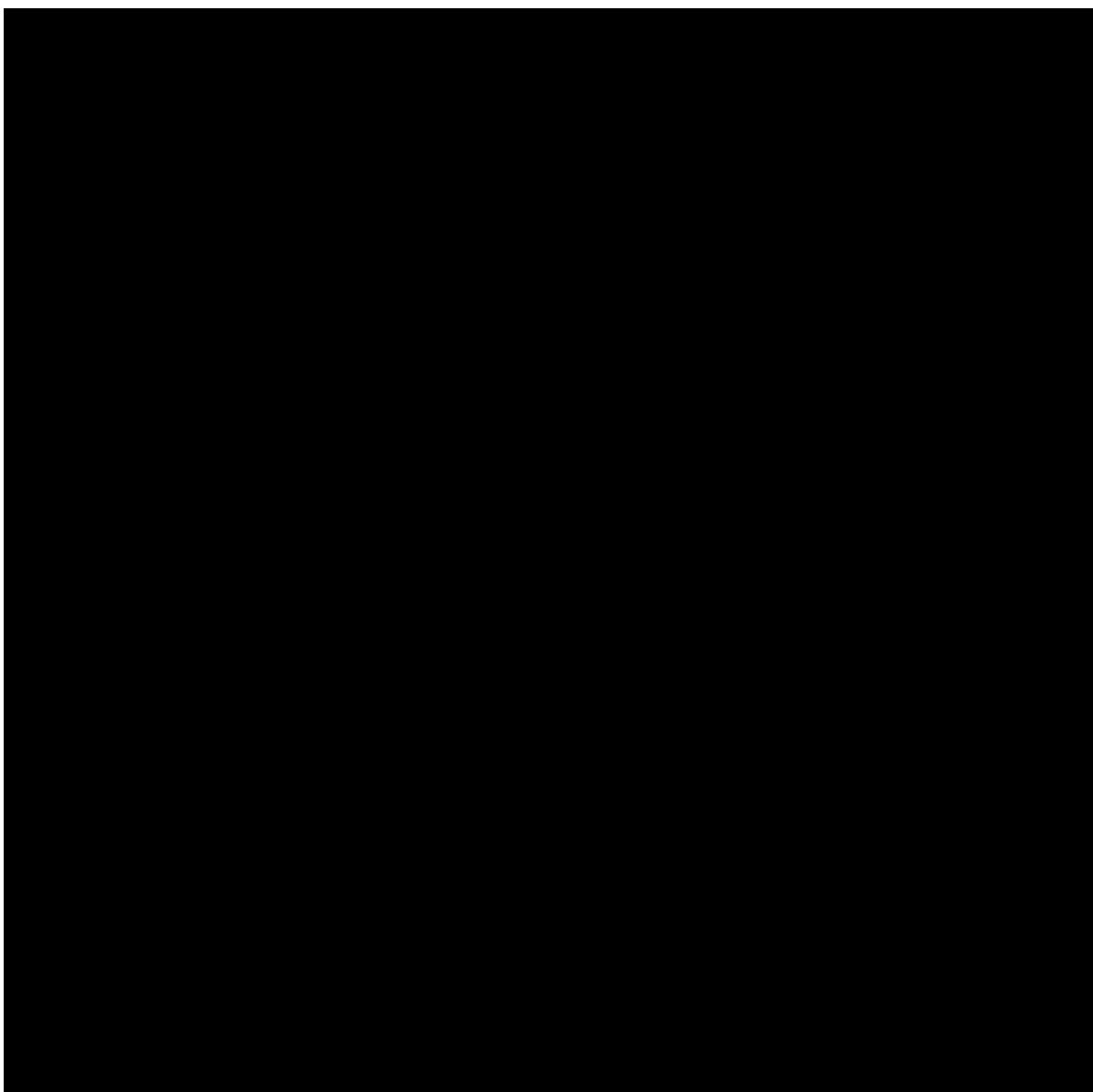
(iii) in respect of all other Provisional Sum Work:

- (B) an amount calculated by multiplying the amount payable under clause 11.16(d)(iii)(A) by the Management Fee Percentage.

11.17 Pre-Approved Subcontracts

The Contractor must:

- (a) **(Submit)**: submit a copy of the terms on which it proposes to engage any Pre-Approved Subcontractor to the Principal's Representative for approval within:
 - (i) in respect of Design Work, twenty (20) Business Days of the date of this deed; and
 - (ii) in respect of any other work, sixty (60) Business Days prior to the intended execution of the relevant Pre-Approved Subcontract;
- (b) **(Amend)**: subsequently amend the proposed terms as required by the Principal's Representative; and
- (c) **(Enter Pre-Approved Subcontract)**: promptly enter into an agreement with a Pre-Approved Subcontractor on the basis of the terms approved by the Principal's Representative.



12. DEFECTS, INSPECTION AND REPAIR

12.1 Defects

- (a) **(Written notice):** The Contractor must:
- (i) keep accurate records; and
 - (ii) on request by the Principal's Representative or the Independent Certifier, provide a written report,
- in respect of:
- (iii) any Defect it detects; and
 - (iv) all action proposed to correct that Defect, including the estimated time required.
- (b) **(Defect Corrections Period):** Subject to clause 12.2(a), the Contractor must correct all Defects arising prior to the expiry of the relevant Defects Correction Period whether or not the Principal's Representative or the Independent Certifier notifies the Contractor of them, including correcting any Defects in a Portion which existed at the time of issue of the Notice of Completion (including, in respect of the Carriageway Portion, any Minor Defects listed in the Notice of Completion).
- (c) **(Contractor to correct):** Without limiting any other obligation of the Contractor to correct Defects, the Contractor must:
- (i) in respect of each Handover Portion, correct all Mandatory Defects and all Defects (including Minor Defects) identified in a Pre-Completion Notice as a pre-condition to Completion of the relevant Portion; and
 - (ii) in respect of the Carriageway Portion:
 - (A) correct all Mandatory Defects and all Defects (other than Minor Defects) identified in a Pre-Completion Notice as a pre-condition to Completion of the Portion; and
 - (B) use its best endeavours to correct all Minor Defects identified in a Notice of Completion within twenty (20) Business Days after the Date of Completion of the relevant Portion and in any event as soon as reasonably practical.

12.2 Principal's Representative's direction

- (a) **(Correction or acceptance):** If prior to or during the relevant Defects Correction Period, the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 12.1(a), the Principal's Representative may, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law, give the Contractor a direction specifying the Defect and doing one or more of the following:
- (i) requiring the Contractor to correct the Defect or a part of it and specifying the time within which this must occur;

- (ii) requiring the Contractor to carry out a Variation to overcome the Defect or a part of it and specifying the time within which this must be carried out;
 - (iii) advising the Contractor that the Principal will accept the work or a part of it despite the Defect; or
 - (iv) in respect of any Defect:
 - (A) to which clause 12.3(g) applies; or
 - (B) subject to clause 12.2(c), discovered during a Defects Correction Period,
- advising the Contractor that:
- (C) an Other Contractor will correct (or has corrected) the Defect, or any part of it; or
 - (D) the Principal will direct an Interface Contractor to carry out a change or variation under its contract with the Principal to overcome the Defect or a part of the Defect,

provided that this clause 12.2(a) does not limit the Contractor's rights under this deed to dispute the existence of a Defect identified by the Principal's Representative prior to or during the relevant Defects Correction Period.

- (b) (**Timing of correction**): In determining the times at which the Contractor is required to correct a Defect or carry out a Variation for the purposes of this clause, the Principal's Representative is entitled to have regard to the need to minimise the interference and disruption to the activities which any Other Contractor or Existing Operator may be carrying out in discharge of its obligations under its contract with the Principal.
 - (c) (**Direction**): Unless the Principal's Representative considers that a Defect is an Urgent Defect or the Contractor is in breach of clause 8.5 or clause 8.6, the Principal's Representative may not direct:
 - (i) an Other Contractor to rectify a Defect, or any part of a Defect pursuant to clause 12.2(a)(iv)(C); or
 - (ii) an Interface Contractor to carry out a change or variation under its contract with the Principal (as applicable) to overcome the Defect or a part of the Defect pursuant to clause 12.2(a)(iv)(D),
- unless the Principal's Representative has first given the Contractor a direction under clause 12.2(a)(i) and the Contractor has:
- (iii) failed to comply with such direction; or
 - (iv) otherwise failed to comply with its obligations under clause 12.3(a) in relation to such Defect.
- (d) (**Urgent Defect**): Where the Principal's Representative considers that a Defect is an Urgent Defect or the Contractor is in breach of clause 8.5 or clause 8.6, the Principal's Representative may give the Contractor a direction under clause 12.2(a)(iv) whether or not a direction has first been given under clause 12.2(a)(i).

12.3 Correction of Defect or Variation

- (a) **(Contractor to correct Defect):** If a direction is given under clause 12.2(a)(i) or 12.2(a)(ii) at any time prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, the Contractor must correct the Defect (or the part of it) or carry out the Variation (as applicable):
- (i) within the time specified in the Principal's Representative's direction;
 - (ii) at times notified by the Principal's Representative;
 - (iii) in accordance with the requirements of any relevant Authority;
 - (iv) so as to minimise the impact on the use of the relevant part of the Project Works;
 - (v) in a manner which causes as little inconvenience as possible to the activities:
 - (A) which any Interface Contractor may be carrying out in discharge of its obligations under its contract with the Principal; and
 - (B) of users of the Project Works or any access and the adjacent community;
 - (vi) subject to clause 16.7, at the Contractor's risk in respect of any restrictions on access;
 - (vii) if an Other Contractor has taken possession of the relevant part of the Construction Site for the purposes of designing and constructing any Interface Works or operating and maintaining any part of the Project Works, in accordance with the requirements of the relevant Other Contractor in relation to access and site safety;
 - (viii) in accordance with its obligations under any relevant Interface Deed; and
 - (ix) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is a Defect (except that to the extent that the subject matter of the notice is determined to not be a Defect following resolution of the Dispute, the Contractor may claim a Variation under clause 10 for the work performed in respect of the alleged Defect).
- (b) **(Notice when corrected):** The Contractor must give written notice to the Principal and the Independent Certifier promptly after it considers that a Defect has been corrected.
- (c) **(Joint Inspection):** The Independent Certifier, the Principal's Representative and the Contractor's Representative must, within five (5) Business Days after receipt of a notice given under clause 12.3(b), inspect the relevant Defect at a mutually convenient time.
- (d) **(Determination by Independent Certifier):** The Independent Certifier must, within ten (10) Business Days after receipt of a notice under clause 12.3(b) or clause 12.3(e), either:
- (i) provide to the Principal's Representative and the Contractor a document signed by the Independent Certifier in the form set out in Part P of Schedule B7 (*Form of Certificates*) certifying that the Defect has been corrected; or

- (ii) issue a notice to the Contractor and the Principal in which it states the items which remain to be completed before the Defect is corrected.
- (e) (**Resubmission**): If the Independent Certifier issues a notice under clause 12.3(d)(ii), the Contractor must continue with the correction of the Defect and when it considers that it has corrected the Defect, clauses 12.3(b), 12.3(c), 12.3(d) and this clause 12.3(e) will reapply.
- (f) (**Obligations unaffected**): A certificate issued by the Independent Certifier under clause 12.3(d)(i) will not:
 - (i) relieve the Contractor of any of its obligations under this deed; or
 - (ii) prejudice any rights or powers of the Principal, the Independent Certifier or the Principal's Representative.
- (g) (**Non-compliance**): If the Contractor does not comply with clause 12.3(a), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this deed or otherwise at Law, give the Contractor a direction under clause 12.2(a)(iv) and have the correction or variation work carried out at the Contractor's expense, and the cost of the correction or Variation work incurred by the Principal will be a debt due from the Contractor to the Principal.

12.4 Acceptance of work or rectification by others

If a direction is given under clause 12.2(a)(iii) or clause 12.2(a)(iv)(C) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, and the Contractor is responsible for the Defect (or the part of it), the amount which represents:

- (a) the diminution in value of the Project Works arising from the Defect (in respect of clause 12.2(a)(iii)); or
- (b) the reasonable cost of correcting the Defect (or the part of it) (in respect of clause 12.2(a)(iv)(C)),

as stated by the Principal's Representative will become a debt due and payable by the Contractor to the Principal.

12.5 Variations under other contracts to overcome Defects

If a direction is given by the Principal's Representative under clause 12.2(a)(iv)(D):

- (a) (**Indemnity**): the Contractor must indemnify the Principal from and against the reasonable costs suffered or incurred by the Principal for the change or variation carried out by the relevant Interface Contractor to the extent necessary to overcome the Defect (or the part of it), provided that this indemnity will not apply to any Loss in respect of delay to a Handover Contractor's project activities due to a Defect in a Handover Portion in respect of which clause 16.5(e)(i) applies; and
- (b) (**Exclusion**): clause 12.4 will not apply with respect to the Defect the subject of that direction.

12.6 WFU Works

The WFU Works within a Portion have:

- (a) **(Defects Correction Period):** a Defects Correction Period of 24 months, which commences on the Date of Completion of the relevant Portion; and
- (b) **(Further Defects Correction Period):** in respect of any work the subject of a direction under clauses 12.2(a)(i), 12.2(a)(ii) or 12.2(a)(iv) during the 12 month period prior to the expiry of the original Defects Correction Period, a further Defects Correction Period which begins on the date of the correction of the Defect (or the part of it) or completion of the Variation and continues for 12 months,

provided that no Defects Correction Period for the WFU Works within a Portion will extend beyond the date that is 36 months after the Date of Completion of the relevant Portion.

12.7 Local Area Works

- (a) **(Defects Correction Period):** Each discrete part of the Local Area Works has:
 - (i) a Defects Correction Period of 12 months, which begins when the relevant works are complete (being the date notified under clause 12.7(d)(i)); and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i), clause 12.2(a)(ii) or clause 12.2(a)(iv) (relating to the discrete part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it) or completion of the Variation,

provided that no Defects Correction Period for any discrete part of the Local Area Works will extend beyond the date that is 24 months after the date notified under clause 12.7(d)(i) as the date on which the relevant part of the Local Area Works were completed.

- (b) **(Area by area basis):** The completion of the Local Area Works will be assessed on an area by area basis in accordance with clauses 12.7(c) and 12.7(d).
- (c) **(Joint inspection):** When the Contractor considers that a discrete part of the Local Area Works is complete, it must notify the Principal's Representative and the Independent Certifier in writing and the Principal's Representative, the Independent Certifier, the Contractor's Representative and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time.
- (d) **(Independent Certifier's determination):** Following the joint inspection under clause 12.7(c) and subject to clause 12.7(e), the Principal and the Contractor acknowledge that the Independent Certifier will determine whether the discrete part of the Local Area Works has been completed in accordance with this deed and the requirements of any relevant Third Party Agreement (if applicable) and will notify the Contractor and the Principal in writing and within five (5) Business Days after the date of the inspection (or such longer period permitted under any relevant Third Party Agreement):
 - (i) if the discrete part is complete, of the date on which the Contractor has completed the discrete part of the Local Area Works in accordance with this deed, which subject to clause 12.7(f)(i), will be the relevant date for the purposes of clause 12.7(a)(i); or

- (ii) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 12.7(c) and this clause 12.7(d) will reapply).
- (e) (**Certificate**): Each discrete part of the Local Area Works will not be regarded as complete unless the Independent Certifier has executed and provided to the Principal's Representative a certificate in the form of Schedule B6 (*Independent Certifier's Certificate – Completion of Local Area Works*) with respect to the discrete part of the Local Area Works.
- (f) (**Condition precedent**): It is a condition precedent to:
 - (i) the commencement of the Defects Correction Period for a discrete part of the Local Area Works that the Contractor provide the Principal's Representative with:
 - (A) a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; or
 - (B) if the Contractor is unable to obtain a notice required under clause 12.7(f)(i)(A) despite having used its best endeavours to do so, a statement from the Contractor to the effect that:
 - (aa) the discrete part of the Local Area Works is complete and the Contractor has notified the relevant Authority of this matter; and
 - (bb) the relevant Authority has failed or refused to provide the written notice required under clause 12.7(f)(i)(A) despite being given fifteen (15) Business Days to provide the notice requested by the Contractor; and
 - (ii) Completion of a Portion that the written notices or statements required under clause 12.7(f)(i) have been provided to the Principal's Representative for all discrete parts of the Local Area Works that form part of that Portion.

12.8 Utility Service Works

- (a) (**Defects Correction Period**): Each discrete part of the Utility Service Works not handed over to the Principal has:
 - (i) a Defects Correction Period of 12 months, which begins when:
 - (A) the relevant Utility Service Authority which has jurisdiction in respect of the Utility Service gives written notice that the work is complete; or
 - (B) if the Contractor is unable to obtain a notice required under clause 12.8(a)(i)(A) despite having used its best endeavours to do so, a written statement from the Contractor to the effect that:
 - (aa) the discrete part of the Utility Service Works is complete and the Contractor has notified the relevant Utility Service Authority of this matter; and
 - (bb) the relevant Utility Service Authority has failed or refused to provide the written notice required under clause 12.8(a)(i)(A) despite being given fifteen (15) Business Days to provide the notice requested by the Contractor,

- and the Principal's Representative has been provided with a copy of the notice or statement; and
- (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i), clause 12.2(a)(ii) or clause 12.1(a)(iv) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, which begins:

- (A) when the relevant Utility Service Authority gives written notice that the Defect (or the part of it) has been corrected or the Variation completed and the Principal's Representative has been provided with a copy of the notice; or
- (B) if the relevant Utility Service Authority fails or refuses to give the notice required under clause 12.8(a)(ii)(A), when the Principal's Representative determines that the Defect (or the part of it) has been corrected or the Variation completed,

provided that no Defects Correction Period for any discrete part of the Utility Service Works will extend beyond the date that is 24 months after the date of the applicable notice or statement given under clause 12.8(a)(i).

- (b) **(Condition precedent to Completion)**: It is a condition precedent to Completion of a Portion, that:
- (i) a written notice of the kind referred to in clause 12.8(a)(i) has been given for each discrete part of the Utility Service Works that forms part of that Portion and the Principal's Representative has been provided with a copy of each such notice; or
- (ii) the Contractor has:
- (A) used best endeavours to obtain and provide the Principal's Representative with a written notice of the kind referred to in clause 12.8(a)(i)(A); and
- (B) provided the Principal's Representative with a written statement of the kind referred to in clause 12.8(a)(i)(B).

12.9 Property Works

Each discrete part of the Property Works has:

- (a) **(Defects Correction Period)**: a Defects Correction Period of 12 months, which begins upon:
- (i) the completion of the Property Works; or
- (ii) submission by the Contractor of a certificate or signed statement (as applicable) to the Principal's Representative under clause 7.5(a)(ii),
- whichever is the later; and
- (b) **(Further Defects Correction Period)**: a further Defects Correction Period of [REDACTED] months in respect of any work the subject of a direction under clause 12.2(a)(i), clause 12.2(a)(ii) or clause 12.1(a)(iv) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it) or completion of the Variation (as applicable),

provided that no Defects Correction Period for any discrete part of the Property Works will extend beyond the date that is 24 months after the date of the applicable certificate or signed statement given under clause 7.5(a)(ii).

12.10 **Delivery Phase Maintenance**

Any works carried out pursuant to the Delivery Phase Maintenance has:

- (a) **(Defects Correction Period):** a Defects Correction Period which begins when the relevant works are completed and which expires 12 months after the Date of Completion of the last Portion to achieve Completion; and
- (b) **(Further Defects Correction Period):** a further Defects Correction Period of the period specified of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i), clause 12.2(a)(ii) and clause 12.2(a)(iv) (relating to the discrete part of works carried out pursuant to the Delivery Phase Maintenance) during the Defects Correction Period, which begins on the date of correction of the Defect (or part of it),

provided that the Defects Correction Period under this clause 12.10 will not extend beyond the date that is 24 months after the Date of Completion of the last Portion to achieve Completion.

12.11 **Failure by the Contractor to comply with direction**

- (a) **(Non-compliance):** If the Contractor does not comply with a direction referred to in clause 12.2(a)(i), clause 12.2(a)(ii) or clause 12.1(a)(iv), the Principal may employ others to carry out that direction.
- (b) **(Debt):** Without limiting clauses 12.4 and 12.5, the Loss suffered or incurred by the Principal arising out of or in connection with taking the action contemplated in clause 12.11(a) or as a result of the Contractor's failure to comply with clause 12.3(a) will be a debt due from the Contractor to the Principal.

12.12 **Rights not affected**

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

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 12 or any other provision of this deed;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights;
- (c) any direction of the Principal's Representative under clause 12.2;
- (d) the correction of a Defect by an Other Contractor as directed by the Principal's Representative under clause 12.2(a)(iv); or
- (e) the Principal accepting the work or a part of it despite a Defect pursuant to clause 12.2(a)(iii).

12.13 Use of defective facilities

The Contractor must not allow the use of any part of the Project Works or Temporary Works which the Contractor knows is defective or unsafe and which threatens the health or safety of people.

12.14 Final inspections of Portions

- (a) (**Final inspection**): The Contractor, the Principal's Representative and any person nominated by the Principal's Representative, will carry out a final inspection of the each Portion (other than the Third Party Works) one month before the end of the original Defects Correction Period in respect of the that Portion (**Final Inspection**).
- (b) (**Written notice**): Within ten (10) Business Days after a Final Inspection, the Principal's Representative may give the Contractor written notice of any Defects which the Principal's Representative observed during the Final Inspection or of which they are otherwise aware.
- (c) (**Direction**): The Principal may give a notice under clause 12.2 in respect of any such Defect notified under clause 12.14(b).

12.15 Final inspections of the Third Party Works

- (a) (**Final inspection**): The Contractor, the Principal's Representative and applicable Authorities, will carry out a final inspection of each discrete part of the Third Party Works three months before the end of the original Defects Correction Period for the relevant discrete part of the Third Party Works (or at such other time specified by the relevant Third Party Agreement) (**Final Third Party Works Inspection**).
- (b) (**Direction**): If the Principal's Representative or applicable Authority identifies any Defects during the Final Third Party Works Inspection, the Principal may give a notice under clause 12.2 in respect of such Defect.

13. ADMINISTRATION

13.1 Principal's Representative

- (a) (**Principal's Representative**): The Principal must ensure that at all times until the date of expiry of the final Defects Correction Period in relation to the Project Works there is a Principal's Representative.
- (b) (**Agent of Principal**): The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this deed as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.
- (c) (**Discretion of Principal's Representative**): A discretion (including an absolute or sole discretion), or power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this deed if exercised or made (or if it is not exercised or made) by the Principal's Representative:
 - (i) independently;
 - (ii) after consultation with the Principal and its advisers; or
 - (iii) as directed by the Principal.
- (d) (**No Claim**): Any control or influence exercised by the Principal over the Principal's Representative does not:

- (i) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
 - (ii) entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.
- (e) (**Contractor must comply**): The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this deed.
- (f) (**Oral direction**): Except where this deed otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.
- (g) (**Directions**): Subject to clauses 13.4(c)(iii) and 13.4(c)(iv), but despite any other provision of this deed, a direction under this deed can only be given by the Principal's Representative, and if a person other than the Principal's Representative purports to do so:
- (i) the Principal is not bound by the purported direction; and
 - (ii) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any such purported direction.
- (h) (**No Claim**): Subject to clause 13.1(i) and its express rights under this deed, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the 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 19 or is unreasonable (other than in accordance with the corrected determination).
- (i) (**Notice of dispute**): The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any direction by the Principal's Representative is by giving a Notice of Dispute in accordance with clause 19.2.
- (j) (**Requirement to act reasonably**): The Principal's Representative must act reasonably in discharging its functions under clauses 10.5(e), 11.12(b)(ii), 11.13(c), and 11.14(a).

13.2 Replacement of the Principal's Representative

- (a) (**Appointment of replacement**): The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the Contractor of that appointment.
- (b) (**Replacement Principal's Representative bound**): Any substitute Principal's Representative appointed under this clause 13.2 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.

13.3 Delegation of Functions

- (a) (**Delegation by Principal's Representative**): The Principal's Representative may:
- (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this deed;
 - (ii) not appoint more than one person to exercise the same function under this deed; and
 - (iii) revoke any appointment under clause 13.3(a)(i) by notice in writing to the Contractor.
- (b) (**Principal's Representative retains functions**): The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 13.3(a)(i).
- (c) (**Appointed persons**): All references in this deed to the Principal's Representative include a reference to an appointee appointed under clause 13.3(a)(i).

13.4 Appointment of Principal's Surveillance Officer

- (a) (**Appointment**): The Principal's Representative may:
- (i) by written notice to the Contractor appoint one or more officers to perform the surveillance functions identified in clause 13.4(b) (each a **Principal's Surveillance Officer**);
 - (ii) revoke or vary any appointment under clause 13.4(a)(i) by notice in writing to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing a Principal's Surveillance Officer to exercise the function under clause 13.4(b)(i).
- (b) (**Functions of Principal's Surveillance Officer**): The functions of a Principal's Surveillance Officer may be all or any of the following:
- (i) monitoring the Contractor's Activities, Project Works and Temporary Works including:
 - (A) product quality;
 - (B) quality management and verification;
 - (C) environmental management;
 - (D) work health and safety;
 - (E) Chain of Responsibility Provisions compliance;
 - (F) control of traffic;
 - (G) community relations;
 - (H) defects and defect rectification;
 - (I) compliance with Third Party Agreements; and
 - (J) commissioning and testing;

- (ii) monitoring the Contractor's compliance with the Project Documents;
 - (iii) monitoring the Independent Certifier's surveillance of the Contractor's Activities;
 - (iv) giving directions with respect to Unknown Pavement Faults as contemplated by clauses 7.15(c)(i)(B) and 7.15(c)(i)(C)(bb); and
 - (v) reporting the findings of its monitoring activities under clauses 13.4(b)(i), 13.4(b)(ii) and 13.4(b)(iii) from time to time to the Principal.
- (c) **(Agent of Principal):** The parties acknowledge and agree that:
- (i) the Principal's Surveillance Officers act at all times as the servant or agent of the Principal and are subject to the directions of the Principal and will act solely in the interests of the Principal;
 - (ii) subject to clauses 13.4(c)(iii) and 13.4(c)(iv), a Principal's Surveillance Officer is not entitled to issue a direction to the Contractor, and if a Principal's Surveillance Officer purports to do so:
 - (A) the Principal is not bound by the purported direction; and
 - (B) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any such purported direction;
 - (iii) a Principal's Surveillance Officer is entitled to issue a direction to the Contractor under clause 8.5(b) and the Contractor must comply with any direction by a Principal's Surveillance Officer given or purported to be given under clause 8.5(b); and
 - (iv) a Principal's Surveillance Officer is entitled to issue a direction to the Contractor under this deed on behalf of the Principal in relation to a Defect or failure to comply with a requirement of this deed relating to quality, health and safety or the Environment.

13.5 Contractor's Personnel

- (a) **(Representative required):** The Contractor must ensure there is a Contractor's Representative for the purposes of this deed who will act as a representative of and be authorised to act on behalf of the Contractor in discharging the Contractor's functions under this deed.
- (b) **(Contractor must notify):** The Contractor's Representative at the date of this deed is the relevant person listed in Schedule A1 (*Contract Particulars*), and the Contractor must notify the Principal in writing of any changes to the Contractor's Representative.
- (c) **(Engagement of Contractor's personnel):** The Contractor must:
 - (i) employ the individuals nominated by the Contractor and listed in Schedule A6 (*Contractor's Personnel*) in the positions specified in Schedule A6 (*Contractor's Personnel*) or equivalent positions;
 - (ii) subject to clause 13.5(c)(iii), not replace the individuals referred to in clause 13.5(c)(i) without the Principal's Representative's prior written approval, which will not be unreasonably withheld;

- (iii) if any of the individuals referred to in clause 13.5(c)(i):
 - (A) dies;
 - (B) becomes unable to continue in their positions due to illness;
 - (C) resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any Related Body Corporate of the Contractor; or
 - (D) becomes the subject of a direction under clause 13.5(d),
replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative; and
 - (iv) without limiting clauses 13.5(c)(i), 13.5(c)(ii) or 13.5(c)(iii), ensure that the:
 - (A) positions specified in Schedule A6 (*Contractor's Personnel*) as full-time, dedicated positions are full-time, dedicated positions; and
 - (B) individuals who occupy the full-time, dedicated positions specified in Schedule A6 (*Contractor's Personnel*) apply themselves fully to the position to the exclusion of all other work,
until the Date of Completion of the last Portion to achieve Completion or such earlier time as may be approved by the Principal's Representative.
- (d) (**Direction to remove**): The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 13.5(a) or clause 13.5(c)) from the Construction Site and the Contractor's Activities.
- (e) (**Removal of personnel**): If the Principal's Representative issues a notice in accordance with clause 13.5(d), the Contractor must:
- (i) cease to engage that person in the Contractor's Activities and must appoint a replacement; and
 - (ii) ensure that any person the subject of a direction under clause 13.5(d) is not again employed in the Contractor's Activities or on the Construction Site.
- (f) (**Directions**): Any direction or notification given under this deed will be deemed to have been given to the Contractor if given to the Contractor's Representative.
- (g) (**Knowledge of the Contractor**): Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.
- (h) (**Minimum limits of delegation**): The Contract must ensure that at all times:
- (i) the Contractor's Commercial Manager (as specified in Schedule A6 (*Contractor's Personnel*)) or any replacement notified under clause 13.5(c)(iii) has the authority to participate in negotiations and discussions in relation to Claims of up to [REDACTED] without requiring further internal approvals;
 - (ii) the Contractor's Representative has the authority to make decisions that bind the Contractor in relation to Claims of up to [REDACTED] without requiring further internal approvals; and

- (iii) its representatives on the Management Review Group have the authority to make decisions that bind the Contractor in relation to Claims of up to [REDACTED] without requiring further internal approvals, and the authority specified in clause 13.24(d).

13.6 Design development meetings

- (a) (**Design meetings**): The Contractor must hold weekly meetings of its design team including the Designers (unless otherwise agreed with the Principal).
- (b) (**Reasonable notice**): The Contractor must give reasonable notice to the Principal's Representative of the design meetings referred to in clause 13.6(a), and of any other meetings at which design issues are to be discussed to enable the Principal's Representative, its delegate and any representatives of any Other Contractor to attend, and the Principal may request the Contractor to ensure the presence at the meeting of any relevant persons from any of the Contractor's Subcontractors involved in the design of any part of the Project Works.
- (c) (**Meeting formalities**): The Contractor must give the Principal's Representative:
 - (i) an agenda prepared in consultation with or as directed by the Principal's Representative for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues as at the date of issue of the agenda); and
 - (ii) minutes of each design meeting within 48 hours after each meeting.
- (d) (**No reliance**): Neither party may rely on such agenda or minutes of meeting as a document constituting or evidencing the giving or receipt of a notice or a direction required to be given under or in accordance with this deed.

13.7 Site Meetings

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

- (a) (**Weekly**): prior to the Date of Completion of the last Portion to reach Completion, weekly or at such longer intervals as may be directed in writing by the Principal's Representative; and
- (b) (**Monthly**): after the Date of Completion of the last Portion to reach Completion, at monthly intervals until all Defects Correction Periods (including any extension), have expired or at such other intervals as may otherwise be agreed between the parties.

13.8 Environmental Representative

The Contractor acknowledges and agrees that:

- (a) (**Appointment**): the Principal has appointed the Environmental Representative as required by the Planning Approval;
- (b) (**Role**): the Environmental Representative:
 - (i) is independent of the parties;
 - (ii) will oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;

- (iii) will advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
 - (iv) will have the authority and independence to:
 - (A) direct the Contractor; or
 - (B) advise the Principal's Representative to direct the Contractor,
the reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts so as to comply with the Planning Approval;
- (c) (**Contractor must comply**): it must comply with the lawful directions of the Environmental Representative or the Principal's Representative as contemplated by clause 13.8(b)(iv); and
 - (d) (**No Claim**): it is not entitled to make, 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.

13.9 Acoustics Advisor

The Contractor acknowledges and agrees that:

- (a) (**Appointment**): the Principal has appointed the Acoustics Advisor as required by the Planning Approval;
 - (b) (**Role**): the Acoustics Advisor:
 - (i) is independent of the parties;
 - (ii) will oversee the implementation of all noise and vibration management plans and monitoring programs required under the Planning Approval, and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) will advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
 - (iv) will have the authority and independence to:
 - (A) direct the Contractor as to; or
 - (B) advise the Principal's Representative to direct the Contractor as to,
reasonable steps the Contractor must take to avoid or minimise unintended or adverse noise and vibration impacts so as to comply with the Planning Approval;
- (c) (**Contractor must comply**): it must comply with the directions of the Acoustics Advisor or the Principal's Representative as contemplated by clause 13.9(b)(iv); and
 - (d) (**No Claim**): it is not entitled to make, and none of the Principal, the Principal's Representative or the Acoustics Advisor will be liable upon, any Claim arising out or in any way in connection with such directions.

13.10 Independent Certifier

- (a) (**Engagement**): The Independent Certifier will be engaged on the terms of the Independent Certifier Deed.
- (b) (**Independent Certifier Deed**): The Contractor acknowledges and agrees that:
 - (i) the Independent Certifier Deed may be executed after the commencement of this deed;
 - (ii) the Contractor must execute the Independent Certifier Deed within five (5) Business Days of receipt from the Principal; and
 - (iii) the Principal will carry out the functions of the Independent Certifier under this deed until the Independent Certifier Deed is executed.
- (c) (**Obligation to be independent**): The Independent Certifier is obliged to act independently of the Principal, the Contractor and the Subcontractors.
- (d) (**Information and access**): Both parties must provide the Independent Certifier with all information and documents and allow the Independent Certifier to:
 - (i) attend meetings;
 - (ii) access all premises where the Contractor's Activities are being carried out including for the purposes of site surveillance;
 - (iii) insert Hold Points or Witness Points in the Project Plans; and
 - (iv) release the Hold Points or Witness Points (unless the Principal has directed the Contractor that another Nominated Authority will release the Hold Point or Witness Point),as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.
- (e) (**Notice between parties**): All notices and documents provided by a party to the Independent Certifier must be copied to the other party, and 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.
- (f) (**Comments by Principal's Representative**): The Principal's Representative may provide comments to the Independent Certifier in respect of the Contractor's Activities.
- (g) (**Determinations final and binding**): Any determination by the Independent Certifier in respect of a matter required by this deed to be determined by the Independent Certifier will, as between the Contractor and the Principal, be final and binding upon the Principal and the Contractor, except in the case of manifest error on the face of the Independent Certifier's determination.
- (h) (**No approval or admission**): A certification or determination by the Independent Certifier (including one that is final and binding) will not:
 - (i) constitute an approval by the Principal of the Contractor's performance of the Contractor's obligations under this deed;

- (ii) be taken as an admission or evidence that the Works or any other matters certified or determined by the Independent Certifier comply with this deed;
 - (iii) prejudice any rights or powers of the Principal under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects; or
 - (iv) prevent or prejudice the right of either party to raise any dispute, difference, controversy or claim in respect of the relevant certification or determination under the provisions of the Independent Certifier Deed in accordance with clause 19.13(a).
- (i) (**No Claim under this deed**): No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier, whether or not such certification or determination:
- (i) is final and binding;
 - (ii) contains a manifest error; or
 - (iii) is overturned in subsequent dispute resolution proceedings,
- will:
- (iv) be deemed to be an act or omission by the Principal (including a breach of contract) under or in connection with the Project Documents; or
 - (v) entitle the Contractor to make any Claim against the Principal.
- (j) (**No impact on rights and obligations**): Without limiting clause 13.10(i), an act or omission (including negligence) of the Independent Certifier will not:
- (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under the Project Documents or otherwise according to Law; or
 - (ii) prejudice or limit a party's rights against the other party whether under the Project Documents or otherwise according to Law.

13.11 Quality Management

- (a) (**Quality Management System**): The Contractor must implement a Quality Management System for the management of all aspects of the Contractor's obligations under this deed in accordance with the applicable requirements of the SWTC, including Appendix C.7 of the SWTC and the Quality Management Plan.
- (b) (**Quality Management Plan**): The Contractor must develop and implement a Quality Management Plan in accordance with this deed, including the SWTC.
- (c) (**Acknowledgments**): The Contractor:
 - (i) assumes responsibility for all aspects of quality for the Contractor's Activities and for the durability of the Project Works and the Temporary Works;
 - (ii) must permit Independent Certifier to observe, monitor, audit and test all aspects of quality in the Contractor's Activities and the durability of the Works to certify compliance with the requirements of this deed;

- (iii) must permit the Independent Certifier to review and assess quality in the Contractor's Activities and the durability of the Project Works, as required to enable the Independent Certifier to certify the Contractor's compliance with the requirements of this deed; and
 - (iv) must allow the Principal to monitor compliance of the Contractor's Activities with the requirements of this deed, and for the purposes of doing so, make arrangements to ensure that the Principal's Representative and the Principal's Surveillance Officers have access to all facilities, documentation, records and personnel (including those of Subcontractors) at any time that they are required for the carrying out of the monitoring referred to in this clause 13.11.
- (d) **(Certificates)**: The Contractor must provide to the Principal certificates executed by:
- (i) the Quality Manager:
 - (A) in the form of Part A of Schedule B7 (*Form of Certificates*), within sixty (60) Business Days after the date of this deed;
 - (B) in the form of Part B of Schedule B7 (*Form of Certificates*), every sixty (60) Business Days from the date of this deed until the Date of Completion of the last Portion to achieve Completion;
 - (C) in the form of Part C of Schedule B7 (*Form of Certificates*) as a condition precedent to Completion of each Portion; and
 - (D) in the form of Part D of Schedule B7 (*Form of Certificates*), upon the expiry of the Defects Correction Period of the last Portion to achieve Completion;
 - (ii) the Independent Certifier:
 - (A) in the form of Part E of Schedule B7 (*Form of Certificates*) within sixty (60) Business Days after the date of this deed;
 - (B) in the form of Part F of Schedule B7 (*Form of Certificates*), every sixty (60) Business Days from the date of this deed until the Date of Completion of the last Portion to achieve Completion; and
 - (C) in the form of Part G of Schedule B7 (*Form of Certificates*) upon the expiry of the Defects Correction Period of the last Portion to achieve Completion;
 - (iii) the Contractor's Environmental Manager in the form of Part H of Schedule B7 (*Form of Certificates*) every eighty-five (85) Business Days from the date of this deed until the Date of Completion of the last Portion to achieve Completion;
 - (iv) the Contractor in the form of Part I of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule;
 - (v) the relevant Subcontractor in the form of Part J of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule;
 - (vi) the Independent Certifier in the form of Part K of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule;

- (vii) the Proof Engineer in the form of Part L of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule;
 - (viii) the Independent Checking Engineer in the form of Part M of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule; and
 - (ix) the Contractor in the form of Part N of Schedule B7 (*Form of Certificates*) within ten (10) Business Days before the expiry of the Landscaping Maintenance Period in respect of each Portion.
- (da) **(Contractor's Employees):** The Principal acknowledges and agrees that any certificates provided by the Contractor to the Principal under clause 13.11(d), which may be executed by the Contractor's Employees, are provided on behalf of the Contractor.
- (e) **(Hold Points):** The Contractor:
- (i) acknowledges and agrees that a work process with a Hold Point must not proceed past the Hold Point without the prior authorisation and release by the Nominated Authority in accordance with the requirements of this deed and any applicable Project Plan;
 - (ii) must comply with any procedures required by this deed in relation to each Hold Point, including as set out in the SWTC; and
 - (iii) must provide the Principal, the Independent Certifier and the Nominated Authority (as applicable) reasonable prior notice of each Hold Point to allow the Principal, the Independent Certifier and/or the Nominated Authority (as applicable) to attend, witness and authorise and release (where applicable) the relevant part of the work process.
- (f) **(Witness Points):** The Contractor:
- (i) acknowledges and agrees that a work process with a Witness Point must not proceed past the Witness Point without the prior notification to the Principal's Representative, the Independent Certifier and/or the Nominated Authority (as applicable) in accordance with the requirements of this deed and any applicable Project Plan;
 - (ii) must comply with any procedures required by this deed in relation to each Witness Point, including as set out in the SWTC; and
 - (iii) must provide the Principal, the Independent Certifier and the Nominated Authority (as applicable) with reasonable prior notice of each Witness Point to allow the Principal, the Independent Certifier and/or the Nominated Authority (as applicable) to attend and witness the relevant part of the work process.

13.12 Industrial Relations

- (a) **(Industrial relations requirements):** The Contractor must in carrying out the Contractor's Activities:
- (i) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
 - (ii) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;

- (iii) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Contractor's Activities, are always observed in full;
- (iv) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities and Other Contractors' activities;
- (v) prepare, document and implement the Workplace Relations Management Plan which must be based on the draft Workplace Relations Management Plan (if any) forming part of this deed;
- (vi) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Contractor as part of the Project Plans, in accordance with the SWTC and clause 13.13;
- (vii) not commence any work on the Construction Site or Extra Land until the Workplace Relations Management Plan have been submitted to the Principal's Representative and the Principal's Representative has not rejected it under clause 13.13;
- (viii) submit to the Principal's Representative, before beginning work on the Construction Site or Extra Land, a statement detailing:
 - (A) 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;
 - (B) the names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and
 - (C) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
- (ix) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;
- (x) before beginning work on the Construction Site or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding 12 months, with all employment and legal obligations, including:
 - (A) payment of remuneration to employees;
 - (B) annual leave provisions;
 - (C) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
 - (D) workers' compensation insurance, including self-insurance arrangements;
 - (E) superannuation fund membership and contributions; and
 - (F) over-award payments such as redundancy fund contributions; and

- (xi) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.
- (b) (**Statement of auditor**): If the Contractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the Contractor under clause 13.12(a)(viii).
- (c) (**Compliance**): The industrial relations requirements contained in this deed and the NSW Guidelines:
 - (i) are in addition to, but are not in substitution for, any requirements of Law; and
 - (ii) do not limit the powers of the Principal or the Liabilities and responsibilities of the Contractor.

13.13 Submission for review by the Principal's Representative or Independent Certifier

- (a) (**Application**): This clause 13.13 applies to all Documents except Design Documentation, Asset Management Information, and Documents in relation to subcontracting to the extent they are addressed in clause 9, the Contractor Documentation Schedule, clause 8.12, or clause 11 (except the Procurement Management Plan) (as applicable).
- (b) (**Use of PDCS**): From the commencement date for use of the PDCS referred to in clause 21.1(b) and other than where clause 21.1(d) applies, the Contractor must manage and transmit all Documents through the PDCS, in accordance with the processes, procedures and systems in the SWTC, including section 3.14 of the SWTC, or as otherwise required by the Principal's Representative.
- (c) (**Principal's documents**): Documents supplied to the Contractor:
 - (i) will remain the property of the Principal;
 - (ii) must be returned by the Contractor to the Principal on demand in writing; and
 - (iii) must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Contractor's Activities.
- (d) (**No Claim**): The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 13.13.
- (e) (**No virus or malicious code**): The Contractor must ensure that any Document that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

- (f) **(No submission):** A Document will be deemed not to have been submitted unless and until:
 - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
 - (ii) the Contractor has otherwise complied with this clause 13.13, in addition to any other requirement of this deed relating to the submission of that Document.
- (g) **(Reviewer):** For the purposes of this clause 13.13, the Reviewer is:
 - (i) the Principal's Representative; and
 - (ii) with respect to the Nominated Project Plans only, the Independent Certifier.
- (h) **(Review and resubmission):** After the submission of a Document which satisfies the requirements of clause 13.13(f) the Principal's Representative may (or in the case of the Nominated Project Plans, the Independent Certifier must):
 - (i) review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and
 - (ii) within:
 - (A) fifteen (15) Business Days; or
 - (B) in the case of the Contractor's Program only, five (5) Business Days, of submission by the Contractor of such Document or resubmitted Document;
 - (C) reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this deed, stating the nature of the non-compliance;
 - (D) make comments on the Document; or
 - (E) notify the Contractor that it has no (or has no further) comments to make on the Document.
- (i) **(Amendment and resubmission):** If any Document is:
 - (i) rejected or deemed to be rejected, the Contractor must submit an amended Document to the Reviewer within ten (10) Business Days of the date of such rejection or deemed rejection and this clause 13.13 will re-apply; or
 - (ii) not rejected and the Reviewer responds to the submission with comments, the Contractor must respond to the comments within ten (10) Business Days or such other period as may be directed by the Reviewer.
- (j) **(Rejection):** If clause 13.13(h)(ii)(D) applies in relation to a Document and the Contractor fails to respond to the Reviewer's comments within the relevant period set out in clause 13.13(i) in a manner satisfactory to the Reviewer, the Document will be deemed to be rejected.
- (k) **(No action until review):** The Contractor must not commence construction of any part of the Project Works to which any Document (other than the Contractor's Program) submitted to the Reviewer applies unless the Reviewer has had the period referred to in clause 13.13(h)(ii) to review the Document and has not rejected the

Document or made any comments on the Document (except in the case where the Contractor has responded to the Reviewer's comments within the required time period and in a manner satisfactory to the Reviewer as referred to in clause 13.13(i), in which case the relevant Document will be deemed not to be rejected by the Reviewer).

- (l) **(No amendment):** The Contractor must not amend for construction purposes any Document that has:
 - (i) been submitted to the Reviewer; and
 - (ii) not been rejected or not had comments made about it under clause 13.13(h)(ii),unless the Contractor submits the proposed amendments to the Reviewer, in which case this clause 13.13 will re-apply.
- (m) **(No duty of care):** The Reviewer does not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, a Document submitted by the Contractor, including for errors, omissions or non-compliance with this deed.
- (n) **(No Claim):** The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Reviewer not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this deed in any Document submitted.
- (o) **(No relief):** No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Document prepared by the Contractor, or any other direction by the Reviewer in connection with the Document, will:
 - (i) constitute a direction to carry out a Variation pursuant to clause 10.6, unless it is in a notice titled "Variation Order" and describes the nature of the Variation in accordance with clause 10.8(a);
 - (ii) relieve the Contractor from or alter its Liabilities or obligations, whether under this deed or otherwise according to any Law; or
 - (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this deed or otherwise according to any Law.
- (p) **(Consultation):** In considering any Document, the Reviewer may consult with and take into account any views or requirements of relevant persons, including any Authority.

13.14 Work Method

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

- (a) **(No Claim):** not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) **(No frustration):** not cause this deed to be frustrated.

13.15 Exchange of Information between Government Agencies

- (a) **(Availability of information):** The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor (including any information provided under clause 13.13) available to NSW Government departments or agencies, including any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this deed.
- (b) **(Contractor acknowledgment):** The Contractor acknowledges that any information about the Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW Government departments and agencies in considering whether to offer the Contractor future opportunities for NSW Government work.
- (c) **(Contractor's performance assessment):** The Contractor also acknowledges that, in addition to the requirements and processes in Schedule F6 (*KRA Incentive Payment Schedule*), the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Contractor's performance under this deed and that it will participate in the Principal's contractor performance reporting process.

13.16 Not used

13.17 Aboriginal participation in construction

- (a) **(Aboriginal Participation Plan):** The Contractor must, within twenty (20) Business Days of the date of this deed, prepare and submit to the Principal for the Principal's approval, an Aboriginal Participation Plan which shows how the Contractor intends to meet the Minimum Aboriginal Participation Requirements and which is based on the template set out in Schedule D2 (*Aboriginal Participation Plan Template*).
- (b) **(Compliance):** The Contractor must comply with the Aboriginal Participation Plan approved by the Principal.
- (c) **(Aboriginal Participation Reports):** The Contractor must prepare and submit to the Principal:
 - (i) each quarter, an Aboriginal Participation Report which provides details of the implementation of the AP Policy and achievement of targets; and
 - (ii) as a condition precedent to Completion of the last Portion to achieve Completion, the final Aboriginal Participation Report describing and explaining:
 - (A) how the Aboriginal Participation Plan has been implemented within the specified period;
 - (B) what actual outcomes have been achieved; and
 - (C) whether the Minimum Aboriginal Participation Requirements have been met.
- (d) **(Non-Compliance):** If the Minimum Aboriginal Participation Requirements have not been met by the Contractor prior to the Contractor's final Payment Claim, the Principal may direct the remaining balance of the required spend to the "Aboriginal Participation Fund" account held by Training Services NSW.

13.18 AIP Plan

- (a) **(Compliance)**: The Contractor must:
- (i) take reasonable steps directed towards allowing Australian entities to have full, fair and reasonable opportunities to bid for the supply of key goods and services required for the Contractor's Activities; and
 - (ii) without limiting clause 6.1, comply with, and cooperate with the Principal in relation to compliance with, the requirements of the AIP Plan.
- (b) **(Publication)**: Without limiting clause 13.18(a), the Contractor must:
- (i) within twenty (20) Business Days of this deed, establish a publicly accessible page on its website of all available opportunities for Australian entities to supply key goods or services for the Project Works, Temporary Works or the Contractor's Activities as they arise (including details of the standards for such goods or services);
 - (ii) update the list of goods and services on this webpage on a regular basis to ensure Australian entities are provided up-to-date information on all opportunities to participate in the Contractor's Activities; and
 - (iii) provide promptly upon request evidence to the reasonable satisfaction of the Principal that the Contractor is complying with its obligation under this clause 13.18(b).

13.19 Waste Reduction and Purchasing Policy

The Contractor must:

- (a) **(Contractor to comply with GREP)**: use its best endeavours to reduce wastage and increase the use of recycled Materials in accordance with the GREP;
- (b) **(Demonstrate compliance)**: 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) **(Reporting)**: 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.

13.20 Skills, training and diversity

- (a) **(Compliance)**: Subject to the express provisions of this deed, the Contractor must:
 - (i) comply with the Training Management Guidelines; and
 - (ii) ensure the ISLP Targets are achieved with respect to the Contractor's Activities.
- (b) **(Local region)**: The parties acknowledge and agree that for the purpose of the ISLP Targets, the relevant "local region" is the Sydney region.
- (c) **(Requirements and obligations)**: Training management requirements specified in this deed and the Training Management Guidelines may be in addition to, but are not in substitution for, any training obligations of the Contractor under statute, industrial

award, enterprise or workplace agreement, or other workplace arrangements approved under Law.

- (d) **(Plan):** At least ten (10) Business Days before starting work on the Construction Site, the Contractor must prepare and submit a Workforce Development Management Plan which sets out in adequate detail how the Contractor will implement and comply with the Training Management Guidelines and achieve the ISLP Targets.
- (e) **(Manage):** The Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in this deed.
- (f) **(Reporting):** The Contractor must provide quarterly reports to the Principal demonstrating the Contractor's performance against the ISLP Targets, in accordance with the Training Management Guidelines and using the template report provided on the Training Services NSW website: https://www.training.nsw.gov.au/programs_services/funded_other/islp/index.html.
- (g) **(Subcontractors):** The Contractor must actively consider the capacity of Subcontractor to contribute to achievement of the ISLP Targets and collect sufficient information from Subcontractors in order to allow the Contractor to provide the report required by clause 13.20(f).
- (h) **(Demonstrate compliance):** The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 13.20.

13.21 Signage

- (a) **(Advertising signage):** Subject to clause 13.21(b), the Contractor must not erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of the Project Works, the Temporary Works or the Construction Site (or permit any third party to do so) at any time.
- (b) **(Permitted signage):** Subject to clause 13.21(c), the Contractor may only (with the prior written approval of the Principal) erect the following signage on or near the Construction Site or Local Areas (as applicable):
 - (i) temporary directional signage to assist businesses in the vicinity of the Construction Site, access to which has been, or is likely to be, adversely affected by the Contractor's Activities;
 - (ii) signage required by Law or reasonably required for the safety and security of the Works;
 - (iii) project identification signage and branding approved by the Principal;
 - (iv) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of the Contractor's Activities; and
 - (v) directional and other signage necessary to inform, and direct the movement of, motorists, cyclists and pedestrians in the vicinity of the Construction Site.
- (c) **(Required signage):** The Contractor must, as requested by the Principal, erect signage on or near the Construction Site or Local Areas provided the erection of such signage complies with Law.

13.22 **National Greenhouse and Energy Reporting Act 2007 (Cth)**

The Contractor acknowledges and agrees that:

- (a) **(Contractor to comply with NGER):** if any of the Contractor's Activities, or the activities of any of the Contractor's personnel, in connection with the Contractor's Activities (the **Relevant Matters**) constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) **(Contractor to assume liability):** if, despite the operation of clause 13.22(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the Contractor;
- (c) **(Greenhouse Data):** if the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time;
- (d) **(Other information):** the Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;
- (e) **(Collecting and recording data):** the Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 13.22, and keep that Greenhouse Data for at least seven 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 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) **(Disclosure by the Principal):** the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 13.22 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) **(No statutory obligation):** nothing in this clause 13.22 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

13.23 Early warning procedure and risk reporting

- (a) (**Contractor must notify**): The Contractor must give early warning of a risk by notifying the Principal's Representative as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:
 - (i) an adverse effect on the performance of the Contractor's Activities or the Project Works including any Claim by the Contractor; or
 - (ii) a party being in breach of any term of this deed.
- (b) (**Not a precondition**): The notice under clause 13.23(a) is separate from, and not a precondition to, the notices required under clause 14.8.
- (c) (**Risk Register**): The Contractor must:
 - (i) prepare a Risk Register within twenty (20) Business Days of the date of this deed;
 - (ii) update the Risk Register at least monthly, and otherwise whenever necessary to ensure it reflects current risks to the Contractor's Activities and the Works; and
 - (iii) provide to the Principal's Representative with real time access to the Risk Register.
- (d) (**Risk management meetings**): The Contractor must attend risk management meetings with the Principal's Representative on a monthly basis or as otherwise directed by the Principal's Representative to:
 - (i) review the current Risk Register;
 - (ii) 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 Contractor, including informing 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 Contractor;
 - (iii) decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and
 - (iv) remove from the Risk Register those risks which have been avoided or passed.
- (e) (**Contractor's Liability**): A notification, record or action under this clause 13.23 will not relieve the Contractor from or alter its Liabilities or obligations under this deed, including any and all notification obligations under this deed.

13.24 Management Review Group

- (a) (**Management Review Group**): The Management Review Group comprises no more than two representatives from each of the Principal and the Contractor. Each representative must discharge the functions of the Management Review Group reasonably.
- (b) (**Representatives**): The representatives at the date of this deed are those persons identified in Schedule A1 (*Contract Particulars*) as being part of the Management Review Group.

- (c) (**Attendance**): The Principal's Representative may direct the attendance at Management Review Group meetings of:
 - (i) representatives of any of the Contractor's Subcontractors which the Principal's Representative reasonably requires; and
 - (ii) any other person the Principal's Representative reasonably requires from time to time.
- (d) (**Binding authority**): Each party acknowledges and agrees that its representatives on the Management Review Group have the authority to make decisions that bind that party where clause 13.25(d) applies.

13.25 Management Review Group functions

- (a) (**Role**): The role of the Management Review Group is to provide leadership, governance and oversight.
- (b) (**Functions**): The functions of the Management Review Group include:
 - (i) reviewing and considering:
 - (A) the progress of the Contractor's Activities in relation to the Contractor's Program and the performance of the Contractor prior to the expiry of the final Defects Correction Period;
 - (B) issues arising out of community relations and community concerns;
 - (C) issues arising out of the quality of the Contractor's Activities;
 - (D) matters arising from the Design Documentation, including any proposed design changes;
 - (E) value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
 - (F) the potential impact of design and construction outcomes on operation and maintenance requirements;
 - (G) environmental issues;
 - (H) safety issues;
 - (I) any significant issues referred by the Completion Steering Committee for resolution pursuant to clause 13.27(c)(iv); and
 - (J) any other matters the Principal's Representative:
 - (aa) refers to the Management Review Group; or
 - (bb) agrees that the Management Review Group can consider;
 - (ii) determining or resolving:
 - (A) any issues referred by the Project Leadership Group for resolution pursuant to clause 13.31(c)(i);
 - (B) with respect to all notices issued by the Contractor under clause 22.1(a), whether or not a direction by the Principal's

- Representative constitutes or involves a Variation (but excluding any time or cost consequences of such direction);
- (C) Claims by the Contractor in respect of Reimbursable Cost Element Adjustment Events pursuant to clause 4.5(a);
 - (D) whether the legal, expert or other consultants costs incurred by the Contractor arising out of or in connection with any Approved Subcontract (including disputes under Approved Subcontracts) should be Reimbursable Costs for the purpose of the definition of "Excluded Costs" in Part B of Schedule F1 (*Payment*).
- (iii) considering Disputes that are the subject of a Notice of Dispute pursuant to clause 19.2 and carrying out Negotiations pursuant to clause 19.3.
- (c) **(Principal's Representative not limited)**: Subject to clause 4.5(a)(ii), the functions of the Management Review Group specified in clause 13.25(b) do not limit or otherwise affect any express right of the Principal's Representative to make a determination or give a direction under this deed.
 - (d) **(Effective determination)**: To be effective, a determination of the Management Review Group must be:
 - (i) a unanimous decision of all representatives;
 - (ii) in writing; and
 - (iii) signed by each member of the Management Review Group.

13.26 Management Review Group meetings

- (a) **(Meeting requirements)**: The Management Review Group must meet:
 - (i) monthly until the expiry of the final Defects Correction Period or such other regular period as the Principal and the Contractor agree in writing;
 - (ii) in accordance with this clause 13.26; and
 - (iii) at other times which the Principal's Representative or the Contractor requires.
- (b) **(Quorum required)**: The quorum required for each Management Review Group meetings is all Management Review Group representatives or their delegates.
- (c) **(Principal's Representative will provide agenda)**: The Principal's Representative will (in consultation with the Contractor's Representative) prepare an agenda for each meeting of the Management Review Group no less than 48 hours prior to each meeting.
- (d) **(Agenda requirements)**: The agenda will include:
 - (i) the minutes of the most recent risk management meeting, together with the current Risk Register;
 - (ii) any issues referred to the Management Review Group by the Completion Steering Committee; and
 - (iii) any other matters relevant to the functions of the Management Review Group referred to in clause 13.25(b).

- (e) (**Chairperson**): The chairperson for meetings of the Management Review Group will be the Principal's senior Management Review Group representative.
- (f) (**Meeting minutes**): The chairperson nominated by the Principal under clause 13.26(e) must give all members of the Management Review Group (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting.

13.27 Completion Steering Committee

- (a) (**Establishment**): Within three months of the date of this deed, the parties must establish a Completion Steering Committee.
- (b) (**Members**): The Completion Steering Committee will consist of:
 - (i) the Principal's Representative;
 - (ii) the Contractor's Representative;
 - (iii) the Independent Certifier's Representative; and
 - (iv) such other persons as the Principal's Representative requires from time to time.
- (c) (**Role**): The role of the Completion Steering Committee is to:
 - (i) provide leadership on matters relating to Completion and handover of the Project Works;
 - (ii) approve processes and procedures prepared by the Completion Working Group;
 - (iii) consider issues referred to it by the Completion Working Group;
 - (iv) refer any significant issues to the Management Review Group for resolution; and
 - (v) such other roles and functions as may be agreed by the parties.
- (d) (**Meeting requirements**): The Completion Steering Committee must meet:
 - (i) monthly; or
 - (ii) at such other times as the parties may agree,until the achievement of Completion of the last Portion to achieve Completion.

13.28 Completion Working Group

- (a) (**Establishment**): Within three months of the date of this deed, the parties must establish a Completion Working Group.
- (b) (**Members**): The Completion Working Group will consist of:
 - (i) nominees of the Principal's Representative;
 - (ii) nominees of the Contractor's Representative; and
 - (iii) such other persons as the Principal's Representative requires from time to time.

- (c) **(Role):** The role of the Completion Working Group is to:
- (i) provide a collaborative forum through which the parties can:
 - (A) plan and agree procedures for completion and handover of the Project Works;
 - (B) plan and agree the process for the progressive submission of records and documentation required for Completion of each Portion;
 - (C) monitor the status of activities and tasks that must be completed in order to achieve Completion of each Portion;
 - (D) identify issues which may adversely impact upon the achievement of Completion of any Portion by the applicable Date for Completion; and
 - (E) consider the Recovery Plans submitted by the Contractor to the Principal's Representative in accordance with clause 14.5(b)(ii) and provide feedback;
 - (ii) report to the Completion Steering Committee on matters relating to completion and handover of the Project Works; and
 - (iii) such other roles and functions as may be agreed by the parties.
- (d) **(Meeting requirements):** The Completion Working Group must meet:
- (i) subject to clause 13.28(d)(ii), monthly until the achievement of Completion of the last Portion;
 - (ii) weekly in the two months prior to the Date for Completion, and otherwise the anticipated Date of Completion, of each Portion; and
 - (iii) at such other times as the parties may agree,
- until the achievement of Completion of the last Portion to achieve Completion.

13.29 Traffic Control Group

- (a) **(Establishment):** Within three months of the date of this deed, the parties must establish a Traffic Control Group.
- (b) **(Members):** The Traffic Control Group will consist of:
 - (i) the Principal's Representative;
 - (ii) the Contractor's Representative;
 - (iii) the Principal's traffic manager;
 - (iv) the Contractor's Construction Traffic Manager (as specified in Schedule A6 (*Contractor's Personnel*)) or any replacement notified under clause 13.5(c)(ii);
 - (v) a representative from CJM or CJP(or both), as nominated by the Principal's Representative; and
 - (vi) such other persons as the Principal's Representative requires from time to time.

- (c) (**Role**): The role of the Traffic Control Group is to provide a collaborative forum through which the parties can:
- (i) monitor the progress of ROL Applications;
 - (ii) review and consider the six month "look ahead" for ROLs;
 - (iii) identify priority outstanding ROL Applications; and
 - (iv) carry out such other roles and functions that are set out in Appendix C.5 of the SWTC or that may be agreed by the parties.
- (d) (**Meeting requirements**): The Traffic Control Group must meet:
- (i) at least once each week; or
 - (ii) at such other times as the parties may agree,

until the achievement of Completion of the last Portion to achieve Completion.

13.30 Project Design Group

- (a) (**Establishment**): Within three months of the date of this deed, the parties must establish a Project Design Group.
- (b) (**Members**): The Project Design Group will consist of:
- (i) a representative or representatives of the Principal nominated by the Principal from time to time;
 - (ii) the Independent Certifier;
 - (iii) the Contractor's Lead Design Consultant Design Manager (as specified in Schedule A6 (*Contractor's Personnel*)) or any replacement notified under clause 13.5(c)(iii);
 - (iv) the Contractor's project director or a senior construction representative of the Contractor, as agreed by the Principal's Representative; and
 - (v) such other persons as the Principal's Representative requires from time to time, which may include:
 - (A) the Proof Engineer;
 - (B) the Independent Checking Engineer; and
 - (C) representatives of the Contractor's design consultants.
- (c) (**Role**): The role of the Project Design Group is to review and consider:
- (i) the status of the Design Documentation;
 - (ii) the quality of the Design Documentation and the Works the subject of the Design Documentation;
 - (iii) issues arising out of or in connection with or identified in the Design Documentation; and
 - (iv) any other matters required by the Principal's Representative.

- (d) **(Meeting requirements):** The Project Design Group must meet:
- (i) at least weekly; or
 - (ii) at such other times as the parties may agree,
- until the achievement of Completion of the last Portion to achieve Completion.
- (e) **(Contractor to provide agenda):** The Contractor must provide an agenda prepared in consultation with the Principal's Representative for each Project Design Group meeting no less than two (2) Business Days prior to the Project Design Group meeting.
- (f) **(Chairperson):** The chairperson for the Project Design Group meeting is the Contractor's project director.
- (g) **(Minutes):** The chairperson must provide the Principal's Representative and all other persons who attended the Project Design Group meeting (and any other person nominated by the Principal's Representative) minutes of the Project Design Group meeting in accordance with the requirements in section 3.16 of the main body of the SWTC.

13.31 Project Leadership Group

- (a) **(Establishment):** Within two months of the date of this deed, the parties must establish a Project Leadership Group.
- (b) **(Members):** The Project Leadership Group will consist of:
- (i) the Principal's Representative;
 - (ii) the Contractor's Representative;
 - (iii) the Independent Certifier; and
 - (iv) such other persons as the Principal's Representative requires from time to time.
- (c) **(Role):** The role of the Project Leadership Group is to:
- (i) consider and discuss any issue prior to such issue being referred to the Management Review Group for resolution;
 - (ii) review and monitor the Contractor's progress against the Contractor's Program; and
 - (iii) discuss issues raised in the Contractor's monthly report required by Appendix C.2 of the SWTC.
- (d) **(Meeting requirements):** The Project Leadership Group must meet:
- (i) at least monthly; or
 - (ii) at such other times as the parties may agree,
- until the achievement of Completion of the last Portion to achieve Completion.

13.32 Out of Hours Coordination Group

- (a) **(Establishment):** At least one month prior to the commencement of Works taking place outside the construction hours (as defined in the Planning Approval), the parties must establish an Out of Hours Coordination Group.
- (b) **(Members):** The Out of Hours Coordination Group will consist of:
 - (i) a representative or representatives nominated by the Principal;
 - (ii) the Contractor's Out of Hours Works Coordination Manager (as required by Appendix D.1 of the SWTC);
 - (iii) such other persons the as Principal's Representative requires from time to time, which may include:
 - (A) the Contractor's Environmental Manager (as specified in Schedule A6 (*Contractor's Personnel*)) or any replacement notified under clause 13.5(c)(iii) (or delegate); and
 - (B) the Contractor's Communications and Stakeholder Manager (as specified in Schedule A6 (*Contractor's Personnel*)) or any replacement notified under clause 13.5(c)(iii) (or delegate).
- (c) **(Role):** The role of the Out of Hours Coordination Group is to:
 - (i) review the Contractor's six month, and detailed one month, look ahead for scheduled works outside of standard construction hours;
 - (ii) provide a collaborative forum through which the parties can coordinate out of hours works planned for the delivery of the Works; and
 - (iii) minimise cumulative noise and vibration impacts and maximise respite for affected sensitive receivers as required by the Planning Approval.
- (d) **(Meeting requirements):** The Out of Hours Coordination Group must meet:
 - (i) at least weekly; or
 - (ii) at such other times as the parties may agree,until the completion of Works taking place outside construction hours.

13.33 Legal effect of meetings

- (a) **(No legal effect):** Subject to clause 13.33(b), the Management Review Group, the Completion Steering Committee, the Traffic Control Group, the Variations Working Group, the Project Design Group, the Project Leadership Group, the Out of Hours Coordination Group and the Completion Working Group are consultative and advisory only and nothing which occurs during or as part of the process of a meeting, no resolution or communication at any meeting, nor minutes recording any resolution or communication of any such group will:
 - (i) limit or otherwise affect the rights or obligations of either party under this deed, any Approved Subcontract or otherwise according to Law;
 - (ii) entitle a party to make any Claim against the other;

- (iii) relieve a party from, or alter or affect, a party's Liabilities or responsibilities whether under this deed or otherwise according to Law;
 - (iv) prejudice a party's rights against the other whether under this deed or otherwise according to Law; or
 - (v) be construed as or amount to a direction by the Principal or the Principal's Representative unless and until a separate direction is given to the Contractor in writing by the Principal's Representative.
- (b) (**Determinations binding**): Subject to clause 19.3, a determination of the Management Review Group made in accordance with clause 13.25(d) will be binding on the parties.

13.34 **Quarterly whole of WHTBL Program reviews**

- (a) (**Contractor attendance and participation**): In each quarter in a calendar year at any time prior to the expiry of the final Defects Correction Period, the Principal may require that the Contractor attend and participate in one or more meetings with the Principal and its other contractors for the WHTBL Program.
- (b) (**Purpose**): The purpose of the meetings under clause 13.34(a) is for the Principal, the Contractor and the Principal's Other Contractors to work together in good faith on a co-operative and collaborative basis to identify and consider:
 - (i) issues and potential issues that have, or which may have, an adverse impact upon the successful delivery of the WHTBL Program or any part of the WHTBL Program (including the Works);
 - (ii) solutions to such issues or potential issues which may mitigate, remedy or avoid any adverse impact upon the successful delivery of the WHTBL Program or any part of the WHTBL Program (including the Works);
 - (iii) improvements that can be implemented to save time, reduce cost or improve the quality of the WHTBL Program or any part of the WHTBL Program (including the Works);
 - (iv) the manner in which any such solutions and improvements can be implemented; and
 - (v) any other matters that the Principal may require.
- (c) (**Notice**): If the Principal requires the Contractor to attend and participate in any meeting contemplated by clause 13.34(a), the Principal's Representative must provide the Contractor with at least ten (10) Business Days prior written notice of any such meeting.
- (d) (**Contractor's personnel to attend**): If the Principal's Representative provides the Contractor with a notice under clause 13.34(b), the Contractor must ensure that the following personnel attend and participate in the meeting:
 - (i) the Contractor's Representative;
 - (ii) representatives of any of the Contractor's Subcontractors which the Principal's Representative reasonably requires; and
 - (iii) any other person the Principal's Representative reasonably requires.

13.35 Independent Property Impact Assessment Panel

- (a) The Contractor acknowledges that the Principal has established an Independent Property Impact Assessment Panel for the WHTBL Program in accordance with the requirements of the Planning Approval.
- (b) The Contractor must:
 - (i) cooperate with the Independent Property Impact Assessment Panel and provide the Independent Property Impact Assessment Panel with any assistance, information or documentation that the Independent Property Impact Assessment Panel may reasonably require in order to carry out its functions;
 - (ii) permit the Independent Property Impact Assessment Panel to access the Construction Site and inspect the Contractor's Activities provided that the Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the Contractor's reasonable work health and safety procedures;
 - (iii) attend any meeting of the Independent Property Impact Assessment Panel that it is requested to attend by the Principal's Representative or the chairperson of the Independent Property Impact Assessment Panel provided that the Contractor is given reasonable prior written notice of any such meeting;
 - (iv) cooperate and provide reasonable assistance to the Principal in respect of any unresolved disputes arising from potential or actual property impacts which are referred to the Independent Property Impact Assessment Panel for resolution; and
 - (v) comply with the findings and recommendations of the Independent Property Impact Assessment Panel.
- (c) The parties acknowledge that any fees payable for the services provided by the Independent Property Impact Assessment Panel will be paid by the Principal.

14. TIME AND PROGRESS

14.1 Rate of Progress

- (a) (**Commencement**): The Contractor must:
 - (i) start to perform its obligations under this deed from the date of this deed; and
 - (ii) regularly and diligently progress the Contractor's Activities in accordance with this deed to ensure that Completion of each Portion is achieved by the relevant Date for Completion.
- (b) (**Suspension of works**): Without limiting its rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of the Contractor's Activities except where directed by a court, Authority or by the Principal's Representative under clauses 6.6(a) or 14.14.
- (c) (**Advance notice**): Without limiting clause 14.1(d), the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor's Activities in accordance with this deed.

- (d) **(No obligation):** 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 applicable) should reasonably have anticipated at the date of this deed.
- (e) **(Order and time):** The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 14.1(e), direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed.
- (f) **(Direction in writing):** No direction by the Principal's Representative will constitute a direction under clause 14.1(e) unless the direction is in writing and expressly states that it is a direction under clause 14.1(e).
- (g) **(Condition precedent to Claim):** If the Contractor considers that compliance with a written direction expressly stated to be pursuant to clause 14.1(e) will or is likely to require the Contractor to undertake more or less Reimbursable Work than otherwise would have been incurred, the Contractor must, as a condition precedent of any entitlement to make a Claim under clause 14.1(h) promptly, and in any event within five (5) Business Days after first receipt of such direction and before following the written direction, notify the Principal's Representative of such.
- (h) **(Variation):** If the Contractor has complied with the conditions in clause 14.1(g), the Principal's direction under clause 14.1(e) will be dealt with as if it was a Variation except to the extent the direction was necessary because of, or arose out of or in any way in connection with, a failure by the Contractor to comply with its obligations under this deed (other than a failure by the Contractor to achieve Completion of a Portion by the relevant Date for Completion).
- (i) **(No Claim):** Other than as set out in clause 14.1(h), the Contractor is not 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 14.1.

14.2 Contractor's Programming Obligations

- (a) **(Provide and update):** The Contractor must:
 - (i) update and provide on an Open Book Basis the Contractor's Program so that it complies with and includes the details required by this deed (including Appendix C.2 of the SWTC) and any requirements of the Principal's Representative;
 - (ii) submit the Contractor's Program to the Principal's Representative for its review in accordance with clause 14.2(a)(i) at the times required by the SWTC;
 - (iii) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within five (5) Business Days of receipt of such a direction;
 - (iv) update, revise and submit to the Principal's Representative an updated Contractor's Program on an Open Book Basis:
 - (A) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Completion, the actual progress made by the Contractor, Variations and any other changes to the Contractor's Activities but excluding Claims for extensions of time to any Date for Completion which have been submitted by the

- Contractor to the extent that they have not been granted by the Principal's Representative;
- (B) to take account of any Recovery Plan submitted by the Contractor;
 - (C) on a monthly basis or whenever directed to do so by the Principal's Representative; and
 - (D) at any other times required by the SWTC; and
- (v) if requested by the Principal's Representative, prepare and provide for the Principal's Representative's information only, versions of all Contractor's Programs prepared in accordance with clause 14.2(a)(iv) that also allow for those Claims for an extension of time to any Date for Completion that have been made by the Contractor in accordance with clause 14.8 but to which the Principal's Representative has not yet responded in accordance with clause 14.10.
- (b) **(Regular meeting):** The Contractor must:
- (i) within three months of the date of execution of this deed, convene a regular fortnightly meeting until the Date of Completion of the last Portion to achieve Completion to discuss any and all programming and sequencing issues in relation to the Contractor's Activities and the Contractor's Program;
 - (ii) provide not less than five (5) Business Days advance written notice of each meeting convened under clause 14.2(b) (including with such notice all information relevant to the meeting) to the Principal's Representative and all invitees who must include the Contractor's key Subcontractors; and
 - (iii) ensure attendance by relevant representatives of the Contractor and its key Subcontractors at each meeting convened under clause 14.2(b);
- (c) **(Principal's requirements):** The Contractor must comply with the requirements of the Principal's Representative and its other obligations under this deed in preparing and using programs, including the requirements in clause 13.13.
- (d) **(Not depart):** The Contractor must not depart from the Contractor's Program, except to the extent agreed by the Principal's Representative or as reasonably necessary for the Contractor to comply with its obligations in clause 3.2.

14.3 **Contractor not Relieved**

Without limiting clause 13.13 or clause 14.2, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Contractor's Program) prepared by the Contractor, by the Principal's Representative in connection with the program, will:

- (a) **(No relief):** relieve the Contractor from or alter its Liabilities or obligations under this deed, including the obligation under clause 14.1;
- (b) **(Extension of time):** evidence or constitute notification of a delay or the claiming of or the granting of an extension of time to any Date for Completion or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) **(Timing of obligations unaffected):** affect the time for the performance of the Principal's or the Principal's Representative's obligations under this deed, including obliging the Principal or the Principal's Representative to do anything earlier than is

necessary to enable the Contractor to achieve Completion of a Portion by the Date for Completion of the Portion.

14.4 Importance of Completion on Time

The Contractor acknowledges:

- (a) (**Significance of compliance**): the importance of complying with its obligations under clause 14.1 to enable Interface Contractors, or any other party elected by the Principal, to carry out the work required under its contract with the Principal; and
- (b) (**Extension of time**): that a Date for Completion of any Portion will only be extended in accordance with clause 14.10, clause 14.13 or clause 10, or when so determined under clause 19.

14.5 Risk and Notice of Delay

- (a) (**Contractor to bear risk**): Except as expressly provided for in clause 14.10 and clause 10, and subject to its right to payment of the Reimbursable Costs, Management Fee, and amounts for Post Completion Activities and Provisional Sum Work under clause 15, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities and performance of its obligations under this deed both before and after any Date for Completion (as applicable).
- (b) (**Written notice – Contractor**): The Contractor must:
 - (i) within five (5) Business Days after the Contractor first becoming aware (or when it ought reasonably to have first become aware) of the commencement of any delay which is not caused by an Extension Event, give the Principal's Representative written notice of:
 - (A) any delay to the carrying out of the Contractor's Activities; and
 - (B) details of the cause;
 - (C) how any Date of Completion is likely to be affected (if at all); and
 - (ii) as soon as reasonably practicable, give the Principal's Representative the Contractor's Recovery Plan for recovery of the delay in accordance with clause 14.6.
- (c) (**Written notice – Principal**): If the Principal reasonably believes that the Contractor will be, or has been, delayed in achieving Completion of a Portion by the relevant Date for Completion by an event which is not an Extension Event then the Principal may give notice to that effect to the Contractor, and the Contractor must as soon as reasonably practicable give the Principal the Contractor's Recovery Plan for recovery of the delay in accordance with clause 14.6.

14.6 Recovery Plan

- (a) (**Details**): Each Recovery Plan which the Contractor must provide pursuant to clause 14.5 must:
 - (i) describe the actions and measures which the Contractor will diligently pursue to remedy or mitigate delay and to ensure the Contractor achieves Completion by the Date for Completion (or if the Date for Completion has passed or it is not reasonably possible to meet that date, to ensure Completion is achieved as soon as possible); and

- (ii) contain a proposed updated Contractor's Program.
- (b) (**Review of plan**): Each Recovery Plan will be reviewed by:
 - (i) the Principal's Representative under clause 13.13; and
 - (ii) the Completion Working Group under clause 13.28.
- (c) (**Compliance**): The Contractor must implement and comply with its Recovery Plan subject to any comments on that plan provided by the Completion Working Group under clause 13.28 or the Principal's Representative under clause 13.13.
- (d) (**No relief**): The Contractor will not be relieved of any Liability or responsibility under this deed or otherwise at Law arising out of or in connection with:
 - (i) any comments given by the Completion Working Group or the Principal's Representative on review of the Recovery Plan; or
 - (ii) the implementation of any Recovery Plan in respect of which the Completion Working Group or the Principal's Representative has or has not given comments.
- (e) (**No Claim**): The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with any comments by the Completion Working Group or the Principal's Representative on the Recovery Plan or preparing, or complying with, a Recovery Plan.

14.7 **Entitlement to Claim Extension of Time**

If the Contractor is, or will be, delayed in achieving Completion of a Portion by reason of an Extension Event, the Contractor may claim an extension of time to the relevant Date for Completion in accordance with the requirements of clause 14.8.

14.8 **Claim for Extension of Time**

- (a) (**Written notice**): To claim an extension of time to the Date for Completion of a Portion, the Contractor must:
 - (i) within ten (10) Business Days after first becoming aware (or when it ought reasonably to have first become aware) of the commencement of the delay, submit a written notice of its intention to claim for an extension to the Date for Completion of the Portion, which:
 - (A) gives details of the delay and the Extension Event causing the delay; and
 - (B) states the number of days for which the extension of time is to be claimed;
 - (ii) within ten (10) Business Days after the Contractor's notice issued under clause 14.8(a)(i), submit a written Claim to the Principal's Representative for an extension to the Date for Completion of the Portion, which:
 - (A) gives detailed particulars of the delay and the Extension Event causing the delay; and
 - (B) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that:

- (aa) the delay involves an activity which is critical to the maintenance of progress in the execution of the Contractor's Activities and which will delay it in achieving Completion of the Portion in the manner described in clause 14.9(a)(iii); and
- (bb) the conditions precedent to an extension of time in clause 14.9 have been met; and
- (iii) if the effects of the delay continue after the date of the Claim under clause 14.8(a)(ii) and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written Claim to the Principal's Representative:
 - (A) every ten (10) Business Days after the first written Claim made under clause 14.8(a)(ii) (or such other period as notified by the Principal's Representative in writing), until five (5) Business Days after the end of the effects of the delay; and
 - (B) containing the information required by clause 14.8(a)(ii) (except to the extent otherwise directed by the Principal's Representative).
- (b) (**Additional information**): The Principal's Representative may, within ten (10) Business Days after receiving the Contractor's Claim or further Claim for an extension of time for Completion pursuant to clause 14.8(a), request additional information in relation to the Claim or further Claim by written notice to the Contractor.
- (c) (**Contractor to provide**): The Contractor must, within ten (10) Business Days after receiving a notice under clause 14.8(b), provide the Principal's Representative with the information requested.
- (d) (**Variations**): Despite any other provision of this deed, the parties agree that:
 - (i) the Contractor is not required to submit a Claim under this clause 14.8 in respect of a Variation; and
 - (ii) the Contractor's entitlement to any extension of time arising out of a Variation will be agreed or determined in accordance with clause 10.

14.9 Conditions Precedent to Extension of Time

- (a) (**Conditions precedent**): Subject to clause 14.15(i), it is a condition precedent to the Contractor's entitlement to an extension of time that:
 - (i) the Contractor gives the notices and Claims required by clause 14.8;
 - (ii) the cause of the delay is beyond the reasonable control of the Contractor; and
 - (iii) the Contractor is actually, or will be, delayed in achieving Completion of a Portion by the relevant Extension Event.
- (b) (**Failure to meet conditions**): If the Contractor fails to meet the conditions precedent in clause 14.9(a), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

14.10 Extension of Time

- (a) (**Extension**): Subject to clause 14.15, if the conditions precedent in clause 14.9(a) have been satisfied, the Principal's Representative must extend the Date for Completion of a Portion by a reasonable period, taking into account clauses 14.11, 14.12 and 14.14, such period to be stated by the Principal's Representative and notified to the Principal and the Contractor within fifteen (15) Business Days after:
- (i) the latest of the:
 - (A) Contractor's written Claim under clause 14.8(a)(ii) or the final notice under clause 14.8(a)(iii) (if relevant), whichever is the later; and
 - (B) provision by the Contractor of any additional information regarding the Claims, as required by clause 14.8(c); or
 - (ii) where the Principal's Representative has given the Contractor a Compression Request, or a Variation Order issued pursuant to clause 14.15(c) and subsequently issues a notice under clause 14.15(g) withdrawing the relevant Compression Request or Variation Order, the date of issue of the withdrawal notice.
- (b) (**Dates not set at large**): A failure of the Principal's Representative to grant a reasonable extension of time to the Date for Completion or to grant an extension of time to the Date for Completion within the relevant fifteen (15) Business Day period will not cause an affected Date for Completion to be set at large, but nothing in this clause 14.10 will prejudice any right of the Contractor to damages.
- (c) (**Site Access Expiry Dates**): If the Contractor is granted an extension of time in accordance with this clause 14.10, there will be a corresponding extension to the Site Access Expiry Dates for the relevant areas of the Construction Site but only to the extent that the Contractor still requires access to those areas of the Construction Site in order to carry out the Contractor's Activities applicable to the relevant Portion.

14.11 Reduction in Extension of Time

In respect of each Claim for an extension of time under clause 14.8(a), the Contractor's entitlement to an extension of time will be reduced to the extent the Contractor:

- (a) (**Avoidance of delay**): could have lessened or avoided the delay if it had taken all reasonable steps both to preclude the cause of the delay and to avoid or minimise the consequences of the delay, including the expenditure of reasonable sums of money and taking reasonable steps to accommodate, re-sequence or re-schedule within the Contractor's Program the cause of delay and the Contractor's Activities affected by the delay; or
- (b) (**Contractor's contribution**): caused or contributed to the delay or the event causing the delay.

14.12 Concurrent delay

Where there are several causes of delay to Completion of a Portion and at least one of those causes is not an Extension Event, then, to the extent the delays resulting from those causes are concurrent, the Contractor will not be entitled to an extension of the Date for Completion of that Portion under clause 14.10.

14.13 Unilateral Extensions

- (a) **(Principal's Representative's may extend):** The Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor, unilaterally extend the Date for Completion of a Portion by any period specified in a notice to the Contractor.
- (b) **(Principal's Representative's discretion):** The power to extend the Date for Completion of a Portion under clauses 14.13(a) or 14.10 (as applicable):
 - (i) may be exercised whether or not the Contractor has made, or is entitled to make, a Claim for an extension of time to any relevant Date for Completion, or has been, or is entitled to be, granted an extension of time to any relevant Date for Completion under clause 14.8;
 - (ii) subject to clause 14.13(b)(iii), may only be exercised by the Principal's Representative, and the Principal's Representative is not required to exercise its discretion under this clause 14.13(a) for the benefit of the Contractor;
 - (iii) without limiting clause 14.13(a), may be exercised or not exercised by the Principal's Representative in accordance with the directions of the Principal; and
 - (iv) is not a direction which can be the subject of a Dispute pursuant to clause 19 or in any other way opened up or reviewed by any other person (including any expert, any arbitrator or court).
- (c) **(Site Access Expiry Date):** The Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor, unilaterally extend any Site Access Expiry Date, by any period specified in a notice to the Contractor and the Principal.

14.14 Suspension

- (a) **(Principal's Representative may direct):** The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Contractor's Activities.
- (b) **(Reason for suspension):** If the suspension under this clause 14.14 arises as a result of:
 - (i) the Contractor's failure to carry out its obligations in accordance with this deed, including where any process, procedure, test method, calculation, analysis or report required by this deed has resulted in or will result in a non-conformance:
 - (A) the Reimbursable Costs will not include the costs incurred as a result of the suspension;
 - (B) there will be no Reimbursable Cost Element Adjustment or Management Fee Adjustment as a result of the suspension; and
 - (C) the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Contractor's failure to perform its obligations in accordance with this deed:

- (A) the Reimbursable Costs will include the costs incurred as a result of the suspension;
- (B) a direction to suspend under this clause 14.14 will be a Reimbursable Cost Element Adjustment Event, a Management Fee Adjustment Event and an Extension Event; and
- (C) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 14.14(b)(ii).

14.15 Compression

- (a) (**Principal may issue Variation Proposal Request**): If the Contractor makes a Claim under clause 14.8, the Principal's Representative may issue a Variation Proposal Request under clause 10.4(a) which proposes a Variation to compress the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve Completion of a Portion by its Date for Completion (**Compression Request**).
- (b) (**Variation Proposal requirements**): In response to a Compression Request, in addition to the other details the Contractor is required to include in a Variation Proposal in accordance with clause 10.4(c), the Contractor must ensure that the relevant Variation Proposal:
 - (i) sets out:
 - (A) the Contractor's opinion (acting reasonably) of whether the compression is reasonably achievable in the circumstances; and
 - (B) if, in the Contractor's reasonable opinion, the compression is not reasonably achievable, an alternative compression proposal setting out the Contractor's assessment (acting reasonably) of the maximum compression that it considers is reasonably achievable; and
 - (ii) includes a revised Contractor's Program which sets out in sufficient detail the method by which the Contractor proposes to achieve the required compression.
- (c) (**Principal may issue Variation Order**): Whether or not:
 - (i) the Principal's Representative has issued a Compression Request under clause 14.15(a); or
 - (ii) the Contractor has issued a Variation Proposal in accordance with clause 14.15(b),
the Principal's Representative:
 - (iii) may issue to the Contractor a Variation Order under clause 10.8(a) directing the compression that is reasonably achievable; and
 - (iv) must not direct any compression that is not reasonably achievable.
- (d) (**Implementation**): If the Principal's Representative gives the Contractor a Variation Order to compress the Contractor's Activities, clause 10.8(d) will apply.

- (e) (**Compression at other times**): In addition to the Principal's Representative's rights under clause 14.15(a), the Principal's Representative will have the right to issue a Compression Request (including to bring forward the Date for Completion of a Portion), including by means of overtime, additional crews, additional shifts, resequencing of the Contractor's Activities, or otherwise, whether or not the Contractor has made a Claim under clause 14.8 or the Contractor's Activities are progressing without delay or in accordance with the Contractor's Program, in which case clauses 14.15(b) to 14.15(d) will apply.
- (f) (**Principal's Representative's discretion**): Despite clause 14.15(a), the Principal's Representative may issue a Compression Request whether or not the cause of delay for which the Contractor has made its Claim under clause 14.8 entitles the Contractor to an extension of time to any relevant Date for Completion.
- (g) (**Withdrawal**): The Principal's Representative may at any time by notice in writing withdraw any Compression Request, or a Variation Order issued pursuant to clause 14.15(c), after which the Contractor will be entitled to:
 - (i) any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the Contractor made a Claim under clause 14.8; and
 - (ii) a Reimbursable Cost Element Adjustment for the reasonable costs incurred by the Contractor to compress the Contractor's Activities in compliance with the Variation Order issued pursuant to clause 14.15(c) prior to its withdrawal.
- (h) (**Effect of compression**): If the Principal's Representative withdraws a Variation Order as contemplated by clause 14.15(g), any extension of time in accordance with clause 14.15(g) will be determined having regard to the effect which the compression of the Contractor's Activities taken by the Contractor prior to the withdrawal of the Variation Order has had on mitigating the delay which is the subject of the Claim for an extension of time made by the Contractor under clause 14.8.
- (i) (**Reduction of entitlement**): If the Principal's Representative gives the Contractor a Variation Order pursuant to clause 14.15(c) and it only applies to part of a delay, the Contractor's entitlement to any extension of time to any relevant Date for Completion, which it otherwise would have had, will only be reduced to the extent to which the Variation Order requires the Contractor to compress to overcome the delay.
- (j) (**No Claim**): Except as provided for under this clause 14.15, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of any Variation Order to compress of the Contractor's Activities.

14.16 **Compression by Contractor**

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

- (a) (**No obligation**): neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Completion of a Portion before the Date for Completion of the Portion;
- (b) (**Timing not affected**): the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) (**No Claim**): the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of such compression or acceleration.

14.17 Directions to Make Accessible

- (a) (**Direction**): The Principal's Representative may, by notice in writing expressly referring to this clause 14.17, direct the Contractor to promptly make the Construction Site or a part of the Construction Site Accessible to an Interface Contractor to perform work even if Completion for that work space has not been reached (**Make Accessible Direction**).
- (b) (**Compliance**): The Contractor must comply with a Make Accessible Direction.
- (c) (**Extension of time**): Except to the extent set out in clause 14.17(e) and clause 14.17(d), this clause 14.17 does not affect the Contractor's entitlement under this deed to an extension of time.
- (d) (**Cost adjustment**): A Make Accessible Direction will be a Reimbursable Cost Element Adjustment Event, a Management Fee Adjustment Event and an Extension Event to the extent that:
 - (i) the need for the Make Accessible Direction is not related to, or a consequence of, any breach of the deed by the Contractor (other than a failure by the Contractor to achieve Completion of a Portion by the relevant Date for Completion); and
 - (ii) the Make Accessible Direction was not, in effect:
 - (A) a direction to the Contractor to perform the Contractor's Activities in accordance with this deed (other than this clause), or consistently with this deed; or
 - (B) related to rectification of a Defect.
- (e) (**No Claim**): The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim as a consequence of any Make Accessible Direction except for the circumstances in clause 14.17(d).

15. PAYMENT

15.1 Principal's payment obligation for design and construction

- (a) (**Principal to pay**): Subject to the terms of this deed and to any other right to set-off that the Principal may have, the Principal will pay the Contractor the following amounts:
 - (i) the Reimbursable Costs;
 - (ii) the Management Fee;
 - (iii) amounts relating to Provisional Sum Work in accordance with clause 11.16(d);
 - (iv) amounts relating to Post Completion Activities in accordance with clause 16A.1(h) or clause 16A.2(d) (as applicable);
 - (v) the KRA Incentive (if any);
 - (vi) the Cost Incentive (if any);
 - (vii) the Early Completion Payments (if any); and

- (b) (**Limitations and conditions precedent**): Schedule F1 (*Payment*), Schedule F2 (*Schedule of Rates and Labour Costs*) and Schedule F6 (*KRA Incentive Payment Schedule*) set out (among other things):
 - (i) those parts of the Contractor's Activities which must be completed before the Contractor may claim a progressive payment with respect to that part;
 - (ii) the payment the Contractor may claim for each progressive payment;
 - (iii) any limitations or other constraints on the Contractor's ability to make Claims for payment; and
 - (iv) the restrictions (if any) on the timing and sequencing of the Contractor's Activities with which the Contractor must comply.
- (c) (**Further constraints**): Clauses 15.2(c), 15.2(m) and 15.11 set out further payment constraints that are to apply.
- (d) (**Excluded Costs**): The Contractor acknowledges and agrees that it will not be entitled to make, and the Principal will not be liable upon, a Claim in respect of any Excluded Costs incurred or payable by the Contractor arising out of or in connection with the Contractor's Activities or this deed.

15.2 **Payment Claims**

- (a) (**Contractor must submit**): The Contractor must give the Principal's Representative a Claim for payment on account of all amounts then payable by the Principal to the Contractor under this deed (**Payment Claim**) on the following dates:
 - (i) on the 25th day of each month (or if this day is not a Business Day, the next Business Day after this day) until the Date of Completion for the last Portion to achieve Completion;
 - (ii) thirty (30) Business Days after each of:
 - (A) the issue of a Notice of Completion for the last Portion to achieve Completion; and
 - (B) the expiry of the final Defects Correction Period; and
 - (iii) in respect of the Post Completion Activities, on the 25th day of each month during which the Post Completion Activities are carried out (or if this day is not a Business Day, the next Business Day after this day).
- (b) (**Requirements for Payment Claims**): For each Payment Claim made under clause 15.2(a) the Contractor must:
 - (i) give the Principal's Representative a Claim in a format required by the Principal's Representative (including electronic format) showing the amount the Contractor claims on account of:
 - (A) the Reimbursable Costs in respect of Reimbursable Work carried out up to the date when the Contractor may issue a Payment Claim in accordance with clause 15.2(a), which have not already been claimed by the Contractor, payable to:
 - (aa) Subcontractors; and
 - (bb) the Contractor;

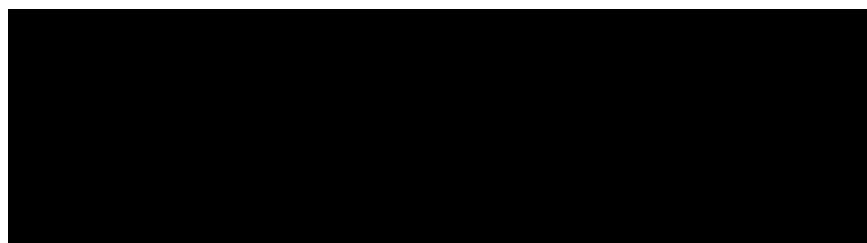
- (B) the Management Fee in the monthly instalments calculated in accordance with Schedule F1 (*Payment*);
- (C) the amount payable for Provisional Sum Work (if any) in respect of Provisional Sum Work carried out prior to the date of the when the Contractor may issues a Payment Claim in accordance with clause 15.2(a), which have not already been claimed by the Contractor;
- (D) the amounts payable for the Post Completion Activities (if any) in respect of Post Completion Activities carried out prior to the date of the when the Contractor may issues a Payment Claim in accordance with clause 15.2(a), which have not already been claimed by the Contractor;
- (E) subject to clause 15.11:
 - (aa) the KRA Incentive (if any);
 - (bb) the Cost Incentive (if any);
 - (cc) any Early Completion Payment (if any); and

[REDACTED]
payable that month; and

- (F) other amounts payable under this deed by the Principal to the Contractor as of the date of the Payment Claim;
 - (ii) where the Principal has given notice under clause 15.14(g)(iv), provide a valid tax invoice for any taxable supplies to which the payment relates;
 - (iii) the most recent monthly statement from the Project Bank Account; and
 - (iv) in the case of the Payment Claims issued after:
 - (A) the issue of a Notice of Completion for the last Portion to achieve Completion; and
 - (B) the expiration of the final Defects Correction Period,
comply with clause 15.2(o).
- (c) **(Reimbursable Costs):** For the purposes of claiming Reimbursable Costs, the following provisions apply:
- (i) where costs could be claimed as a Reimbursable Cost or another type of cost, the Contractor must claim such costs as Reimbursable Costs;
 - (ii) all discounts or rebates received by the Contractor in relation to goods or services procured for the purposes of the Contractor's Activities must be applied to reduce the Reimbursable Costs;
 - (iii) any credit on the sale of surplus materials or excavated material in connection with the Contractor's Activities must be applied to reduce Reimbursable Costs;
 - (iv) where an Contractor's Employee's salary package includes a motor vehicle, the costs of that motor vehicle must be covered by the relevant multiplier in

Schedule F2 (*Schedule of Rates and Labour Costs*), and cannot be separately claimed as Reimbursable Costs;

- (v) subject to clause 15.2(c)(viii), the Contractor can only recover a maximum of 100 per cent of any bona fide Reimbursable Costs incurred by the Contractor in carrying out the Contractor's Activities;
- (vi) Reimbursable Costs in respect of Approved Subcontracts are taken to have been incurred at the times stated in clause 15.2(c)(vii)(A) for the relevant goods or services (without limiting clause 15.2(c)(vii)(C));
- (vii) for the purposes of clause 15.2(c)(vi):
 - (A) the Contractor may only claim such Reimbursable Costs if:
 - (aa) it has received a final tax invoice from the relevant Subcontractor under an Approved Subcontract;



and may not otherwise claim Reimbursable Costs on account of the estimated value of Reimbursable Work carried out;

- (B) the Contractor must provide proof of all amounts actually paid to Subcontractors under Approved Subcontracts (once paid); and
- (C) the Principal may deduct from any subsequent payment the amount by which the original amount claimed by the Contractor under this deed exceeds the actual amount paid by the Contractor to the Subcontractor under an Approved Subcontract; and
- (viii) the Contractor is not required to apply any amount or Liability which it has recovered or may be entitled to recover from a Subcontractor under an Approved Subcontract in respect of delay in performing the Contractor's Activities (whether as liquidated damages, general damages or otherwise) to reduce or offset the Reimbursable Costs payable by the Contractor to the Subcontractor, except to the extent that the Contractor has been granted, or is entitled to, an extension of time under clause 14.10 in respect of some or all of the relevant delay.

- (d) **(Sufficient details):** Each Payment Claim must set out or attach (to a standard directed by the Principal from time to time) sufficient details, calculations, supporting documentation and any other information required by the Principal in respect of all amounts claimed by the Contractor on an Open Book Basis, including:

- (i) with respect to Reimbursable Work carried out under Approved Subcontracts, the relevant:
 - (A) payment schedule from the Contractor to the Subcontractor specifying the amount due to the Subcontractor; or
 - (B) payment claim from the Subcontractor to the Contractor specifying the amount claimed by the Subcontractor,

- for the relevant period of the Payment Claim;
- (ii) with respect to Self-Performed Reimbursable Work comprising labour by the Contractor's Employees:
- (A) timesheets for the relevant period of the Payment Claim; and
- (B) where the amount of any Direct Base Salary for any Contractor's personnel is different from the Direct Base Salary previously claimed for that personnel, the relevant salary information;
- (iii) with respect to Self-Performed Reimbursable Work comprising Construction Plant and Equipment, utilisation logs for the relevant period of the Payment Claim; and
- (iv) without limiting clauses 15.2(d)(i) to 15.2(d)(iii), such other information as may be:
- (A) required to enable the Principal's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Contractor under this deed and by the Contractor to the Principal; or
- (B) otherwise required by the Principal from time to time, whether in relation to a specific payment or not.
- (e) **(Payment Schedule):** The Principal's Representative must, on behalf of the Principal, within ten (10) Business Days of receipt of the Contractor's Payment Claim, issue to the Contractor a Payment Schedule stating:
- (i) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor under this deed and which the Principal proposes to pay to the Contractor; or
- (ii) the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal,
- including details of the calculation of the progress amount, and if the amount stated as payable by the Principal to the Contractor is less than the amount claimed by the Contractor, the Principal's Representative must state why the amount is less and the reason(s) why the Principal proposes to withhold payment.
- (f) **(Withhold and set-off):** In issuing a Payment Schedule, the Principal's Representative may deduct from the amount which would otherwise be payable to the Contractor any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed or otherwise at Law, including any amount which the Principal is entitled to set-off or withhold under clauses 15.5, 15.6, 15.8 or 15.15(d).
- (g) **(Principal may issue Payment Schedule):** If the Contractor does not give the Principal's Representative a Payment Claim at a time required by clause 15.2(a), the Principal's Representative may nevertheless (but is not obliged to) issue a Payment Schedule as if a Payment Claim was made at the time required.
- (h) **(Requirements for Payment Schedules):** A Payment Schedule issued under clause 15.2(e) or clause 15.2(g) will separately identify the sum of the amounts due on account of the:

- (i) the Reimbursable Costs payable to:
 - (A) Subcontractors; and
 - (B) the Contractor;
- (ii) the Management Fee;
- (iii) the amount payable in respect of Provisional Sum Work (if any);
- (iv) the amount payable in respect of Post Completion Activities (if any);
- (v) the KRA Incentive (if any);
- (vi) the Cost Incentive (if any);
- (vii) the Early Completion Payment (if any);

[REDACTED]

- (ix) other amounts payable under this deed by the Principal to the Contractor.

- (i) **(Discrepancy):** Where the Principal has given notice under clause 15.14(g)(iv), if the amount set out in a Payment Schedule issued under clause 15.2(e) is different to the amount in the Contractor's Payment Claim or if the Principal's Representative issues a Payment Schedule under clause 15.2(g), the Contractor must, within two (2) Business Days of receiving the Payment Schedule, issue a revised tax invoice or adjustment note (as applicable) to the Principal to reflect the amount in the Payment Schedule.
- (j) **(Payment):** Within fifteen (15) Business Days of the date of the Contractor's Payment Claim in accordance with clause 15.2(a):
 - (i) where the Payment Schedule provides that an amount is payable by the Principal to the Contractor, the Principal must pay the Contractor the progress payment due to the Contractor as certified in the Payment Schedule; and
 - (ii) where the Payment Schedule provides that an amount is payable by the Contractor to the Principal, the Contractor must pay the Principal the amount due to the Principal as certified in the Payment Schedule.
- (k) **(Early lodgement of claim):** If the Contractor lodges a Payment Claim earlier than at the times specified under clause 15.2(a), the Principal's Representative will not be obliged to issue the Payment Schedule in respect of that Payment Claim earlier than it would have been obliged had the Contractor submitted the Payment Claim in accordance with this deed.
- (l) **(Exclusions and deductions):** Despite any other provisions of this deed to the contrary, the amount of any Payment Claim to which the Contractor is entitled in relation to this deed and the amount to be allowed by the Principal's Representative in any Payment Schedule issued under clause 15.2(e) as the amount payable to the Contractor arising out of or in any way in connection with this deed will:
 - (i) not include the following amounts:
 - (A) any Excluded Costs;
 - (B) any amount which this deed provides cannot be claimed or is not payable because of the failure by the Contractor to take any action

(including to give any notice to the Principal or the Principal's Representative);

(C) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);

(D) any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any events identified in the Schedules F1 (*Payment*) and F6 (*KRA Incentive Payment Schedule*));

(E) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;

(F) any amount in respect of which the Contractor has failed to provide supporting information as required by this deed; or

(G) any amount for work which is not in accordance with this deed;

(ii) deduct the following amounts:

(A) any amounts which have become due from the Contractor to the Principal under this deed; and

(B) any amounts which the Principal is entitled under this deed to retain, deduct, withhold or set-off against the Payment Claim, including under clauses 15.5, 15.6, 15.8, or 15.15(c) to 15.15(d);

(iii) in determining amounts to be excluded or deducted under clauses 15.2(l)(i) and 15.2(l)(ii), have regard to matters or circumstances occurring at any time before the date that the determination is being made; and

(iv) be determined having regard to the amounts payable or calculated in accordance with Schedule A2 (*Portions*), Schedule F1 (*Payment*), Schedule F2 (*Schedule of Rates and Labour Costs*) and Schedule F6 (*KRA Incentive Payment Schedule*).

(m) **(Principal's Representative not prejudiced):** Failure by the Principal's Representative to set out in a Payment Schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.

(n) **(Inclusion of all Claims):** The Contractor must include in the Payment Claim lodged by it after:

(i) the issue of a Notice of Completion for the last Portion to achieve Completion; and

(ii) the expiration of the final Defects Correction Period,

all Claims (excluding third party Claims for death, injury or property damage of which the Contractor is not aware, and ought not reasonably to have been aware) that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this deed which occurred:

- (iii) in the case of the Payment Claim referred to in clause 15.2(a)(ii)(A), prior to the date of that Payment Claim; and
 - (iv) in the case of the Payment Claim referred to in clause 15.2(a)(ii)(B), in the period between the date of the Payment Claim referred to in clause 15.2(a)(ii)(A) and the date of the Payment Claim.
- (o) (**Release from previous Claims**): The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Project Works or this deed that occurred prior to the date of submission of the relevant Payment Claim referred to in clauses 15.2(a)(ii)(A) or 15.2(a)(ii)(B), except for any Claim which:
- (i) has been included in the relevant Payment Claim which is given to the Principal's Representative within the time required by, and in accordance with, clause 15.2(a); and
 - (ii) has not been barred under another provision of this deed.
- (p) (**Subcontractor work**): Where any part of a payment to be made by the Principal to the Contractor is in respect of work carried out by a Subcontractor, the Principal will pay that part of the payment into the Project Bank Account.
- (q) (**Withdrawal of payment**): The Contractor may only make withdrawals from the Project Bank Account to pay the relevant Subcontractor for work carried out by that Subcontractor that forms part of the relevant Payment Claim.
- (r) (**Interest**): Interest on amounts standing to the credit of the Project Bank Account will accrue for the benefit of the Principal.

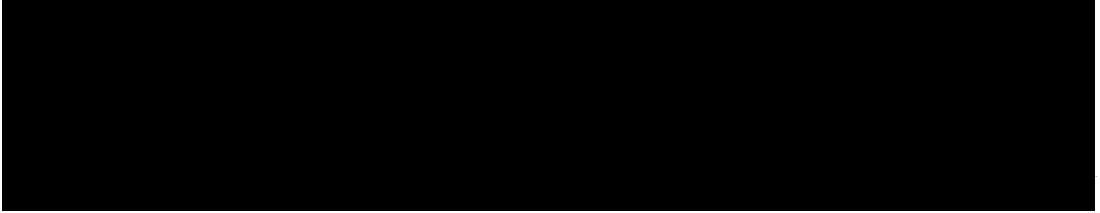
15.3 Effect of Payment Schedules and payments

- (a) (**No approval or Liability**): Neither the issue of a Payment Schedule under clauses 15.2(e) or 15.2(g), nor the making of any payment pursuant to any such Payment Schedule, will:
- (i) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
 - (ii) constitute evidence of the value of any work or an admission of Liability or evidence that work has been executed or completed in accordance with this deed; or
 - (iii) prejudice the right of either party to dispute under clause 19 whether any amount certified as payable in a Payment Schedule is the amount properly due and payable (and on determination, whether under clause 19 or as otherwise agreed, of the amount properly due and payable, the Principal or the Contractor, as applicable, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable), and any payments made pursuant to a Payment Schedule are payments on account only.
- (b) (**Right to amend retained**): The Principal's Representative may at any time correct, modify or amend any Payment Schedule.

15.4 Provision of documentation and other requirements

- (a) (**Documentation**): The value of the construction work carried out, or related goods and services provided, by the Contractor and the amount to which the Contractor is entitled will be no more than [REDACTED] per cent of the amount that the Principal's Representative would otherwise have set out in any Payment Schedule unless and until the Contractor has:
- (i) provided the Principal with the unconditional undertakings and the Parent Company Guarantee required under clause 5;
 - (ii) provided the Principal's Representative with:
 - (A) a statutory declaration by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule B1 (*Form of Statutory Declaration*), made out not earlier than the date of the Payment Claim;
 - (B) where clause 15.7(o) applies, the statement and the evidence (if any) required to be provided by the Contractor pursuant to that clause; and
 - (C) if applicable, the Asset Management Information and evidence of compliance with the reporting requirements and the sustainability reporting requirements in the SWTC;
 - (iii) where the Principal has given notice under clause 15.14(g)(iv), provided the Principal's Representative with a tax invoice, revised tax invoice or adjustment note (as applicable) as required under clause 15.2(b)(ii) and clause 15.2(i);
 - (iv) where the Principal's Representative has requested information relating to the Cost Plan or the Contractor's cost system in accordance with clause 9.16(e), provided such information to the Principal as required under clause 9.16(e);
 - (v) demonstrated to the Principal's Representative that it has effected and is maintaining, or has procured to be effected the insurances required to be effected by the Contractor under clause 17 and (if requested) provided supporting evidence of this to the Principal's Representative;
 - (vi) subject to clauses 15.4(c) and 15.4(d), in relation to each tenderer approved by the Principal's Representative pursuant to clause 11.7(a), evidence to the satisfaction of the Principal's Representative of the Contractor's compliance with clause 11.7 (including the provision of each of the agreements referred to in clause 11.7(c) having been duly stamped (if required by Law));
 - (vii) provided the documents required by clause 6.9(b) evidencing payment of the long service leave levy; and
 - (viii) done everything else that it is required to do under this deed before being entitled to make a Payment Claim or receive payment.
- (b) (**Updated Contractor's Program**): The value of the construction work carried out by the Contractor and the amount to which the Contractor is entitled will be no more than [REDACTED] per cent of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the Contractor has provided the Contractor's Program (and any updates) required by clause 14.2.
- (c) (**First Payment Claim**): In relation to the Contractor's first Payment Claim after the Claim for the Initial Payment, to satisfy the evidentiary requirements of clause 15.4(a)(vi), the Contractor must provide evidence of each tenderer engaged

pursuant to clause 11.7(a) since the date of this deed and the date of the first Payment Claim.

- (d) (**Subsequent Payment Claims**): In relation to each subsequent Payment Claim, to satisfy the evidentiary requirements of clause 15.4(a)(vi), the Contractor must provide evidence of each tenderer engaged pursuant to clause 11.7(a) since the date of previous Payment Claim referred to in clause 15.4(c) and the date of that Payment Claim.
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15.5 **Payment of Subcontractors, workers compensation and payroll tax**

- (a) (**Principal may pay**): If a worker or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the GST exclusive amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (b) (**Administration or winding up**): If the Principal receives notices of:
- (i) the Contractor being placed under administration; or
 - (ii) the making of a winding up order in respect of the Contractor,
- the Principal will not make any payment to a worker or Subcontractor pursuant to clause 15.5(a) without the concurrence of the administrator, provisional liquidator or liquidator, as applicable.
- (c) (**Withholding moneys**): If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 15.4(a)(ii)(A), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (d) (**Principal's rights unaffected**): Nothing in this clause 15.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

15.6 **Unfixed Materials**

- (a) (**Exclusion to Payment Claim**): Subject to clause 15.6(b), the value of unfixed or off-site Materials must not be included in a Payment Claim.
- (b) (**Requirements for payment**): The Contractor is only entitled to make a Claim for payment for Materials intended for incorporation in the Project Works but not yet incorporated, and the Principal is only obliged to make payment for such Materials if:

- (i) the Contractor provides evidence of:
 - (A) ownership of Materials;
 - (B) identification and labelling of the Materials as the property of the Principal; and
 - (C) adequate and secure storage and protection;
 - (ii) the Contractor has provided to the Principal an unconditional undertaking that meets the requirements of clause 5.2 for an amount equal to the payment claimed for the unfixed Materials;
 - (iii) the insurance held and the storage arrangements for the unfixed Materials are acceptable to the Principal's Representative;
 - (iv) the condition of the unfixed Materials has been confirmed in an inspection by the Principal's Representative; and
 - (v) if the PPS Law applies, the Contractor has registered a Security Interest in the unfixed Materials in favour of the Principal in accordance with clause 21.17.
- (c) (**Principal's property**): The only such unfixed Materials to be allowed for in a Payment Schedule are those that have become or (on payment) will become the property of the Principal.
 - (d) (**Title**): Upon a payment against a Payment Schedule that includes amounts for unfixed Materials, title to the unfixed Materials included will vest in the Principal.
 - (e) (**Release**): The security provided in accordance with clause 15.6(b)(ii) will be released once the applicable unfixed Materials are incorporated into the Project Works.

15.7 SOP Act

- (a) (**Interpretation**): Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) (**Provision of information to Principal**): The Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a Payment Claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (c) (**Agency**): In responding to the Contractor under the SOP Act, the Principal's Representative acts as the agent of the Principal and the Principal authorises the Principal's Representative to issue Payment Schedules on its behalf (without affecting the Principal's right to issue a Payment Schedule itself).
- (d) (**Issue of Payment Schedule**): If, within the time allowed by the SOP Act for the service of a Payment Schedule by the Principal, the Principal does not:
 - (i) serve the Payment Schedule itself; or
 - (ii) notify the Contractor that the Principal's Representative does not have authority from the Principal to issue the Payment Schedule on its behalf,

then a Payment Schedule issued by the Principal's Representative under this deed which relates to the period relevant to the Payment Schedule will be taken to be the

Payment Schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).

- (e) (**Other amounts**): For the purposes of this deed, the amount of the progress payment to which the Contractor is entitled under this deed will be the amount certified by the Principal's Representative in a Payment Schedule under clause 15.2(e) less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.
- (f) (**No additional rights**): Nothing in this deed will be construed to:
 - (i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a breach of this deed (unless the Principal would have been in breach of this deed if the SOP Act had no application); or
 - (ii) subject to clause 15.7(g), give to the Contractor rights under this deed which extend or are in addition to rights given to the Contractor by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.
- (g) (**Suspension**): If the Contractor suspends the whole or part of the Contractor's Activities pursuant to the SOP Act, except to the extent (if any) expressly provided under the SOP Act and clause 15.7(f), the Principal will not be liable for and the Contractor is not entitled to Claim any Loss suffered or incurred by the Contractor as a result of the suspension.
- (h) (**Indemnity**): The Contractor must indemnify the Principal from and against all Claims against the Principal, and all Loss suffered or incurred by the Principal arising out of:
 - (i) a suspension by a Subcontractor of work which forms part of the Contractor's Activities pursuant to the SOP Act (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 deed); or
 - (ii) a failure by the Contractor to comply with its obligations under clause 15.7(b).
- (i) (**Nominating authority**): The Contractor agrees that for the purposes of section 17(3) of the SOP Act:
 - (i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the Contractor's Activities is to be made; and
 - (ii) the Contractor must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).
- (j) (**Adjudication amount**): If an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 15.2(e);
 - (ii) if it is subsequently determined pursuant to this deed that the Contractor was not entitled under this deed to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the

- Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; 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 Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (k) (**Withholding amounts**): Without limiting clause 15.8, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (l) (**Effect of withholding amounts**): If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
- (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the Principal to the Contractor has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the Contractor must be made.
- (m) (**No proceedings**): The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (n) (**Debt due**): Any amount paid by the Principal pursuant to section 26C of the SOP Act will, to the extent not already withheld, deducted or set-off under clause 15.8, be a debt due from the Contractor to the Principal.
- (o) (**Statutory declaration**): If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:
- (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal within five (5) Business Days of the occurrence of the event in clause 15.7(o)(i) or clause 15.7(o)(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 applicable).

15.8 Right of set-off

- (a) (**Withhold or set-off**): The Principal's Representative may (on behalf of the Principal) in any Payment Schedule issued under clauses 15.2(e) or 15.2(g) withhold, set-off or deduct from the money which would otherwise be certified as payable to the Contractor or which would otherwise be due to the Contractor under this deed:
- (i) any debt or other moneys due from the Contractor to the Principal (including any debt due from the Contractor to the Principal pursuant to section 26C of the SOP Act or any amount due from the Contractor to the Principal as determined under clause 19);
 - (ii) 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;
 - (iii) any amount received by the Contractor from the sale of material salvaged from the Construction Site in performing the Contractor's Activities (to the extent that the amount has not been applied to reduce Reimbursable Costs under clause 15.2(c)(iii));
 - (iv) any amount that the Principal is not required to pay due to the application of clause 15.2(c) or clause 15.4;
 - (v) any amount that the Principal is entitled to withhold under clause 15.12(c);
 - (vi) any bona fide Claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise; or
 - (vii) any other amount the Principal is entitled to withhold, set-off or deduct under this deed,

under or arising out of or in connection with this deed or the Contractor's Activities and the Principal may make such withholding, set-off or deduction whether or not such amounts were included in a payment schedule issued by the Principal's Representative.

- (b) (**Survival of clause**): This clause 15.8 will survive the termination of this deed.
- (c) (**No right of set off**): The Contractor acknowledges and agrees that it has no right to set off under or in relation to this deed.

15.9 Interest

- (a) (**Principal to pay**): The Principal will pay simple interest at the rate of █ per cent above the Base Interest Rate on any:
- (i) amount which has been set out as payable by the Principal's Representative in a payment schedule under clause 15.2(e), but which is not paid by the Principal within the time required by this deed;
 - (ii) damages; and
 - (iii) amount which is found after the resolution of a Dispute to be payable to the Contractor, and which has not been paid by the Principal,

from the date such amount was first due and payable until the date such amount is paid.

- (b) (**Contractor to pay**): The Contractor will pay simple interest at the rate of [redacted] per cent above the Base Interest Rate on any amount which this deed provides may become due and payable by the Contractor to the Principal and such simple interest will be payable from the date such amount was first due and payable until the date such amount is paid.
- (c) (**Sole entitlement**): Clauses 15.9(a) and 15.9(b) will be the Contractor's or the Principal's (as applicable) sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

15.10 Title and risk

- (a) (**Title**): Title in all Materials forming part of the Project Works, the Temporary Works, the works carried out pursuant to the Delivery Phase Maintenance and the Post Completion Activities will pass progressively to the Principal on the earlier of:
 - (i) installation of the relevant Project Works, the Temporary Works, the works carried out pursuant to the Delivery Phase Maintenance and the Post Completion Activities on the Construction Site; or
 - (ii) payment for or delivery of such Materials to the Construction Site, regardless of whether the relevant Materials are unfixed,
 provided that title to Temporary Works will only pass to the Principal if the Temporary Works ultimately form part of the Project Works.
- (b) (**Risk**): Risk in all such items remains with the Contractor in accordance with clause 17.1.

15.11 Timing for claims for Cost Incentive, KRA Incentive, Early Completion Payments and [redacted]

The Contractor will be entitled to claim the following payments at the following times:

- (a) (**Cost Incentive**): in respect of the Cost Incentive (if any):
 - (i) [redacted]
 - (ii) the remaining balance of the Cost Incentive as part of the Payment Claim made under clause 15.2(a)(ii)(B);
- (b) (**KRA Incentive**): in respect of the KRA Incentive (if any), as part of the Payment Claim following the Principal's Representative issuing a written notice to the Contractor in accordance with clauses 3.4 and 3.4A of Schedule F6 (*KRA Incentive Payment Schedule*);
- (c) (**Early Completion Payment**): in respect of the Early Completion Payment for a Portion (if any), as part of the Payment Claim immediately following the Date of Completion of that Portion; and

15.12 Outturn Cost exceeds Target Cost

- (a) (**Share of Cost Overrun**): If the Outturn Cost is greater than the Target Cost, the Share of Cost Overrun will be a debt due and payable by the Contractor to the Principal.

- (b) (**Limit on payment**): The Contractor's total aggregate Liability under clause 15.12(a) is limited to an amount equal to the Share of Cost Overrun Cap.
- (c) (**Withholding payment**): If:
 - (i) the Principal reasonably determines during the carrying out of the Contractor's Activities that the Outturn Cost will exceed the Target Cost; or
 - (ii) the Outturn Cost has actually exceeded the Target Cost,

the Principal may withhold payment of all or part of the Management Fee, the Reimbursable Costs, or any other amount otherwise due to the Contractor under this deed to meet the Principal's determination of the Contractor's liability under clause 15.12(a).

15.13 No Claim by Contractor

The Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any act, omission or breach of contract by the Principal or the Principal's Representative, to the extent that this may have contributed to preventing the Contractor from maximising the amount it otherwise would have been entitled to under clause 15.11.

15.14 GST

- (a) (**GST exclusive**): Unless otherwise stated, all amounts set out in this deed are GST exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 15.14.
- (b) (**Entitlement to increase amount**): Subject to clauses 15.14(e) and 15.14(f), where any supply occurs under or in connection with this deed or the Project Works which is subject to GST, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (c) Not used
- (d) (**Input tax credits**): Where an amount is payable to the Supplier for a supply under or in connection with this deed or the Project Works which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under clause 15.14(b).
- (e) (**Condition precedent**): As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (f) (**Variation**): If the GST payable in relation to a supply made under or in connection with this deed or the Project Works varies from the amount of GST paid by the recipient under clause 15.14(b), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the recipient. Any payment, credit or refund under this clause 15.14(f) is deemed to be a payment, credit or refund of the amount of GST payable under clause 15.14(b). Where there is an adjustment event, the Supplier must issue an adjustment note to the recipient as soon as the Supplier becomes aware of the adjustment event.
- (g) (**Requirements**): The parties agree that unless and until otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this deed:

- (i) the Principal will issue to the Contractor a recipient created tax invoice (**RCTI**) for each taxable supply made by the Contractor to the Principal under this deed;
 - (ii) the Principal will issue to the Contractor a recipient created adjustment note for any adjustment event;
 - (iii) the Contractor will not issue a tax invoice or adjustment note in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI or recipient created adjustment note for each taxable supply made by the Contractor under this deed, in which case, from that point in time, the Principal will not be required to issue RCTIs and recipient created adjustment notes in respect of such supplies and the Contractor will be required to issue tax invoices and adjustment notes to the Principal in respect of any such taxable supply.
- (h) (**Registration status**): Each party acknowledges and warrants that at the time of entering into this deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (i) (**Interpretation**): In this clause 15.14:
 - (i) **GST** means the tax payable on taxable supplies under the GST Legislation;
 - (ii) **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
 - (iii) terms defined in GST Legislation have the meaning given to those terms in GST Legislation; and
 - (iv) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15.14.

15.15 Initial payment

- (a) The Contractor is entitled to be paid the Initial Payment, subject to the satisfaction of the following conditions:
 - (i) the Contractor has given the Principal written details of the portions of the Initial Payment which have become payable to its Subcontractors and the due dates for payment; and
 - (ii) the Contractor has established to the Principal's reasonable satisfaction that the Initial Payment will be used for the purposes of performing the Contractor's Activities.

- (b) (**Payment claim**): Subject to clause 15.15(a), the Contractor may submit to the Principal a Payment Claim for the Initial Payment on the date of this deed.
- (c) (**Principal to pay**): The Principal will pay to the Contractor the Initial Payment within fifteen (15) Business Days of the date of the Contractor's Claim under clause 15.15(a).
- (d) (**Payment Claim Deductions**): The Contractor acknowledges and agrees that:
 - (i) from the [REDACTED] Payment Claim issued after the Payment Claim for the Initial Payment, the Principal will be entitled to deduct from the amount which would otherwise be payable to the Contractor, an amount equal to [REDACTED] per cent of the Initial Payment until the Principal has recovered an amount equal to the Initial Payment; and
 - (ii) if this deed is terminated in accordance with clause 18 prior to the date that the Principal has recovered an amount equal to the Initial Payment under clause 15.15(d)(i), the Principal will be entitled to recover such unrecovered amount as a debt due and payable.

16. COMPLETION

16.1 Progressive Inspection and Testing

- (a) (**Direction for testing**): At any time prior to Completion of a Portion, the Principal's Representative may direct that any Materials or work forming part of the Contractor's Activities in respect of that Portion be tested.
- (b) (**Contractor to provide assistance**): The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Contractor's Activities or Project Works as may be required to facilitate any test directed by the Principal's Representative under clause 16.1(a).
- (c) (**Make good**): On completion of any test the Contractor must make good the Contractor's Activities or Project Works so that they fully comply with this deed.
- (d) (**Direction not to cover**): The Principal's Representative may direct that any part of the Contractor's Activities or the Project Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.
- (e) (**Conduct of tests**): The tests prescribed in this deed must be conducted by the Contractor as and when provided for in this deed, or may be conducted by the Principal's Representative or a person (that may include the Contractor or the Independent Certifier) nominated by the Principal's Representative.
- (f) (**Testing by independent authority**): Any testing required to be done by an independent authority must be carried out by an authority recognised by Joint Accreditation System of Australia and New Zealand (JAS-ANZ) ABN 49 614 982 550 (or their successors or assigns).
- (g) (**Written notice**): Unless otherwise stated in this deed, before conducting a test under this deed the Principal's Representative or the Contractor must give not less than two (2) Business Days' notice in writing to the other of the time, date and place of the test (provided that if the other party does not then attend, the test may nevertheless proceed).
- (h) (**Parties may conduct test**): Without prejudice to any other rights or remedies under this deed, if the Contractor or the Principal's Representative delays in

conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

- (i) **(Availability of results):** Each party must promptly make the results of tests available to the other and to the Principal's Representative and the Independent Certifier.
- (j) **(Costs of testing):** Where the Principal's Representative directs that Materials or work be tested, the costs of and incidental to testing will be Reimbursable Costs unless:
 - (i) the test is in respect of a part of the Contractor's Activities or the Project Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
 - (ii) the test is consequent upon a failure of the Contractor to comply with a requirement of this deed.
- (k) **(Extra costs):** Where the cost of testing are not Reimbursable Costs in accordance with clause 16.1(j), any additional costs incurred by the Principal will be a debt due from the Contractor to the Principal and payable by the Contractor to the Principal on demand.

16.2 Completion

- (a) **(Written notice):** The Contractor must, in respect of each Portion, give the Principal's Representative:
 - (i) six (6) months;
 - (ii) three (3) months;
 - (iii) one (1) month; and
 - (iv) eight (8) Business Days,written notice of the estimated Date of Completion of the Portion.
- (b) **(Joint inspection):** Subject to clause 16.2(h), the Principal's Representative, the Contractor's Representative and the Independent Certifier must, within four (4) Business Days after receipt of each notice given under clause 16.2(a) jointly inspect the Contractor's Activities at a mutually convenient time.
- (c) **(Notice from Independent Certifier):** Within three (3) Business Days after the joint inspection referred to in clause 16.2(b), the Independent Certifier must give the Principal and the Contractor 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 Contractor is so far from achieving Completion of the Portion that it is not practicable to issue a list as contemplated in clause 16.2(c)(i).
- (d) **(Incomplete list of Defects):** The parties acknowledge and agree that the Defects identified in any notice under clause 16.2(c)(i) are representative of the Defects that may be present at that period in time only and does not represent a complete list of all Defects that may prevent the Contractor from achieving Completion.

- (e) **(Joint inspection - Completion):** When the Contractor considers that it has achieved Completion of a Portion:
- (i) the 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 B4 (*Contractor's Certificate of Completion*); and
 - (ii) thereafter, and subject to clause 16.2(h), the Principal's Representative, the Contractor's Representative and the Independent Certifier must jointly inspect the Contractor's Activities at a mutually convenient time.
- (f) **(Determination by Independent Certifier):** The Independent Certifier must, within five (5) Business Days after receipt of a notice under clause 16.2(e)(i) or a notice under clause 16.2(g):
- (i) if Completion of the Portion has been achieved, provide the Principal's Representative and the Contractor with a document signed by the Independent Certifier in the form in Schedule B5 (*Notice of Completion*); or
 - (ii) if Completion of the Portion has not been achieved, issue a notice to the Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before Completion of the Portion (**Pre-Completion Notice**); or
 - (B) that the Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 16.2(f)(ii)(A).
- (g) **(Resubmission):** If the Independent Certifier issues a notice under clause 16.2(f)(ii), the Contractor must proceed with the Contractor's Activities and thereafter, when it considers that it has achieved Completion of the Portion, clauses 16.2(e) and 16.2(f) will reapply.
- (h) **(Attendees and comments):** The 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 16.2 (including any relevant Interface Contractors); and
 - (ii) the Principal's Representative may provide comments to the Independent Certifier (with a copy to the Contractor) in relation to any non-compliance of the Contractor's Activities with this deed.
- (i) **(Acknowledgements):** Without affecting the 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 Project Works is specified in this deed;
 - (ii) Completion of the Project Works is achieved by achieving Completion of all the Portions;
 - (iii) Completion of the Project Works will be taken to have occurred once Completion of all Portions has occurred; and
 - (iv) the Date of Completion of the Project Works will be taken to be the Date of Completion of the last Portion to achieve Completion.

16.3 **Unilateral Issue of Notice of Completion**

If at any time a notice required to be given by the Contractor to the Independent Certifier under either of clauses 16.2(e) or 16.2(g) is not given by the Contractor yet the Principal's Representative is of the opinion that Completion of a Portion has been achieved, the Principal's Representative may direct the Independent Certifier to:

- (a) issue a Notice of Completion under clause 16.2(f) for the Portion; or
- (b) carry out an inspection as if a notice had been received pursuant to clause 16.2(e)(i) and clauses 16.2(f) and 16.2(g) will apply.

16.4 **Part of the Project Works or a Portion**

(a) **(New Portions):** The Principal's Representative may (in its absolute discretion), at any time (including where part of a Portion has reached a stage equivalent to Completion, but another part of the Portion has not reached a stage equivalent to Completion) by written notice to the Contractor direct additional Portions under this clause 16.4 (including by dividing any existing Portion into multiple Portions).

(b) **(Timing of direction):** In respect of any additional Portion directed under this clause 16.4, if the notice under clause 16.4(a) is given by the Principal's Representative:

(i) before the Date for Completion of the relevant existing Portion and before the relevant part of the Portion to be separated has reached a stage equivalent to Completion, it will be a Reimbursable Cost Element Adjustment Event, a Management Fee Adjustment Event and an Extension Event; or

(ii) after:

(A) the Date for Completion of the relevant existing Portion but before the relevant part of the Portion to be separated has reached a stage equivalent to Completion; or

(B) the date the relevant part of the Portion to be separated has reached a stage equivalent to Completion,

the Contractor will not be entitled to make, and the Principal will not be liable upon, and Claim in respect of the direction of the additional Portion.

(c) **(Notice requirements):** Subject to clause 16.4(d), any notice given by the Principal's Representative under clause 16.4(a) must, for each new Portion, include details of:

(i) the Works which will become the new Portion;

(ii) the Date for Completion for any new Portion; and

(iii) respective daily rates of liquidated damages for the new Portions (provided that the aggregate of the daily rates of liquidated damages applicable to the new Portions must not exceed the daily rate of liquidated damages applicable to the relevant existing Portion prior to the creation of the new Portions),

all as determined by the Principal's Representative (acting reasonably).

(d) **(Portion divided):** If the Principal's Representative directs a new Portion in circumstances where parts of a Portion have reached a stage equivalent to

Completion, but other parts of the Portion have not, the Contractor acknowledges and agrees that:

- (i) in relation to a Portion that relates to the incomplete part of the Works within the Portion, such Portions for those Works will have:
 - (A) a Date for Completion equivalent to the relevant date that applied to such Works prior to the creation of the new Portions, unless otherwise agreed by the Principal in writing (in its absolute discretion); and
 - (B) liquidated damages payable at the rate applicable to the existing Portion as set out in Schedule A2 (*Portions*), unless otherwise agreed by the Principal in writing (in its absolute discretion); and
 - (ii) in relation to a Portion that relates to the part of the Works within the Portion that have reached a stage equivalent to Completion, the Principal's Representative may determine the Date for Completion for the new Portions having regard to the stage of completion of such Works and the time required to complete the relevant process in clause 16.
- (e) **(Written notice for occupation)**: Without limiting clauses 16.4(a) to 16.4(d), the Principal may (or may allow its nominee to), upon written notice to the Contractor occupy or use any part of a Portion although the whole of the Portion has not reached Completion.
- (f) **(Access)**: If the Principal's Representative gives a notice under clause 16.4(e):
 - (i) the Principal must allow the 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 Contractor to bring the relevant Portion of which the area being occupied or used forms part to Completion; and
 - (ii) this will not otherwise limit or affect the obligations of the parties under this deed, including the obligation of the Contractor to achieve Completion of the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Completion.
- (g) **(No Claim)**: Other than as specified in clause 16.4(b)(i), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in connection with a direction under this clause 16.

16.5 Liquidated Damages

- (a) **(Acknowledgement)**: The Principal and the Contractor agree and acknowledge that the Principal is pursuing a policy of delivering the WHTBL Program and the Project Works for purposes that include achieving the objectives set out in clause 2.
- (b) **(Project impacts)**: The Contractor and the Principal acknowledge and agree that the Contractor's Activities represent a most important element of the building of the WHTBL Program.
- (c) **(Difficulty with calculating loss)**: The Contractor acknowledges and agrees that if:
 - (i) the Contractor fails to achieve Completion of the Portions by the required Dates for Completion; or
 - (ii) there are Defects in the Project Works after Completion of the relevant Portion,

these events will not only result in direct Losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued and the Loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.

- (d) **(Liquidated damages for delay in achieving Completion):** Subject to clause 16.5(f), the Contractor agrees that if it does not achieve Completion of a Portion by the Date for Completion of that Portion, it must pay the Principal the following amounts:
- (i) with respect to all Portions other than Handover Portion 9 and the Carriageway Portion:
- (A) for every day after the Date for Completion of the Portion up to (but not including):
- (aa) the applicable LDs Step-up Date; or
- (bb) the date that this deed is validly terminated,
(whichever first occurs), the applicable amount set out in Schedule A2 (*Portions*) in the column titled "Liquidated Damages (pre-LDs Step up Date)"; and
- (B) for every day on and from the LDs Step-up Date for the Portion up to and including:
- (aa) the Date of Completion of the applicable Portion; or
- (bb) the date that this deed is validly terminated,
(whichever first occurs), the applicable amount set out in Schedule A2 (*Portions*) in the column titled "Liquidated Damages (on and after LDs Step up Date)"; and
- (ii) with respect to Handover Portion 9 and the Carriageway Portion, for every day after the Date for Completion of the Portion up to and including:
- (A) the Date of Completion of the applicable Portion; or
- (B) the date that this deed is validly terminated,
(whichever first occurs), the applicable amount set out in Schedule A2 (*Portions*) in the column titled "Liquidated Damages (pre-LDs Step up Date)".
- (e) **(Liquidated Damages for Defects):** In addition to any liability to pay liquidated damages under clause 16.5(d) (and subject to clause 16.5(f)), if:
- (i) there is a delay to a Handover Contractor's project activities due to a Defect in a Handover Portion of which the Contractor has been notified under clause 12.2(a) arising prior to the expiry of the relevant Defects Correction Period; and
- (ii) as a result of such delay the Handover Contractor has claimed and has been granted an extension of time under its Handover Contract [REDACTED]

then the Contractor must pay the Principal [REDACTED] for every day of the extension of time granted under the Handover Contract in relation to the delay caused by the relevant Defect.

- (f) **(Aggregate daily cap for liquidated damages):** For any day on which the Contractor is liable to pay liquidated damages pursuant to one or more of clauses 16.5(d) or 16.5(e), the Contractor's liability to pay liquidated damages on any such day will be limited to the amount set out in Schedule A1 (*Contract Particulars*).
- (g) **(No penalty):** The parties agree that the liquidated damages:
- (i) provided for in clauses 16.5(d) and 16.5(e) represent proper, fair and reasonable amounts recoverable by the Principal arising from:
 - (A) failure of the Contractor to achieve Completion of the Portion by the Date for Completion of the Portion; or
 - (B) delay to the Handover Contractors due to a Defect in a Handover Portion,
 - (as applicable), and do not constitute, and are not intended to be, a penalty and have been freely agreed to by the Contractor; and
 - (ii) will be recoverable by the Principal from the Contractor as a debt due and payable.
- (h) **(Arms' length dealings):** The Principal and the Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.
- (i) **(No unconscionable conduct):** The Contractor agrees that the liquidated damages under clauses 16.5(d) and 16.5(e) have been agreed without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (j) **(Contractor intention):** The Contractor entered into the obligation to pay the amounts specified in clauses 16.5(d) and 16.5(e) with the intention that it is a legally binding, valid and enforceable contractual provision against the Contractor in accordance with its terms.
- (k) **(Interaction with Laws):** The Contractor agrees:
- (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
 - (ii) that if this clause 16.5 (or any part of this clause 16.5) 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 Project Works) as a result of:
 - (A) the Contractor failing to achieve Completion of a relevant Portion by its Date for Completion; or

- (B) delay to the Handover Contractors due to a Defect in a Handover Portion,
- (as applicable), but the Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.
- (l) (**Provisional assessment**): The Principal's Representative, when issuing a payment schedule pursuant to clauses 15.2(e) and 15.2(g) after the Date for Completion of a relevant Portion, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clauses 16.5(d) or 16.5(e) to the date of the payment schedule (despite Completion of that Portion not having occurred).
- (m) (**Liability**): Subject to clause 16.5(n), the Principal and the Contractor agree that the aggregate of the amount payable under clauses 16.5(d), 16.5(e) and 16.5(k)(ii), is limited as set out in clause 20.1(b) and is a limitation on the Contractor's liability to the Principal for:
- (i) a failure to achieve Completion of any Portion by the relevant Date for Completion; or
 - (ii) delay to the Handover Contractor due to a Defect in a Handover Portion,
- (as applicable), and the Principal will not be entitled to make, nor will the Contractor be liable upon, any Claim for these circumstances other than for the amount for which the Contractor is liable under this clause 16.5 (including where applicable common law damages under clauses 16.5(k)(ii)).
- (n) (**No limitation**): Nothing in clause 16.5(m) in any way limits:
- (i) the Contractor's Liability where this deed is terminated by the Principal under clause 18.4 or otherwise at Law;
 - (ii) the Contractor's obligations under this deed to:
 - (A) achieve Completion of each Portion by the relevant Date for Completion; or
 - (B) rectify any Defect or pay Defect rectification costs; or
 - (iii) the Principal's rights or the Contractor's Liability in connection with an event giving rise to a delay or the consequences of that event (other than for a failure to achieve Completion of a Portion by the relevant Date for Completion, delay to the Handover Contractor due to a Defect in a Handover Portion).

16.6 Effect of Notice of Completion

- (a) (**No approval**): A Notice of Completion will not:
- (i) constitute approval by the Principal, the Independent Certifier or the Principal's Representative of the Contractor's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the Portion complies with the requirements of this deed; or
 - (iii) prejudice any rights or powers of the Principal, the Independent Certifier or the Principal's Representative.

- (b) (**Final and binding**): Without limiting clause 16.6(a), clause 13.10(g), clause 13.10(h) or clause 13.10(j), the parties agree that as between the Contractor and the Principal, in the absence of manifest error on the face of the certification, the Independent Certifier's certification as set out in a Notice of Completion is final and binding on the parties.

16.7 Access following Completion of a Portion

- (a) (**Principal to procure access**): Where Completion has been achieved in respect of a Portion but the Contractor still requires access to such Portion in order to rectify Defects, or carry out the Post Completion Activities, the Principal must procure that the Contractor is provided with reasonable access to such Portion to enable the Contractor to continue the Contractor's Activities, subject to the Contractor:
- (i) complying with any relevant Other Contractor's reasonable safety, protection and security measures;
 - (ii) complying with its obligations under clause 7.2; and
 - (iii) paying the relevant Lane Occupancy Fees in accordance with Schedule E6 (*Lane Occupancy Fees*).
- (b) (**Use and occupation**): The occupation and use of such Portion by the Principal (and its nominees) will not limit or affect the responsibilities, obligations or Liabilities of the Contractor including the obligation of the Contractor to achieve Completion of any remaining Portion by the relevant Date for Completion.

16A POST COMPLETION ACTIVITIES

16A.1 Landscaping Maintenance

- (a) (**Performance of maintenance**): The Contractor must perform the Landscaping Maintenance during the Landscaping Maintenance Period in respect of any part of the Project Works that includes landscaping.
- (b) (**Replacement of plants and trees**): If, in the performance of the Landscaping Maintenance, the Contractor is required to replace any dead, diseased or damaged plants or trees, the replacements must be of at least the quality required by this deed and fit for their intended purposes.
- (c) (**Final joint inspection**): As soon as reasonably practicable after the end of the Landscaping Maintenance Period, the Principal, the Contractor, the Independent Certifier and any other person responsible for the maintenance of the relevant Project Works must jointly inspect the Landscaping Maintenance at a mutually convenient time.
- (d) (**Independent Certifier certificate**): Within five (5) Business Days of the joint inspection referred to in clause 16A.1(c), the Independent Certifier must give the Contractor and the Principal a certificate signed by the Independent Certifier in the form set out in Part O of Schedule B7 (*Form of Certificates*) containing a list of all Defects in the Landscaping Maintenance.
- (e) (**Rectification of Defects**): Clause 12.1 will apply to the Defects listed in the Independent Certifier's certificate under clause 16A.1(d), and the Principal may give a direction under clause 12.2 in relation to those Defects.
- (f) (**Removal of temporary protection**): After the Landscaping Maintenance Period has ended, except to the extent directed by the Principal, the Contractor must

promptly remove all Temporary Works installed in connection with the Landscaping Maintenance.

- (g) (**Effect of inspection and notice**): Neither the inspection under clause 16A.1(c) nor the Independent Certifier's certificate under clause 16A.1(d) will:
- (i) constitute approval of the Contractor's performance of its obligations under this deed in relation to the Landscaping Maintenance;
 - (ii) be taken as an admission or evidence that the Landscaping Maintenance comply with this deed; or
 - (iii) prejudice any rights or powers of the Principal.
- (h) (**Payment**): With respect to Landscaping Maintenance, the Contractor will be entitled to be paid the amount specified in Schedule F1 (*Payment*) (**Landscaping Lump Sum**) as progress payments as the Landscaping Maintenance is carried out provided that:
- (i) the total amount claimed by the Contractor with respect to Landscaping Maintenance may not exceed the Landscaping Lump Sum; and
 - (ii) following the expiry of the Landscaping Maintenance Period, the Contractor may claim any unclaimed portion of the Landscaping Lump Sum.

16A.2 Optional Post Completion Activities

- (a) (**Optional Post Completion Activities**): The Principal may give written notice to the Contractor at any time before the Date of Completion of a Portion that any of the Optional Post Completion Activities must be carried out in respect of that Portion.
- (b) (**No instruction**): If the Principal's Representative does not instruct the Contractor to carry out the Optional Post Completion Activities under clause 16A.2(a) in respect of a Portion:
- (i) the Contractor must not carry out the Optional Post Completion Activities in respect of that Portion; and
 - (ii) these services do not form part of the Contractor's Activities.
- (c) (**Cessation of services**): At any time, the Principal may give five (5) Business Days' written notice to the Contractor that the Contractor is to cease performance of any Optional Post Completion Activities instructed under clause 16A.2(a).
- (d) (**Payment**): With respect to the Optional Post Completion Activities, the Contractor will be entitled to be paid for each day on which the Optional Post Completion Activities are carried out at the applicable daily rate specified in Schedule F2 (*Schedule of Rates and Labour Costs*).

16A.3 Requirements for Post Completion Activities

- (a) (**Compliance**): The Contractor must perform the Post Completion Activities:
- (i) in accordance with:
 - (A) the SWTC;
 - (B) any applicable Laws and Approvals; and

- (C) Good Industry Practice; and
- (ii) in an efficient and cooperative manner.
- (b) (**Allocation of resources**): The Contractor must allocate such resources and staff as are necessary to enable the due and proper performance of the Post Completion Activities.
- (c) (**Handover**): Following the completion of Post Completion Activities in respect of a part of the Works, the Contractor must handover that part of the Works to the Principal (or its nominee) in the same condition that the Works were in at the Date of Completion, subject to the rectification of any Defects.
- (d) (**Removal of temporary protection**): After the completion of Post Completion Activities on a part of the Construction Site, except to the extent directed by the Principal, the Contractor must promptly remove all Temporary Works installed in connection with the Post Completion Activities.
- (e) (**Defect rectification**): Despite this clause 16A, the Contractor acknowledges and agrees that:
 - (i) the costs of rectifying Defects after the Date of Completion of a Portion are Excluded Costs;
 - (ii) Defects rectified by the Contractor during the performance of the Post Completion Activities may be subject to an extended Defects Correction Period in accordance with clause 12; and
 - (iii) the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in connection with rectifying Defects during the period in which the Contractor is carrying out the Optional Post Completion Activities.

17. CARE OF THE PROJECT WORKS, RISKS AND INSURANCE

17.1 Responsibility for care of the Project Works

- (a) (**Prior to Completion**): Subject to clause 17.1(d) and 17.1(f), the Contractor is, in respect of each Portion, responsible for the care of, and bears the risk of destruction, loss or damage to:
 - (i) the Contractor's Activities, the Works and any Extra Land, from the date of this deed up to and including the Date of Completion for the relevant Portion;
 - (ii) the relevant parts of the Construction Site (other than the Shared Construction Site Areas), from the date on which access to that part of Construction Site is granted under clause 7.1(b) up to and including the Date of Completion for the relevant Portion; and
 - (iii) the Shared Construction Site Areas, during the periods that the Contractor has management and control of the relevant part of the Shared Construction Site Areas under clause 7.6(b).
- (b) (**After Completion**): Subject to clause 17.1(d), after the time after which the Contractor ceases to be responsible under clause 17.1(a) for the care of a part of the Project Works or any other thing referred to in clause 17.1(a), the Contractor will bear the risk of any destruction, loss of or damage to that part of the Project Works or other thing, arising from:

- (i) any act or omission of the Contractor during the Defects Correction Periods (including any extended Defects Correction Period);
 - (ii) any other Contractor's Activities, including the Post Completion Activities or the Delivery Phase Maintenance; or
 - (iii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Project Works or other thing under clause 17.1(a) in connection with the Contractor's Activities.
- (c) **(Make good and indemnify):** The Contractor must:
- (i) subject to clause 17.1(d) and clause 17.15, promptly make good in accordance with clause 17.14 any destruction, loss or damage to anything caused during the period the Contractor is responsible for its care pursuant to clause 17.14; and
 - (ii) indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal arising out of or any way in connection with such destruction, loss or damage, but only to the extent the relevant destruction, loss or damage was caused or contributed to by the Contractor's Activities.
- (d) **(Excepted risks):** Subject to clause 17.1(e), clauses 17.1(a), 17.1(b) and 17.1(c)(i) do not apply to the extent that any destruction, loss or damage for which the Contractor would otherwise have been responsible or bears the risk of or is obliged to indemnify the Principal against under this clause arises from an Excepted Risk.
- (e) **(Direction to make good):** To the extent any destruction, loss or damage arises from an Excepted Risk, the Contractor must where directed by the Principal's Representative to do so, make good or repair the destruction, loss or damage in which event such making good or repair will, to the extent the destruction, loss or damage arises from an Excepted Risk, be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 10 applies.

17.2 Indemnity by the Contractor

- (a) (**General indemnity**): The Contractor must indemnify the Principal from and against:
- (i) each of the following:
 - (A) loss of or any destruction or damage to, any of the Principal's real or personal property (other than property referred to in clause 17.1 while the Contractor is responsible for its care);
 - (B) any claim against the Principal or Liability the Principal may have to third parties in respect of or arising out of or in connection with:
 - (aa) any illness, personal injury to, or death of, any person; or
 - (bb) the loss of or destruction or damage to any real or personal property; and
 - (C) without limiting clause 17.2(a)(i)(A) or clause 17.2(a)(i)(B)(bb), loss of use or access to any real or personal property (whether total or partial), but only to the extent it is an Insured Liability,
to the extent caused by, arising out of, or in any way in connection with, the Contractor's Activities, the Works or any failure by the Contractor to comply with its obligations under this deed; and
 - (ii) any:
 - (A) Liability to or claim by any other person; or
 - (B) Loss suffered or incurred by the Principal,
arising out of, or in any way in connection with, the Contractor's breach of a term of this deed.
- (b) (**Reduction of liability**): Where the Contractor indemnifies the Principal under this deed from and against any Liability, claim or Loss, the Contractor's liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal or its Associates or an Other Contractor (excluding the Interface Contractors) contributed to the Liability, claim or Loss.
- (c) (**Other obligations unaffected**): Clause 17.2(a) does not limit or otherwise affect the Contractor's other obligations under this deed or otherwise according to Law.
- (d) (**No relief**): The Contractor is not relieved of any obligation to indemnify the Principal under this clause 17.2 by reason of effecting insurance or being an insured party under an insurance policy effected by the Principal pursuant to clause 17.3.

17.3 Principal's insurance

- (a) (**Effect and maintain**): On or before the date of this deed, the Principal must effect and maintain insurances that are either:
- (i) on the terms of the draft policies set out in Schedule F5 (Insurance Policies);
or
 - (ii) where the Principal is not able to effect or maintain the insurances on the terms of the draft policies set out in Schedule F5 (Insurance Policies) despite

its reasonable endeavours, on terms that are not materially different in substance from the terms of the draft policies set out in Schedule F5 (*Insurance Policies*).

- (b) **(Exclusions):** Such insurance is subject to the exclusions, conditions, deductibles and excesses noted on the policies and the Contractor:
 - (i) must satisfy itself of the nature and extent of the cover provided by these insurance policies; and
 - (ii) acknowledges that the Principal's insurances do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect insurance for any risk or Liability which is not covered by the Principal's insurances.
- (c) **(Replacement):** The Contractor acknowledges that the Principal may change or replace an insurance policy effected pursuant to clause 17.3(a), provided the terms of the replacement policy are not materially different from the terms of the existing policy.
- (d) **(Principal must provide):** The Principal must, in respect of the insurances which it is required to effect or procure to be effected pursuant to this clause 17.3, provide the Contractor's Representative within five (5) Business Days of a request with:
 - (i) certificates of currency of the insurances for each insurance; and
 - (ii) a copy of any insurance policy that notes the interests of the Contractor whenever requested by the Contractor's Representative.

17.4 Contractor's insurance obligations

The Contractor must effect and maintain the following insurance:

- (a) **(Workers compensation):** workers compensation insurance referred to in clause 17.5;
- (b) **(Construction Plant):** Construction Plant insurance referred to in clause 17.6;
- (c) **(Motor vehicle):** motor vehicle insurance referred to in clause 17.7;
- (d) **(Marine Transit Insurance):** marine transit insurance referred to in clause 17.7A; and
- (e) **(Marine Liability Insurance):** marine liability insurance referred to in clause 17.7B.

17.5 Workers compensation insurance

- (a) **(Effect and maintain):** The Contractor must effect and maintain workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
 - (i) for the maximum amount required by Law; and
 - (ii) in the name of the Contractor and (if legally possible) extended to indemnify the Principal for its statutory liability to persons employed by the Contractor.

- (b) (**Subcontractors**): The Contractor must ensure that each of its Subcontractors effects and maintains workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
- (i) for the maximum amount required by Law; and
 - (ii) in the name of the Subcontractor and (if legally possible) extended to indemnify the Principal and the Contractor for their statutory liability to persons employed by the Subcontractor.

17.6 **Construction Plant insurance**

The Contractor must effect and maintain insurance in respect of any Construction Plant (whether owned, hired or leased by the Contractor) which provides cover against all physical loss or damage to any such Construction Plant for an amount not less than the market or reinstatement value of such Construction Plant.

17.7 **Motor vehicle insurance**

The Contractor must effect and maintain:

- (a) (**Compulsory third party insurance**): compulsory third party insurance as required by Law in respect of all registered motor vehicles used in connection with the Contractor's Activities; and
- (b) (**Motor vehicle cover**): motor vehicle insurance which covers:
 - (i) physical loss or damage to the Contractor's vehicles whether owned, hired, or leased, which are used in connection with the Contractor's Activities for an amount not less than the market value of those vehicles; and
 - (ii) third party property loss or damage in respect of all vehicles, used in connection with the Contractor's Activities with a limit of indemnity of at least [REDACTED] for any one occurrence.

17.7A **Marine Transit Insurance**

The Contractor must effect and maintain insurance covering all Construction Plant and Materials against the risk of loss, damage or destruction caused by all commercially insurable risks for an amount not less than their full replacement value plus freight and insurance on an indemnity basis during transits of such property by land, sea or air and during loading or unloading and storage during transit to and from the Construction Site or any Extra Land.

17.7B **Marine liability insurance**

If any vessels are used in connection with the Contractor's Activities, the Contractor must effect and maintain marine liability insurance (or protection and indemnity) insurance written on an occurrence basis with a limit of indemnity of not less than [REDACTED] each and every occurrence which covers liability of the Contractor in respect of:

- (a) (**Real or personal property**): loss of, damage to, or loss of use of, any real or personal property; and
- (b) (**Injury or death**): the bodily injury of, disease or illness (including mental illness) to, or death of, any person,

arising out of, or in connection with, the use, operation or ownership of any vessel by the Contractor or its Subcontractors in connection with the Contractor's Activities.

17.8 **Periods of insurance**

The Contractor must ensure that the insurances it is required to take out pursuant to this deed:

- (a) **(Commencement)**: are in force before the Contractor commences the Contractor's Activities; and
- (b) **(Maintenance of insurance)**: are maintained until the end of all Defects Correction Periods.

17.9 **Evidence of policies**

- (a) **(Contract must provide)**: The Contractor must, in respect of the insurances which it is required to effect or procure to be effected pursuant to this clause 17, provide the Principal's Representative within five (5) Business Days of a request with:
 - (i) certificates of currency of the insurances before the relevant commencement date referred to in clause 17.8 for each insurance in a form acceptable to the Principal's Representative; and
 - (ii) a copy of any insurance policy that notes the interests of the Principal, the Contractor and Subcontractors whenever requested by the Principal's Representative.
- (b) **(Costs and expenses incurred)**: Without limiting clause 17.12, if the Contractor does not comply with clause 17.9(a) or otherwise fails to effect and maintain insurance which the Contractor is required to effect and maintain under this clause 17, the Principal may effect and maintain the relevant insurances and any costs and expenses incurred by the Principal in doing so will be a debt due and payable from the Contractor to the Principal.

17.10 **Provisions in policies**

The Contractor must ensure that:

- (a) **(Notification)**: in respect of the insurances required to be effected by the Contractor under clauses 17.6 and 17.7, the Contractor notifies the Principal (in writing) whenever:
 - (i) it receives a notice under or in connection with the insurance policy, including any claim arising from or related to this deed;
 - (ii) it gives any insured a notice under or in connection with the policy, which in the case of a notice of cancellation must be given to the Principal twenty (20) Business Days prior to the cancellation of the policy; and
 - (iii) it renews an insurance policy, including providing updated evidence of the insurance policies in accordance with the requirements of clause 17.9(a).
- (b) **(Noted Interests)**: the insurances referred to in clauses 17.6 and 17.7 noted the interests of the Principal, the Contractor and Subcontractors and must provide that:
 - (i) all insurance agreements and endorsements (with the exception of limits of liability) operate as if there was a separate policy of insurance covering the Principal, the Contractor and Subcontractors;

- (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
- (iii) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy;
- (iv) a notice to the insurer by one insured will be deemed to be notice by all insured parties; and
- (v) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against the Principal, the Contractor and Subcontractors.

17.11 General Obligations

The Contractor must ensure that each insurance required to be effected by the Contractor under this clause 17:

- (a) (**Insurers**): is effected with insurers rated not less than 'A-' by Standard and Poors; and
- (b) (**Coverage**): is required to provide coverage to Subcontractors and acknowledges that the same coverage applies to suppliers of goods and materials to the Contractor.

17.12 Premiums

- (a) (**Payment**): The Contractor must punctually pay all premiums in respect of all insurances required to be effected by it under this clause 17 and give the Principal's Representative copies of receipts for payment of premiums if and when requested by the Principal's Representative (or if receipts are not provided by insurers, notice in writing from the insurer that the relevant premium has been paid).
- (b) (**Costs incurred by Principal**): If the Contractor fails to comply with clause 17.12(a), the Principal may effect such insurance or pay such premium or other amount and any costs incurred by the Principal will be a debt due and payable from the Contractor to the Principal.

17.13 Undertaking to inform

The Contractor must ensure that in respect of each insurance required to be effected under this clause 17, it:

- (a) (**No prejudice**): does not do anything which prejudices any insurance;
- (b) (**Rectification**): if necessary, rectifies anything which may prejudice any insurance;
- (c) (**Reinstatement**): except where the insurance is required to be effected by the Principal, reinstates any insurance policy if it lapses;
- (d) (**Cancellation or variation**): except where the insurance is required to be effected by the Principal, does not cancel, vary or allow any insurance policy to lapse without the prior written consent of the Principal's Representative;
- (e) (**Notification**): immediately notifies the Principal's Representative if:
 - (i) an insurance policy is cancelled;
 - (ii) if any event occurs which may result in an insurance policy being cancelled;

- (iii) if it is notified by an insurer that a policy may be cancelled; or
- (iv) it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in this clause 17 which could materially reduce the available limit of indemnity; and
- (f) (**Disclosure**): gives full, true and particular information to the insurer of all matters and things the non-disclosure of which may in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

17.14 **Reinstatement**

If, prior to the time the Contractor ceases to be responsible under clause 17.1(a) for the care of a part of the Project Works or the Temporary Works or any other thing referred to in clause 17.1(a), any destruction, physical damage or loss occurs to the Project Works or the Temporary Works, the Contractor must:

- (a) (**Make secure**): make secure the Works and the parts of the Construction Site which are still under the control of the Contractor in accordance with clause 7.6;
- (b) (**Notify and comply**): notify:
 - (i) appropriate Authorities, Emergency Services and the like; and
 - (ii) the insurers for assessment,
 and comply with their instructions; and
- (c) (**Consult with Principal and make good**): promptly consult with the Principal and carry out such steps as are necessary to ensure:
 - (i) the prompt repair or replacement of the destruction, loss or damage so that:
 - (A) it complies with the SWTC; and
 - (B) there is minimal disruption to the Works; and
 - (ii) that, to the greatest extent possible, the Contractor continues to comply with its obligations under this deed;
- (d) (**Minimise impact**): subject to clause 17.1(e), manage all repair and replacement activities so as to minimise the impact on the Works; and
- (e) (**Inform on progress**): keep the Principal's Representative fully informed of the progress of the repair and replacement activities.

17.15 **Application of insurance proceeds**

Where, prior to the Date of Completion of the last Portion to achieve Completion, Works are damaged or destroyed, all insurance proceeds in respect of that damage or destruction that are payable under any insurances maintained by the Principal in accordance with clause 17.3 will:

- (a) (**Payment**): be paid to the Principal; and
- (b) (**Progress payments**): despite anything to the contrary in this deed, be paid by the Principal to the Contractor by progress payments under clause 15.2 as and when the Contractor reinstates the Works (but such costs will not form part of the Reimbursable Costs).

17.16 Damage to property

- (a) (**Obligation to repair**): Subject to clause 17.16(c), where any physical loss of or destruction or damage to real or personal property or the Environment (including any Utility Services but excluding the Project Works or the Temporary Works) occurs arising out of, or in any way in connection with, the carrying out by the Contractor of the Contractor's Activities or a failure by the Contractor to comply with its obligations under this deed, the Contractor must, promptly repair and make good any such physical loss, destruction or damage.
- (b) (**Debt due and payable**): If the Contractor fails to carry out any repair work under clause 17.16(a), the Principal may carry out such work or engage others to carry out such work and any Loss suffered or incurred by the Principal will be a debt due and payable from the Contractor to the Principal.
- (c) (**Exclusion**): This clause 17.16 does not apply where the owner of the real or personal property does not agree to the Contractor carrying out the work under clause 17.16(a).
- (d) (**No limit**): Nothing in this clause 17.16 limits the operation of the indemnity in clause 17.2(a).

17.17 Risk of deductibles or excesses

- (a) Subject to clause 17.17(b), to the extent that the Contractor:
 - (i) is required to:
 - (A) make good destruction, loss or damage under clause 17.1(c)(i) or clause 17.1(e); or
 - (B) indemnify the Principal under clause 17.1(c)(ii) or clause 17.2,
 - and makes a claim under any of the insurance policies required by this clause 17 in respect of the destruction, loss or damage or the event giving rise to the indemnity; or
 - (ii) otherwise makes a claim under or in respect of any of the insurance policies required by this clause 17,
- the Contractor must pay any excesses or deductibles in the insurance policies in Schedule F5 (*Insurance Policies*) or any insurance taken out by the Contractor under clause 17.4, that may apply in those circumstances.
- (b) The costs incurred by the Contractor under clause 17.17(a) will be Reimbursable Costs, except to the extent the relevant event or claim was caused or contributed to by the Contractor's Activities.

18. DEFAULT OR INSOLVENCY

18.1 Contractor's Default

- (a) (**Written notice**): If any of the events referred to in clause 18.1(b) occur, the Principal may give the Contractor a written notice in accordance with clause 18.2.

(b) (**Events of default**): The events to which this clause applies are:

- (i) the Contractor not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this deed, in breach of clause 14.1;
- (ii) the Contractor suspending of work in breach of clause 14.1;
- (iii) the Contractor failing to implement, comply with or otherwise diligently pursue a Recovery Plan in accordance with clause 14.6(c);
- (iv) the Contractor failing to provide and maintain:
 - (A) the unconditional undertakings in accordance with clauses 5.1, 5.2 and 5.7; or
 - (B) the Parent Company Guarantees in accordance with clause 5.10;
- (v) the Contractor failing to insure or provide evidence of insurance in breach of clause 17;
- (vi) the Contractor failing to use the Materials or standards of workmanship required by this deed in breach of clause 8.1;
- (vii) the Contractor not complying with any direction of the Principal's Representative made in accordance with this deed in breach of clause 13.1(e);
- (viii) the Contractor not complying with the requirements of this deed regarding the Project Plans in a material respect;
- (ix) the Contractor not complying with its obligations under the SWTC with regard to the Project Plans;
- (x) the Contractor not complying with its environmental obligations under this deed;
- (xi) the Contractor not complying with its obligations under this deed regarding work health and safety;
- (xii) the Contractor not complying with its obligations under this deed relating to Road Occupancy Licences;
- (xiii) the Contractor failing to comply with all applicable Laws, including the failure to comply with, carry out and fulfil the conditions and requirements of all Approvals in breach of clause 6.2;
- (xiv) breach of the subcontracting obligations set out in each of clauses 11.3, 11.7 or 11.8;
- (xv) where the Contractor has failed to achieve Completion of a Portion by the relevant Date for Completion, the Contractor failing to provide the Contractor's Recovery Plan in relation to a delay in accordance with clause 14.5
- (xvi) fraud of the Contractor or an adverse Independent Commission Against Corruption (**ICAC**) finding is made against the Contractor;
- (xvii) the Parent Company Guarantee becoming void or voidable;

- (xviii) the Contractor causing or contributing to the occurrence of an Incident and failing to ensure that the Principal is promptly notified, as set out in clause 3.5(e); or
- (xix) any other failure by the Contractor to comply with a material obligation under this deed.

18.2 **Contents of Notice**

A written notice under clause 18.1 must:

- (a) (**Notice**): state that it is a notice under clause 18.1;
- (b) (**Alleged breach**): specify the alleged breach;
- (c) (**Remedy breach**): require the Contractor to remedy the breach or, in the case of a notice by the Principal where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and
- (d) (**Time and date**): specify the time and date by which the Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than fifteen (15) Business Days after the notice is given).

18.3 **Rights of the Principal Following Notice**

Subject to clause 18.4, if, by the time specified in a notice under clause 18.1, the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor, immediately:

- (a) (**Take out**): take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) (**Termination**): terminate this deed.

18.4 **Immediate Termination or Take-Out**

If:

- (a) (**Insolvency Event**): an Insolvency Event occurs:
 - (i) to the Contractor;
 - (ii) where the Contractor comprises more than one person, any one of those persons; or
 - (iii) to a Parent Company Guarantor,

and the Contractor or a Parent Company Guarantor are not able to satisfy the Principal (in its absolute discretion) within five (5) Business Days (or any longer period agreed to by the Principal in its absolute discretion) of the Insolvency Event occurring that this deed should not be terminated (as applicable), including by:

- (iv) demonstrating that where the Contractor comprises more than one person, the solvent entity or entities have continued to perform and are able to continue to perform the obligations of the Contractor under this deed;
- (v) a replacement entity of appropriate creditworthiness assuming the obligations and liabilities of the insolvent entity to the Principal on terms satisfactory to the Principal; and

- (vi) the Contractor providing additional unconditional undertakings for amounts and in a form satisfactory to the Principal;
- (b) not used;
- (c) (**General liability cap**): the aggregate Liability of the Contractor to the Principal under or in connection with the Project Documents is equal to or exceeds [redacted] per cent of the original Target Cost specified in this deed;
- (d) (**Liquidated damages Cap**): the aggregate Liability of the Contractor to the Principal under or in connection with any one or all of clauses 16.5(d), 16.5(e) or 16.5(k)(ii) is equal to or exceeds the Liquidated Damages Cap;
- (e) (**Share of Cost Overrun Cap**): the aggregate Liability of the Contractor to the Principal under or in connection with clause 15.12(a) is equal to or exceeds the Share of Cost Overrun Cap;
- (f) (**Change in Control - Contractor**): a Change in Control occurs in respect of an entity that comprises the Contractor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 21.4(a)(i)); or
- (g) (**Change in Control – Parent**): 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 21.4(b)(i)),

then, whether or not the Contractor is then in breach of this deed, the Principal may, without giving a notice under clause 18.1, exercise the right under clause 18.3(a) or clause 18.3(b).

18.5 Principal's Rights After Take-Out or Termination

- (a) (**Principal's rights**): If:
 - (i) the Principal:
 - (A) exercises its rights under clause 18.3(a); or
 - (B) terminates this deed under clauses 18.3(b), 18.4 or 18.9;
 - (ii) the Contractor repudiates this deed and the Principal subsequently terminates this deed; or
 - (iii) this deed is frustrated under the Law,

then:

 - (iv) the Contractor:
 - (A) must novate to the Principal or the Principal's nominee those Subcontracts between the Contractor and its Subcontractors that the Principal directs by executing a deed of novation substantially in the form of Schedule A9 (*Deed of Novation*);
 - (B) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to:
 - (aa) execute, sign, seal and deliver all notices, deeds and documents; and

(bb) undertake actions in the name of the Contractor,
for the purposes referred to in clause 18.5(a)(iv)(A) when the Contractor fails to execute, sign, seal and deliver all notices, deeds and documents or undertake actions in the name of the Contractor within five (5) Business Days of a written request to do so; and

- (C) must immediately handover to the Principal's Representative all copies of:
- (aa) any documents provided by the Principal to the Contractor;
 - (bb) all Contract Documentation and Materials prepared by the Contractor to the date on which the Principal exercises its rights under clauses 18.3(a), 18.3(b), 18.4 or 18.10 (whether complete or not); and
 - (cc) any other documents or information in existence that is to be provided to the Principal under the terms of this deed; and

(v) the Principal:

- (A) will be entitled to require the Contractor to remove from the Construction Site or any area affected by the Project Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Project Works;
 - (B) may complete that work;
 - (C) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Construction Site or Extra Land as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work; and
 - (D) must, if it takes possession of the items referred to in clause 18.5(a)(v)(C):
 - (aa) for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 19; and
 - (bb) maintain the Construction Plant, Temporary Works or other things and, subject to clause 18.6, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 18.5(a)(v)(C) which are surplus.
- (b) **(Survival of clause):** This clause 18.5 will survive the termination or frustration of this deed.

18.6 Principal's Entitlements after Take-Out

- (a) **(Right to payment):** If the Principal exercises the right under clause 18.3(a), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor.

- (b) (**Costs incurred for completion**): When all of the work taken out of the hands of the Contractor under clause 18.3(a) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work (**Principal Cost to Complete**) and will issue a certificate to the Contractor certifying the amount.
- (c) (**Liability for costs**): Despite any other provisions of this deed, if the Principal Cost to Complete is:
 - (i) greater than the amount that would have been paid to the Contractor if the Contractor had completed the work (as reasonably determined by the Principal) (**Contractor Cost to Complete**):
 - (A) the Target Cost will be reduced by Contractor Cost to Complete; and
 - (B) the difference between the Contractor Cost to Complete and the Principal Cost to Complete will be a debt due from the Contractor to the Principal; or
 - (ii) less than the Contractor Cost to Complete, the Target Cost will be reduced by the Contractor Cost to Complete.
- (d) (**Recovery of expenses**): Without limiting clause 18.6(c) and without limiting the Principal's rights at Law, if the Principal exercises the right under clause 18.3(a), the Principal will be entitled to recover from the Contractor any Loss reasonably and necessarily 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) (**Contractor to grant lien**): If the Contractor is indebted to the Principal:
 - (i) the Contractor grants to the Principal a lien over any Construction Plant, Temporary Works or other things as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work which were taken by the Principal under clause 18.5 such that the Principal may retain that property until the debt is met;
 - (ii) if after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale; and
 - (iii) any excess will be paid to the Contractor.
- (f) (**Mitigation**): The Principal must take reasonable steps to mitigate the cost incurred by the Principal in completing the Project Works and its Losses in relation to the exercise of its right under clause 18.3(a).

18.7 Principal's further rights after Termination

- (a) (**Principal's rights**): Without limiting clause 18.11, if the Principal terminates this deed under clauses 18.3(b) or 18.4, or if the Contractor repudiates this deed and the Principal otherwise terminates this deed the Principal will:
 - (i) not be obliged to make any further payments to the Contractor, excluding any money that is the subject of an existing Payment Claim under clause 15.2(a) or an existing Payment Schedule under clause 15.2(e);
 - (ii) be absolutely entitled to call upon, convert and have recourse to and retain without limiting clause 5 the proceeds of any unconditional undertaking held under clause 5 or clause 15.15; and

- (iii) be entitled to recover from the Contractor any Loss reasonably and necessarily incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination, to the extent the Principal has taken reasonable steps to mitigate the Loss.
- (b) (**Survival of clause**): This clause 18.7 survives the termination of this deed.
- (c) (**Excess**): If it is determined that the Principal has withheld more monies than it is entitled to recover from the Contractor in respect of a Loss incurred or suffered by the Principal under clauses 18.7(a)(i) and 18.7(a)(ii), the difference will be a debt due to the Contractor from the Principal.

18.8 **Contractor's Rights after Repudiation or Wrongful Termination**

- (a) (**Principal's rights**): If the Principal:
 - (i) repudiates this deed and the Contractor terminates this deed; or
 - (ii) wrongfully:
 - (A) exercises or attempts to exercise any right or power conferred on it by clauses 18.3 or 18.4; or
 - (B) terminates or purports to terminate this deed at common law,
- then the:
- (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 18.9 and the Contractor's sole rights in such circumstances will be those set out in clause 18.10; and
- (iv) Contractor:
 - (A) will not be entitled to the payment of damages;
 - (B) will not be entitled to any payment on a quantum meruit basis; and
 - (C) waives all other rights it has to make a Claim in such circumstances.

- (b) (**Survival of clause**): This clause 18.8 will survive the termination of this deed.

18.9 **Termination for Convenience**

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

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

18.10 Payment for Termination for Convenience

- (a) (**Contractor's entitlement to payment:**) If the Principal terminates this deed under clause 18.9 (or is deemed to have done so in accordance with clause 18.8(a)(iii)), the Contractor:
- (i) will be entitled to payment of the following amounts as determined by the Principal's Representative (excluding all Excluded Costs):
 - (A) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the Contractor submitted a Payment Claim under clause 15.2 for work carried out to the date of termination;
 - (B) the cost of Construction Plant and Materials reasonably ordered by the Contractor for the Project Works and for which it is legally bound to pay provided that:
 - (aa) the value of the Construction Plant and Materials have not been previously paid or included in the amount payable under clause 18.10(a)(i)(A); and
 - (bb) title in the Construction Plant and Materials vests in the Principal upon payment;
 - (C) the reasonable cost:
 - (aa) of removing from the Construction Site all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the Contractor's Activities that are not part of, or to be part of, the Project Works; and
 - (bb) complying with the Principal's directions in connection with the termination of this deed;
 - (D) the reasonable cost:
 - (aa) of terminating Approved Subcontracts; and
 - (bb) terminating any lease or property licence entered into for the purposes of the Project Works or in the expectation of completing the Contractor's Activities;
 - (E) an amount reasonably determined by the Principal in respect of the estimated KRA Incentive for the period between the previous "Performance Assessment Period" (as that term is defined in Schedule F6 (*KRA Incentive Payment*)) and the date of termination, on a pro-rata basis; and
 - (F) the amount calculated by applying the percentage specified in Schedule A1 (*Contract Particulars*) to the total of the amounts payable pursuant to clauses 18.10(a)(i)(B) and clause 18.10(a)(i)(C), for all overheads and profit associated with, and to the extent not included in, the work and costs determined under clauses 18.10(a)(i)(B) and 18.10(a)(i)(C); and
 - (ii) must take all steps possible to mitigate the costs referred to in clauses 18.10(a)(i)(B), 18.10(a)(i)(C), 18.10(a)(i)(D) and 18.10(a)(i)(F).

- (b) (**Return of security**): To the extent the Principal has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 5 when the Contractor has complied with all its obligations under this clause.
- (c) (**Limitation of Principal's liability**): The amount to which the Contractor is entitled under this clause 18.10 will be a limitation upon the Principal's Liability to the Contractor arising out of, or in any way in connection with, the termination of this deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this deed other than for the amount payable under this clause 18.10.
- (d) (**Survival of clause**): This clause 18.10 will survive the termination of this deed by the Principal under clause 18.9.

18.11 **Preservation of Rights**

Subject to clauses 18.8, nothing in this clause 18 or that the Principal does or fails to do pursuant to this clause 18 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 15.8) which it may have where the Contractor breaches (including repudiates) this deed.

18.12 **Termination by Frustration**

- (a) (**Principal's obligations**): If under the Law this deed is frustrated, the Principal will:
 - (i) pay the Contractor the following amounts as determined by the Principal's Representative:
 - (A) an amount calculated in accordance with clause 18.10(a)(i)(A) for work carried out prior to the date of frustration;
 - (B) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 18.10(a)(i)(B); and
 - (C) the costs calculated in accordance with the terms of clause 18.10(a)(i)(C); and
 - (ii) to the extent the Principal has not had recourse to them, return all unconditional undertakings then held by it under clause 5 when the Contractor has complied with its obligations under this clause.
- (b) (**Limitation of Principal's liability**): The amount to which the Contractor is entitled under this clause 18.12 will be a limitation upon the Principal's Liability to the Contractor arising out of, or in any way in connection with, the frustration of this deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this deed other than for the amount payable under this clause 18.12.
- (c) (**Survival of clause**): Without limiting any other provision of this deed, this clause 18.12 will survive the frustration of this deed.

18.13 **Codification of Contractor's Entitlements**

This clause 18 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

- (a) (**No exceptions**): cannot otherwise terminate, rescind or treat this deed as repudiated; and

- (b) (**Waiver**): waives all rights at Law to terminate, rescind or treat this deed as repudiated,

otherwise than in accordance with this clause 18.

19. **DISPUTE RESOLUTION**

19.1 **Disputes generally**

Any Dispute must be resolved in accordance with this clause 19.

19.2 **Notice of Dispute**

- (a) (**Notice of Dispute**): Where a Dispute arises either party may serve a notice in writing on the other party specifying:
- (i) that it is a notice of Dispute under this clause 19.2;
 - (ii) the Dispute and the particulars of the Dispute; and
 - (iii) the position which the party believes is correct in relation to the Dispute, **(Notice of Dispute)**.
- (b) (**Parties must attempt to resolve**): Without limiting or affecting clause 19.2(a), the parties agree that the Principal's Representative and the Contractor's Representative will attempt to resolve Disputes between themselves prior to issuing a Notice of Dispute.

19.3 **Management Review Group**

- (a) (**Negotiation**): If a Notice of Dispute is served, the Management Review Group must meet and undertake good faith negotiations for the purpose of attempting to resolve the Dispute **(Negotiation)**.
- (b) (**Without prejudice**): Unless otherwise agreed in writing, all communications at or related to the Negotiation are without prejudice and are inadmissible in any process under this clause 19 or in any other legal proceeding.
- (c) (**In writing and signed**): Any agreement reached at the Negotiation must be unanimous, in writing, and signed by both parties.
- (d) (**Refer to Expert Determination**): If the Dispute is not fully resolved by the Management Review Group within twenty (20) Business Days (or such longer period as the parties agree) after a Notice of Dispute is given under clause 19.2(a):
- (i) either party may by giving notice in writing to the other party, refer the Dispute to expert determination in accordance with clause 19.4; or
 - (ii) the parties may agree to have the Dispute determined in accordance with clause 19.7.

19.4 **Expert determination**

- (a) (**Rules**): Any Dispute which is referred to expert determination under clause 19.3(d)(i) will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule A13 (*Modification to the Expert Determination Rules*).

- (b) **(Parties to provide information):** Both parties must promptly make available to the Expert all such additional information, access to the Construction Site and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.
- (c) **(No conferral of court powers):** 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) **(Expert's determination):** Within fifty (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 to both parties, which must be reasoned and must state that it is given under this clause 19.4.
- (e) **(Nature of determination):** Without limiting clause 19.5, the determination of the Expert will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 19.

19.5 Notice of dissatisfaction

- (a) **(Parties may give notice)** If:
 - (i) either party is dissatisfied with a determination made by an Expert under clause 19.4, then either party may, within ten (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 fifty (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 ten (10) Business Days after the relevant period has expired, give a notice to the other party of its dissatisfaction,

(Notice of Dissatisfaction).
- (b) **(Requirements):** A Notice of Dissatisfaction issued under clause 19.5(a) must:
 - (i) state that it is given under this clause 19.5; and
 - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) **(Notice required to progress):** Neither party will be entitled to commence court proceedings or arbitration in respect of any Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 19.5.

19.6 Final and binding decision

- (a) (**Binding decision**): If:
- (i) an Expert has made a determination as to a Dispute; and
 - (ii) no Notice of Dissatisfaction has been given by either party under clause 19.5 within ten (10) Business Days after it received the Expert's determination,
- then the determination will become final and binding upon both parties, who must give effect to it.
- (b) (**No challenge**): Once a determination of an Expert has become final and binding under clause 19.6(a), neither party will be entitled to challenge the determination on any basis.

19.7 Litigation or arbitration

- (a) The Principal (in its absolute discretion), may within five (5) Business Days:
- (i) after issuing or receiving a Notice of Dissatisfaction; or
 - (ii) reaching an agreement under clause 19.3(d)(ii),
- (as applicable) issue a notice to the Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings.
- (b) If the Principal does not issue a notice under clause 19.7(a) within the five (5) Business Day period, the Dispute will be referred to arbitration.

19.8 Arbitration

- (a) (**ACICA rules to apply**): Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) (**Location**): The seat of the arbitration will be Sydney, Australia.
- (c) (**Language**): The language of the arbitration will be English.
- (d) (**Number of arbitrators**): The number of arbitrators will be one.
- (e) (**General principles of procedure**): The parties agree:
- (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) that any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
 - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out in clauses 19.8(e)(i) and 19.8(e)(ii), particularly in deciding issues such as:
 - (A) the procedural timetable;
 - (B) the number of written submissions that will be permitted;
 - (C) where appropriate, the length and scope of written submissions;

- (D) the extent of document discovery permitted, if any;
 - (E) the consolidation of proceedings, when requested;
 - (F) the joinder of parties, when requested;
 - (G) the length of any hearing, if any; and
 - (H) the number of experts, if any, each party is permitted to appoint.
- (f) **(Tribunal powers):** The parties agree that:
- (i) subject to clause 19.9, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
 - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (g) **(Third party):** The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party and each party hereby consents to such joinder.
- (h) **(Single or separate awards):** In the event of joinder of parties in the arbitration pursuant to clause 19.8(g), the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- (i) **(Binding award):** To the extent not inconsistent with Law, any award of the arbitral tribunal will be final and binding upon the parties.
 - (j) **(NSW law applies):** This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.

19.9 **Exclusion from determination or award**

- (a) **(No conferral of court power):** The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 19.
- (b) **(No application of the CLA):** The arbitral tribunal 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 arbitral tribunal.

19.10 **Payments**

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

19.11 Contractor to continue performing obligations

Despite the existence of any Dispute, or the referral of any Dispute for resolution under this clause 19, the Contractor and the Principal must continue to perform their respective obligations under this deed.

19.12 Urgent relief

Nothing in this clause 19 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 or equivalent provision under any Law.

19.13 Dispute under related contracts

The parties acknowledge and agree that:

- (a) (**No application to Independent Certifier**): the provisions of this clause 19 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed;
- (b) (**Parties bound**): the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Certifier Deed; and
- (c) (**Common Dispute**): where the Dispute is a Common Dispute, as that term is defined in Schedule E3 (*Requirements of Third Party Agreements*), then this clause 19 will apply subject to the provisions of Schedule E3 (*Requirements of Third Party Agreements*).

19.14 Survive termination

This clause 19 will survive termination of this deed.

20. LIABILITY

20.1 Limitation of Liability

- (a) (**General cap**): Subject to clause 20.1(f) and 20.1(k), the Contractor's total aggregate Liability to the Principal under or in connection with:
 - (i) this deed;
 - (ii) the Project Documents; and
 - (iii) the Third Party Agreements,howsoever caused or arising, whether in contract, tort (including by negligence), equity, statute, by way of indemnity, contribution, unjust enrichment, warranty or guarantee or otherwise at Law is limited to an amount equal to [REDACTED] per cent of the original Target Cost specified in this deed.

- (b) (**Liquidated damages Cap**): The Contractor's total aggregate Liability to the Principal under clauses 16.5(d), 16.5(e) and 16.5(k)(ii), is:
 - (i) limited to an amount equal to the Liquidated Damages Cap; and

- (ii) included in the cap on Liability in clause 20.1(a).
- (c) (**Share of Cost Overrun Cap**): The Contractor's total aggregate Liability under clause 15.12(a) is:
- (i) limited to an amount equal to the Share of Cost Overrun Cap; and
 - (ii) included in the cap on Liability in clause 20.1(a).
- (d) (**Lane Occupancy Fees**): The Contractor's total aggregate Liability under Schedule E6 (*Lane Occupancy Fees*), is:
- (i) limited to an amount equal to [REDACTED] per cent of the original Target Cost specified in this deed; and
 - (ii) included in the cap on Liability in clause 20.1(a).
- (e) (**Consequential Loss**): The Contractor:
- (i) subject to clauses 20.1(e)(ii), 20.1(f) and 20.1(g), will not be liable to the Principal (in contract for breach of this deed, under an indemnity, for debt, in tort including negligence, by way of strict or vicarious Liability, under statute or otherwise according to Law or in equity) for any Consequential Loss (including any Consequential Loss for which the Principal is liable to third parties) arising out of or in any way in connection with this deed, the Project Works, the Temporary Works or the Contractor's or any Subcontractor's conduct (including breach of this deed and any other acts or omissions, whether before, on or after the date of this deed); and
 - (ii) will only be liable to the Principal for any loss of use or loss of access to any real or personal property (whether total or partial) arising under an indemnity under a Third Party Agreement to the extent that such Liability:
 - (A) arises out of, or is in any way in connection with, the Contractor's Activities, the Project Works or any failure by the Contractor to comply with its obligations under this deed; and
 - (B) (ignoring the application of clause 20.1(a)), is an Insured Liability.
- (f) (**Liability not limited**): Clauses 20.1(a) and 20.1(e)(i) do not limit or exclude the Contractor's Liability:
- (i) in respect of Liability which:
 - (A) cannot be limited at Law;
 - (B) arises under clauses 7.7(b), 7.17(d), 8.6(g), 9.12(c)(ii), 9.12(j) or 17.2(a)(i);
 - (C) is due to the Contractor's Wilful Misconduct or Reckless Misconduct, fraud or criminal conduct; or
 - (D) arises in connection with the Contractor's abandonment of its obligations under this deed;
 - (ii) to the extent that (ignoring the application of clause 20.1(a) and clause 20.1(e)), the Liability is an Insured Liability;

- (iii) to the extent that (ignoring the application of clause 20.1(a) and clause 20.1(e)), the Contractor:
- (A) has recovered that Liability from a third party (excluding any Subcontractor or insurer); or
 - (B) would have been entitled to recover that Liability from a third party (excluding any Subcontractor or insurer) had it diligently pursued a claim against the third party, provided that the Contractor is not required to pursue such a claim where it has provided the Principal with evidence acceptable to the Principal (acting reasonably) that, even if the relevant claim is successfully pursued, the resulting Liability has no reasonable prospect of being recovered,
- and those Liabilities will not be included in any calculation of the Contractor's total aggregate Liability under clause 20.1(a).

- (g) **(Liquidated damages and Lane Occupancy Fees):** Clause 20.1(e) does not limit the Contractor's Liability:
- (i) under clauses 16.5(d), 16.5(e) or 16.5(k)(ii); or
 - (ii) for Lane Occupancy Fees (or general damages under Schedule E6 (*Lane Occupancy Fees*)).
- (h) **(Pure Economic Loss):** The Contractor is not liable to the Principal or its Associates, nor will the Principal or its Associates be entitled to make any Claim against the Contractor, in respect of any Liability of the Principal or its Associates to any third party for Pure Economic Loss arising directly as a result of:
- (i) the decision by the Principal to proceed with the WHTBL Program; or
 - (ii) the existence or location of the Project Works.
- (i) **(Applicability of clause):** This clause 20 applies:
- (i) notwithstanding and survives any termination of this deed (including a termination as result of a default or an Insolvency Event in relation to the Contractor);
 - (ii) notwithstanding any other provision of this deed; and
 - (iii) to the maximum extent permitted by Law (present or future) and subject to clause 20.7.
- (j) **(Insurer's obligation unaffected):** The parties acknowledge and agree that nothing in this clause 20.1 is intended to, and does not, operate to release the Contractor from any Liability to the Principal to the extent that the insurer of any policy of insurance required under this deed seeks to rely on this clause 20.1 (or any other provision of this deed with respect to Insured Liability) to deny, limit or reduce its liability to indemnify an insured under the relevant policy of insurance for a Liability, claim or Loss.
- (k) **(Interface Deeds):** The parties acknowledge and agree that, for the purposes of clause 20.1(a), any Liability of the Contractor to an Interface Contractor under an Interface Deed will be included in the calculation of the Contractor's total aggregate Liability to the Principal.

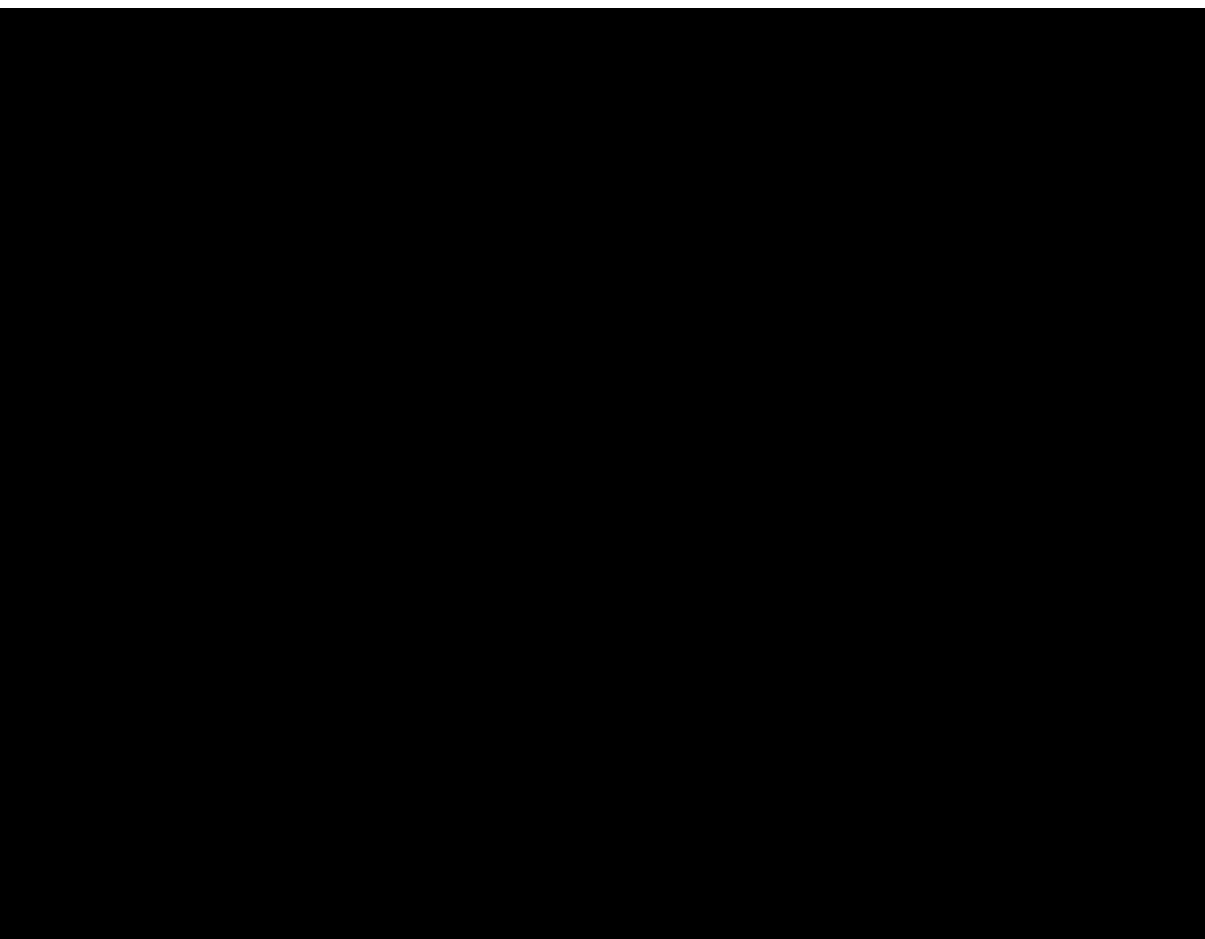
20.2 **Exclusion of proportionate liability scheme**

- (a) **(Exclusion of CLA):** To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002 (NSW)* (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or Liabilities of either party under this deed whether such rights, obligations or Liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Proportionate liability):** Without limiting clause 20.2(a), the rights, obligations and Liabilities of the Principal and the Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

20.3 **Contractor not to apply proportionate liability scheme**

To the extent permitted by Law:

- (a) **(Claims):** the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002 (NSW)* in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
- (b) **(Indemnity):** if any of the provisions of Part 4 of the *Civil Liability Act 2002 (NSW)* are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002 (NSW)*.



20.5 Subcontracts

The Contractor must:

- (a) (**Subcontract exclusions**): in each Subcontract into which it enters for the carrying out of the Contractor's Activities 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
- (b) (**Further Subcontracts**): require each Subcontractor to include, in any further contract that it enters into with a third party for the carrying out of the Contractor's Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002 (NSW)* in relation to all and any rights, obligations or Liabilities of either party under 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.

20.6 Insurance requirements

The Contractor must ensure that all policies of insurance covering third party liability which it is required by this deed to effect or maintain (including the policy set out in clause 17.7):

- (a) (**Liability excluded**): cover the Contractor for potential Liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002 (NSW)*; and
- (b) (**Liability not excluded**): do not exclude any potential Liability the Contractor may have to the Principal under or by reason of this deed.

20.7 Provisions Limiting or Excluding Liability

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

21. GENERAL

21.1 Notices generally

- (a) (**Notice**): Wherever referred to in this clause:
 - (i) **Notice** means a notice, document, consent, approval, request and demand that is required, permitted, given or contemplated pursuant to the terms of this deed (including a notice of any Claim, a Notice of Dispute, Notice of Completion and Notice of Dissatisfaction); and
 - (ii) **Other Communication** means all communications under or in connection with this deed other than a Notice.
- (b) (**PDCS notice**): When the PDCS is ready for use by the parties after the date of this deed, the Principal's Representative will notify the Contractor that a PDCS is ready for use, which notice will set out:
 - (i) the commencement date for use of the PDCS for the giving of Notices and Other Communication under or in connection with this deed;

- (ii) any password, login details or similar information required for the Contractor to use the PDCS;
 - (iii) any requirements for specific notices (e.g. 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 deed; and
 - (v) any other information reasonably necessary for the use and service of Notices and Other Communication via the PDCS.
- (c) (**Changes to PDCS**): At any time and from time to time, the Principal's Representative may notify the Contractor that a different PDCS will be used for giving Notices and Other Communication under or in connection with this deed. The Principal's Representative's notice will set out:
- (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the Contractor to use the PDCS;
 - (iv) any requirements for specific notices (eg notices of Claims);
 - (v) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this deed; and
 - (vi) any other information reasonably necessary for the use and service of Notices and Other Communication via the PDCS.
- (d) (**Notices not for PDCS**): At any time and from time to time, the Principal's Representative may notify the Contractor that a PDCS will not be used for giving certain Notices or Other Communication under or in connection with this deed and such notice will state that such Notices or Other Communication will be given in accordance with clause 21.1(e)(i) or 21.1(ee)(i).
- (e) (**Requirements for Notices**): Each Notice must:
- (i) before the date referred to in clause 21.1(b) or where clause 21.1(d) applies:
 - (A) be in writing;
 - (B) be addressed:
 - (aa) in the case of a Notice from the Contractor, to the Principal's Representative and any additional person notified by the Principal in writing; or
 - (bb) in the case of a Notice from the Principal, to the 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:
 - (aa) in the case of a Notice from the Contractor, the Contractor's Representative; or

- (bb) in the case of a Notice from the Principal, the Principal's Representative; or
 - (cc) the solicitor for, or any attorney, director, secretary or authorised agent of, that party (on that party's behalf); and
- (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

Principal

Name: TfNSW, a New South Wales Government agency

Address: 20 – 44 Ennis Road, Milsons Point NSW 2061

Email: [REDACTED]

For the attention of: the Principal's Representative and any additional person notified by the Principal in writing

Contractor

Name: CPB Downer Joint Venture

Address: Level 18, 177 Pacific Highway, North Sydney, NSW 2060

Email: [REDACTED]

For the attention of: The Contractor's Representative

- (ii) from the commencement date for use of the PDCS referred to in clause 21.1(b) and other than where clause 21.1(d) applies:
- (A) be sent through the PDCS in accordance with the requirements set out in clause 21.1(g) and the processes, procedures and systems in the SWTC, including section 3.14 of the SWTC; and
 - (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 21.1(e)(i).

(ee) **(Requirements for Other Communication):** Each Other Communication must:

- (i) before the date referred to in clause 21.1(b) or where clause 21.1(d) applies:
 - (A) be in writing;
 - (B) comply with any requirements for specific communication specified by the Principal in writing;
 - (C) be delivered or posted to the relevant address or sent to the email address for the party shown above (or to any new address or email address notified by the intended recipient);

- (ii) from the commencement date for use of the PDCS referred to in clause 21.1(b) and other than where clause 21.1(d) applies:
 - (A) be sent through the PDCS in accordance with processes, procedures and systems in the SWTC, including section 3.14 of the SWTC, or
 - (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 21.1(ee)(i).
- (f) (**Delivery**): A communication is taken to be received by the addressee:
 - (i) (in the case of a Notice and Other Communication sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice or Other Communication was sent;
 - (ii) (in the case of prepaid post sent to an address in the same country) two (2) Business Days after the date of posting;
 - (iii) (in the case of international post) seven (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,
- (g) (**PDCS**): With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by:
 - (A) in the case of a Notice from the Contractor, the Contractor's Representative; or
 - (B) in the case of a Notice from the Principal, the Principal's Representative; and
 - (ii) all Notices must be addressed to:
 - (A) in the case of a Notice from the Contractor, the Principal's Representative and any additional person notified in accordance with clause 21.1(b)(iv) or clause 21.1(c)(v); or
 - (B) in the case of a Notice from the Principal, be addressed to the Contractor's Representative;
 - (iii) all Notices from the Contractor must comply with any requirements notified in accordance with clause 21.1(b)(iii) or clause 21.1(c)(iv);

- (iv) only the text in any Notice, or subject to clause 21.1(g)(iii) any attachments to such Notice which are referred to in the Notice, will form part of the Notice and any text in the subject line will not form part of the Notice; and
- (v) 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.

(h) **(Requirements)**: The 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 or Other Communication) using the PDCS;
 - (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 21.1(e)(ii)(B) to the Principal's Representative through the PDCS;
 - (vii) align its document management and quality processes to complement and utilise the functions and features of the PDCS, which functions and features may be amended by the Principal from time to time; and
 - (viii) strictly adhere to the documentation numbering system, metadata structures and revision code sequences which are required by the Principal.
- (i) **(No claim)**: The 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 Contractor's access to or use of the PDCS or any failure of the PDCS.

21.2 Governing Law

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

21.3 No Waiver

- (a) **(Failure or delay)**: Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or

enforcement of that or any other right, power or remedy provided by Law or under this deed.

- (b) (**Effectiveness**): Any waiver or consent given by the Principal under this deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) (**Other breaches unaffected**): No waiver by the Principal of:
 - (i) a breach of any term of this deed; or
 - (ii) any other failure by the Contractor to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

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

21.4 Assignment and Change in Control

- (a) (**Change in Control of an entity that comprises the Contractor**): The Contractor acknowledges and agrees that:
 - (i) subject to the terms of this clause 21.4(a), the Contractor must ensure that there is no Change in Control of any entity that comprises the Contractor without the prior written consent of the Principal (which must not be unreasonably withheld);
 - (ii) the Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the 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 21.4(a)(iv), in relation to the Change in Control of the relevant entity that comprises the 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 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 Contractor where the Principal is of the reasonable opinion that:
 - (A) the person or entity which will exercise Control of the Contractor or the relevant entity that comprises the Contractor:
 - (aa) is not solvent and reputable;

- (bb) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (cc) is involved in a business or activity which is incompatible, or inappropriate, in relation to the WHTBL Program; or
- (B) as a result of the Change in Control, the Contractor will no longer:
- (aa) have sufficient expertise and ability; or
 - (bb) be of sufficiently high financial and commercial standing,
- to properly carry out the obligations of the Contractor under this deed;
- (v) if a Change in Control of any entity that comprises the Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 21.4(a)(iii)), the Contractor acknowledges that the Principal may terminate this deed by notice in writing to the Contractor; and
- (vi) the Principal's approval of a Change in Control of any entity that comprises the Contractor will not relieve the Contractor of any of its obligations under this deed.
- (b) **(Change in Control of a Parent Company Guarantor):** The Contractor acknowledges and agrees that:
- (i) subject to the terms of this clause 21.4(b), the 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 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 21.4(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 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:
 - (aa) is not solvent and reputable;

- (bb) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (cc) is involved in a business or activity which is incompatible, or inappropriate, in relation to the WHTBL Program; or
- (B) as a result of the Change in Control, the relevant Parent Company Guarantor will no longer:
- (aa) have sufficient expertise and ability; or
 - (bb) 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 21.4(b)(iii)), the Contractor acknowledges that the Principal may terminate this deed by notice in writing to the Contractor; and
 - (vi) the Principal's approval of a Change in Control of a Parent Company Guarantor will not relieve the Contractor of any of its obligations under this deed.
- (c) **(Assignment by the Contractor):** The Contractor cannot assign, transfer or novate any of its rights or Liabilities under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.
- (d) **(Assignment and Novation by the Principal):** The Contractor acknowledges and agrees that:
- (i) without limiting clause 21.20, the Principal may assign, novate or otherwise transfer this deed, its interest in the subject matter of this deed or any right under this deed with the Contractor's prior written consent (which must not be unreasonably withheld or delayed);
 - (ii) the Contractor agrees to such assignment, novation or transfer such that no further consent is required 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;
 - (iii) in the case of a novation by the Principal under this clause:
 - (A) the Principal will be released from its obligations under this deed and the respective rights of the Principal and the Contractor against one another under this deed will cease;
 - (B) the novated agreement will be on the same terms as this deed, such that the incoming party and the 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 21.4(d)(iii)(A), except that the incoming party replaces the Principal for all purposes under the agreement; and
 - (C) the 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; and

- (iv) the Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

21.5 **Entire Agreement**

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

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

21.6 **Joint and Several Liability**

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

21.7 **Severability**

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

- (a) (**Legality not affected**): the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) (**Legality not affected**): the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed.

21.8 **Indemnities**

- (a) (**Continuing obligation**): Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) (**Survival**): Nothing in this clause 21.8 prevents any other provision of this deed, as a matter of interpretation also surviving the termination of this deed.
- (c) (**Costs**): It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.
- (d) (**Pay on demand**): Each indemnity in this deed is an obligation on the indemnifying party to pay on demand the amount of the relevant claim or loss suffered or incurred by the indemnified party.
- (e) (**Limitation**): Despite anything to the contrary in this deed, the Project Documents or any Third Party Agreement, but subject to clause 21.8(f), neither the Principal nor any other person who has the benefit of an indemnity or other promise given by the

Contractor under the Project Documents, is entitled to bring any Claim whatsoever arising out of, or in connection with this deed or any other Project Document, against the Contractor on or after the date occurring:

- (i) subject to clause 21.8(e)(ii), 12 years after the Date of Completion of the last Portion to achieve Completion; or
- (ii) for a Claim arising out of or in connection with any Defect notified under clause 12.2 during the applicable Defects Correction Period, 12 years after the expiry of the applicable Defects Correction Period for that Defect,

and the Principal and those other parties irrevocably release the Contractor from any such Claims.

- (f) (**No time bar**): The Contractor acknowledges and agrees that clause 21.1(e) does not apply to any Claim arising out of or in relation to clause 9.14.

21.9 Stamp Duty and Other Fees

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

21.10 Taxes

Without limiting clause 6 but subject to clause 15.14, the Contractor must pay all Taxes that may be payable in respect of the Contractor's Activities, including any customs duty or tariff, and primage applicable to imported Construction Plant and Materials required for the Contractor's Activities.

21.11 Confidentiality

- (a) (**Contractor's confidentiality obligation**): Subject to clause 21.11(b), the Contractor must:

- (i) keep confidential this deed, the Project Documents, all Information Documents and any information relating to the Contractor's Activities and any discussions concerning this deed or any Information Documents;
- (ii) not use the information referred to in clause 21.11(a)(i) except as necessary for the performance of the Contractor's Activities; and
- (iii) ensure that each of its officers, employees and Subcontractors complies with the terms of clauses 21.11(a)(i) and 21.11(a)(ii).

- (b) (**No confidentiality obligation**): The Contractor is not obliged to keep confidential any information:

- (i) which is in the public domain through no default of the Contractor; or
- (ii) the disclosure of which is:
 - (A) required by Law;
 - (B) consented to in writing by the Principal; or
 - (C) given to a court in the course of proceedings to which the Contractor is a party.

- (c) **(Requirements):** The Contractor must:
- (i) execute and submit to the Principal within ten (10) Business Days of the date of this deed a Confidentiality Undertaking in the form of Schedule B3 (*Form of Confidentiality Undertaking*);
 - (ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
 - (iii) ensure that each Subcontractor to the Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) **(Higher Sensitivity Deed Poll):** If the Principal's Representative at any time directs the Contractor to execute a Higher Sensitivity Deed Poll with respect to specific information to be provided to the Contractor by the Principal, the Contractor must, no later than five (5) Business Days after the date of the direction, provide to the Principal's Representative a Higher Sensitivity Deed Poll duly and properly executed by the Contractor.
- (e) **(Principal's disclosure):** Subject to clause 21.11(f) the Contractor acknowledges that the Principal may disclose this deed (and information concerning the terms of this deed) under or in accordance with any one or more of the following:
- (i) the GIPA Act;
 - (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.
- (f) **(Consultation):** The parties acknowledge that:
- (i) the Principal will notify the Contractor of any proposed disclosure of any information that the Principal considers (acting reasonably) may be Commercially Sensitive Information by the Principal under the GIPA Act no later than fifteen (15) Business Days before the proposed date of disclosure;
 - (ii) following notification by the Principal in accordance with clause 21.11(f)(i) the Principal will take reasonable steps to consult with the Contractor before the Principal discloses the information referred to in clause 21.11(f)(i) including under the GIPA Act; and
 - (iii) if, following:
 - (A) notification by the Principal in accordance with clause 21.11(f)(i); or
 - (B) consultation between the Principal and the Contractor in accordance with clause 21.11(f)(ii)
- the Contractor objects to disclosure of some or all of the information referred to in clause 21.11(f)(i) on the basis that it is Commercially Sensitive Information, the Contractor must provide details of any such objection within three (3) Business Days of the date the Contractor received notification from the Principal or the date on which the consultation process concluded (as relevant).
- (g) **(Objections):** The Principal may take into account such objection received from the Contractor pursuant to clause 21.11(f)(iii) in determining whether the information

identified by the Contractor as Commercially Sensitive Information should be disclosed.

- (h) **(Contractor to provide information):** Without limiting clause 21.11(f), the Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 21.11(e).
- (i) **(GIPA Act compliance):** Nothing in this clause 21.11 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

21.12 Principal May Act

- (a) **(Principal may take action):** The Principal may, either itself or by a third party, perform an obligation under this deed that the Contractor was obliged to perform but which it failed to perform, provided prior written notice is given by the Principal to the Contractor, except in the case of an emergency (including where there is a risk to the health and safety of people or damage to property or the environment).
- (b) **(Principal may recover Loss):** The Loss suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal, provided the Principal has taken reasonable steps to mitigate its Loss.
- (c) **(Principal's discretion):** Where the Principal or the Principal's Representative is entitled under this deed to exercise any right or power to:
 - (i) direct or instruct the 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.
- (d) **(Contractor's risk):** Where the Principal or the Principal's Representative does not exercise any such right or power, the Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Project Works.

21.13 Process Agent

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

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

21.14 Variations

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

21.15 Prior Work

The Contractor agrees that the work in connection with the Contractor's Activities carried out by the Contractor prior to the date of this deed will be deemed to be governed by the

provisions of this deed and will be deemed to be part of the Contractor's Activities and any payments made to the Contractor by the Principal prior to the date of this deed in respect of the Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this deed.

21.16 **Counterparts**

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

21.17 **Personal Property Securities Act**

- (a) **(Perfect and enforceable):** By signing this deed, the Contractor acknowledges and agrees that if this deed and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (**Security Interest**), the Contractor must do anything (including amending this deed or any other document, executing any new terms 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 deed.
- (b) **(Excluded provisions from PPS Act):** If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.
- (c) **(Collateral, undertaking and waiver):** The Contractor:
 - (i) acknowledges that the Security Interests created under or pursuant to this deed 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 (as defined under the PPS Act) without the prior written consent of the Principal.
- (d) **(No disclosure):** 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) **(Waiver):** The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

21.18 Vienna Convention

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

21.19 No Merger

Terms contained in this deed 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.

21.20 Transfer of Functions or Road Transport Agency Assets

(a) **(Authorities):** The parties acknowledge that:

- (i) a Road 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 Road Transport Agency may be transferred to or vested in another entity;
- (ii) if a Road Transport Agency is reconstituted, renamed, dissolved, replaced or restructured, or some or all of that Road Transport Agency's powers, functions, rights or responsibilities are transferred to another entity, then other than as notified by the Road Transport Agency, references in this deed to that Road Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Road Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
- (iii) a Road Transport Agency may, or may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets.

(b) **(Acknowledgment of variations):** The Contractor acknowledges and agrees that it must, to the extent required by a Road Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Road Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.

(c) **(Contractor's consent):** The Contractor will be taken for all purposes to have consented to, and will not have, and no Road Transport Agency will be liable for, any Claim as a result of any action, matter or circumstance referred to in, or contemplated by clause 21.20.

(d) **(Entity type):** For the purposes of this clause 21.20 'another entity' means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

21.21 Financial reporting

(a) **(Exception to obligation):** The Contractor is not obligated to comply with any requirements of this clause 21.21 that would otherwise put the Contractor, or any entity comprising the Contractor or any Parent Company Guarantor in breach of ASX listing rules or requirement of the place of incorporation of any Parent Company Guarantor.

(b) **(Audited financial statements):** At the end of March and September of each year, the Contractor must give the Principal its most recent audited annual, or half-year,

financial statements (as applicable), or where audited financial statements are not available for the relevant period, give management accounts including profit and loss, balance sheets and cash flow statements for:

- (i) each entity that comprises the Contractor; and
 - (ii) each Parent Company Guarantor.
- (c) **(Accounting principles):** The Contractor must prepare (or procure the preparation of) the accounts and financial statements required under clause 21.21(b) in compliance with all applicable laws and, without limitation, in accordance with the accounting principles generally accepted in Australia or the place of incorporation of the relevant entity and consistently applied.
- (d) **(Certificate):** Each of the documents to be provided to the Principal in accordance with clause 21.21(b) must be accompanied by a certificate signed by two authorised officers of the relevant entity certifying that the information provided is accurate, complete and correct in all respects.
- (e) **(Frequency of documents):** The Contractor must provide the documents required under clause 21.21(b):
- (i) from the date of this deed to the achievement of Completion at the required frequencies; and
 - (ii) thereafter until Completion, at any time following the Principal's request, provided that the Principal may not request the relevant information at greater frequencies than those required by clause 21.21(b), as relevant.
- (f) **(No obligation after Completion):** The Contractor is not required to provide any documents under this clause 21.21 once Completion has been reached.

21.22 Financial Assessment

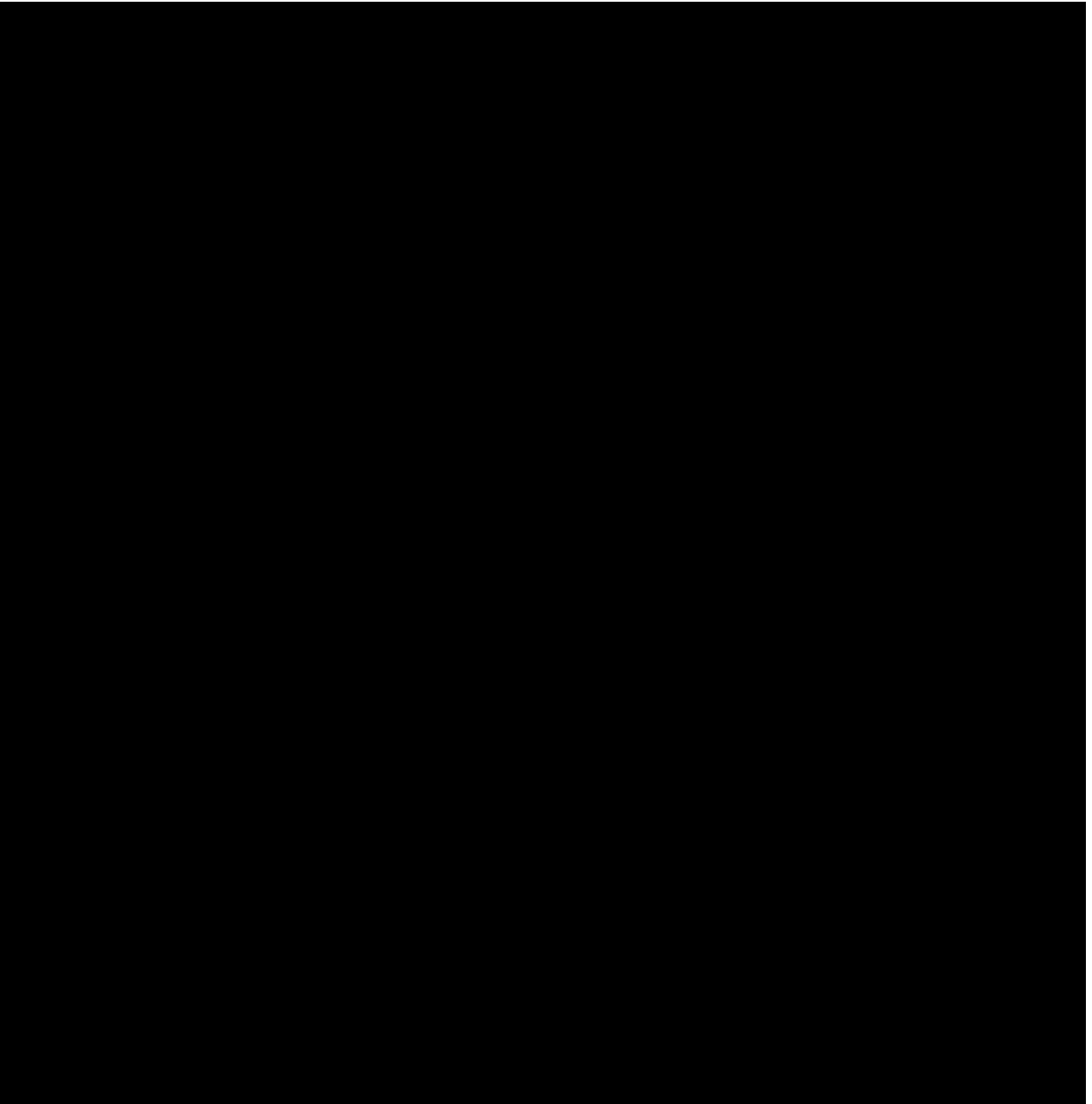
Without limiting or otherwise restricting clauses 21.11(e) and 21.21, the Contractor acknowledges and agrees that:

- (a) **(Principal may assess):** the Principal may, in its absolute discretion, either itself, or through the engagement of private sector service providers, undertake financial assessments (**Financial Assessment**) of the Contractor (or any entity that comprises the Contractor) and any Parent Company Guarantor that are relevant to the matter which resulted in the Principal's decision to undertake the assessment;
- (b) **(Frequency of assessment):** the Financial Assessment may be undertaken at six monthly (or longer) intervals from the date of this deed; and
- (c) **(Request information):** if requested by the Principal, it must, within ten (10) Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal under, out of, or in connection with the Financial Assessment. The Principal may request such documents, information and evidence in addition to any other documents, information and evidence otherwise required to be provided by the Contractor under this clause 21.22.

21.23 Financial Mitigation Plan

- (a) **(Determination):** Subject to the requirements of all applicable laws, the Principal may notify the Contractor if a Financial Capacity Event has occurred. In determining if a Financial Capacity Event has occurred, the Principal may have regard to the documents, information, evidence and notifications provided by the Contractor under clauses 21.21 to 21.23 and any other information it considers relevant in its absolute discretion.
- (b) **(Meeting):** Following the occurrence of a Financial Capacity Event, the Contractor must meet with the Principal within five (5) Business Days of the date of the notice provided pursuant to clause 21.23(a) (or such longer period as the Principal may agree) to discuss the nature of the Financial Capacity Event and its implications in respect of the obligations and liabilities of the Contractor under the Project Documents. The Contractor must also procure the attendance at such meeting of any Parent Company Guarantor specified by the Principal.
- (c) **(Purpose of meeting):** The meeting shall also be for the purpose of:
 - (i) discussing any effect of the Financial Capacity Event on the ability of:
 - (A) the Contractor to continue to perform its obligations and meet its liabilities under this deed, including the timely performance of the Contractor's Activities and how any adverse effect will be mitigated; or
 - (B) any Parent Company Guarantor to meet its liabilities under the relevant Parent Company Guarantee;
 - (ii) identifying the information relating to the Contractor (or any entity that comprises the Contractor) and any Parent Company Guarantor that the Principal reasonably requires in order to better understand the matters described in clause 21.23(c)(i) and the timing for the provision of that information, to the extent such information may be disclosed to the Principal without breaching any Law or confidentiality obligations; and
 - (iii) subject to clause 21.23(d), specifying the form, duration and content of the Financial Mitigation Plan required to be prepared by the Contractor (if the Principal, acting reasonably, requires a Financial Mitigation Plan to be prepared in response to the Financial Capacity Event) which must include details of the measures the Contractor proposes to take to avoid, mitigate or minimise any adverse effect of the Financial Capacity Event on the matters described in clause 21.23(c)(i).
- (d) **(Contractor's governance):** The parties agree that the measures set out in the Financial Mitigation Plan for the purposes of clause 21.23(c)(ii) must be consistent with those reasonable measures that the governing body of the Contractor and the Parent Company Guarantor (as applicable) determines are in the best interest of the Contractor or the Parent Company Guarantor (as applicable) in accordance with their duties and obligations at Law.
- (e) **(Prepare plan):** If a Financial Mitigation Plan is required by the Principal, the Contractor must prepare and submit the Financial Mitigation Plan to the Principal within fifteen (15) Business Days of the meeting held pursuant to clause 21.23(b).
- (f) **(Review plan):** The Principal may, within ten (10) Business Days after it receives the Financial Management Plan under clause 21.23(e):
 - (i) review the Financial Mitigation Plan; and

- (ii) provide written comments on any aspects of the Financial Mitigation Plan which does not, in the opinion of the Principal (acting reasonably), satisfy the requirements of this clause 21.23 for the avoidance, mitigation or minimisation of any adverse effect of a Financial Capacity Event, which must include the reasons for its opinion.
- (g) (**Plan not agreed**): If the Contractor receives comments under clause 21.23(f)(ii), the Contractor must within ten (10) Business Days (or such longer period as the Principal may agree) submit an amended Financial Mitigation Plan, or relevant part of it, to the Principal which addresses the comments to the extent required to satisfy the requirements of clause 21.23. If requested by either party, the Principal and the Contractor may meet within five (5) Business Days with a view to discussing the comments on the Financial Mitigation Plan. The Contractor must also procure the attendance at such meeting of any Parent Company Guarantor.
- (h) (**Implement plan**): The Contractor must diligently implement a Financial Mitigation Plan submitted under clause 21.23(e), incorporating the amendments required by clauses 21.23(f) or 21.23(i) (as applicable).
- (i) (**Updates to plan**): The Contractor:
 - (i) must promptly update the Financial Mitigation Plan in order to take into account any events or circumstances, including any additional Financial Capacity Event, which occurs or comes into existence and which has any effect on the matters described in clause 21.23(c)(i); and
 - (ii) must promptly submit any amended Financial Mitigation Plan to the Principal, in which case clauses 21.23(f) and 21.23(g) shall again apply and the Contractor must comply with the then current Financial Mitigation Plan until the ten (10) Business Days period under clause 21.23(f) has elapsed.
- (j) (**Event mitigated**): The Contractor may notify the Principal at any time if the Contractor reasonably believes that a Financial Capacity Event that is the subject of the Financial Mitigation Plan has been adequately mitigated in accordance with the Financial Mitigation Plan and/or no longer subsists.
- (k) (**Contractor relieved**): If the Contractor gives a notice under clause 21.23(j) and the Principal agrees (acting reasonably) that the Financial Capacity Event has been adequately mitigated and/or no longer subsists:
 - (i) the Principal must promptly provide written notice to the Contractor confirming this; and
 - (ii) the Contractor will be relieved of its obligation to comply with the relevant Financial Mitigation Plan under this deed from the date of such notice.
- (l) (**No limitation**): This clause 21.23 is without prejudice to and will not lessen or otherwise affect:
 - (i) the Contractor's obligations or liabilities under this deed or otherwise according to Law; or
 - (ii) any of the Principal's rights against the Contractor, whether under this deed or otherwise according to Law, which arise as a result of or in connection with any of the matters dealt with in this clause 21.23, including any rights arising under clause 18.4.

- (m) **(No liability):** The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the performance of any of its obligations under this clause 21.23.
- 

22. NOTIFICATION OF CLAIMS

22.1 Notice of Variation

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

- (a) **(Notice requirements):** within ten (10) Business Days 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 22.3(a) that it considers the direction constitutes or involves a Variation;

- (b) (**Written Claim**): within ten (10) Business Days of the notice pursuant to clause 22.1(a) submit a written Claim to the Principal's Representative, which includes the details required by clause 22.3(b); and
- (c) (**Contractor's Activities to continue**): continue to carry out the Contractor's Activities in accordance with this deed and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 22.1.

22.2 Notice of Other Claims

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

- (a) (**Express entitlement**): it is otherwise given an express entitlement under this deed; or
 - (b) (**Costs**): this deed expressly provides that there will be a Reimbursable Cost Element Adjustment or Management Fee Adjustment,
- the Contractor must give the Principal's Representative:
- (c) (**Notice**): the notice required by clause 22.3(a); and
 - (d) (**Claim**): a Claim in accordance with clause 22.3(c).

22.3 Prescribed Notices

- (a) (**Notice**): Any written notice referred to in clauses 22.1(a) and 22.2(c) must:
 - (i) be provided not later than ten (10) Business Days after the Contractor:
 - (A) receives the direction (in respect of a notice under clause 22.1(a)); or
 - (B) first becoming aware (or when it ought reasonably to have first become aware) of the alleged entitlement arising as a result of an event, circumstance, act, omission, fact, matter or thing (in respect of a notice under clause 22.2(c)); and
 - (ii) expressly specify:
 - (A) that the Contractor proposes to make a Claim; and
 - (B) the direction, event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) (**Claim requirements**): Any written Claim referred to in clause 22.1(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 deed or other legal basis upon which the Claim is based; and

- (iii) details of the amount claimed and how it has been calculated.
- (c) (**Written Claim requirements**): Any written Claim referred to in clause 22.2(d) must:
- (i) be provided not later than ten (10) Business Days of giving the written notice under clause 22.3(a); and
 - (ii) include:
 - (A) detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (B) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (D) details of the amount claimed and how it has been calculated.

22.4 **Register of potential claims**

- (a) (**Register**): The Contractor must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the Contractor under clauses 22.1(a) and 22.2(c) and provide a copy of this register to the Principal's Representative at least three (3) Business Days in advance of each meeting of the Management Review Group.
- (b) (**Form of register**): This register must be in a form acceptable to the Principal and must include, for each potential Claim, the claim number, a brief description, the date of the potential Claim, any agreed next steps and the status of such next steps.

22.5 **Assessment of Claims**

- (a) (**Submitted Claim**): Claims submitted by the Contractor under clauses 22.1(b) and 22.2(d) will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.
- (b) (**Rejected Claim**): If within twenty (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 twentieth Business Day.

22.6 **Continuing Events**

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 22.3(b) or clause 22.3(c) every twenty (20) Business Days after the written Claim under clause 22.1(b) or clause 22.2(d) (as applicable) 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.

22.7 **Bar**

If the Contractor fails to comply with clauses 4.2, 6.3, 6.4, 6.5, 6.7, 14.8, 22.1, 22.2, 22.3 or 22.6:

- (a) (**No liability**): the Principal will not be liable upon any Claim by the Contractor; and
- (b) (**Bar on Claim**): the Contractor will be absolutely barred from making any Claim against the Principal,

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

22.8 Other Provisions Unaffected

Nothing in clauses 22.1 to 22.7 will limit the operation or effect of any other provision of this deed that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

23. REPRESENTATIONS AND WARRANTIES

23.1 Principal representations and warranties

The Principal represents and warrants for the benefit of the Contractor that:

- (a) (**Statutory body**): it is a statutory body validly constituted and existing under the *Transport Administration Act 1988 (NSW)*;
- (b) (**Authorisations**): 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 deed (or will have them in full force and effect at the time the obligation is to be performed);
- (c) (**Valid and binding**): this deed constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) (**No violation**): the execution, delivery and performance of this deed 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.

23.2 Contractor Representations and Warranties

The Contractor represents and warrants for the benefit of the Principal that:

- (a) (**Registered body**): is duly registered and remains in existence;
- (b) (**No violation**): the execution, delivery and performance of this deed 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) (**Authorisations**): it has taken all action required to enter into this deed and to authorise the execution and delivery of this deed and the satisfaction of its obligations under it;
- (d) (**Valid and binding**): this deed constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) (**Constitution**): it subsists and is properly constituted;
- (f) (**No trust**): 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) (**No immunity**): 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) (**No material change**): there has been no material change in the financial condition of the Contractor (since the date of its last audited accounts) which would prejudice the ability of the Contractor to perform its obligations under this deed;
- (i) (**Financial condition**): the most recently published financial statements of the 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 Contractor;
- (j) (**Full disclosure**): the 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 deed with the Contractor; and
- (k) (**No proceedings**): 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 deed.

23.3 **Repetition of representation and warranties**

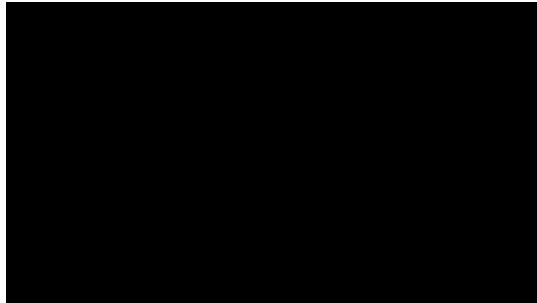
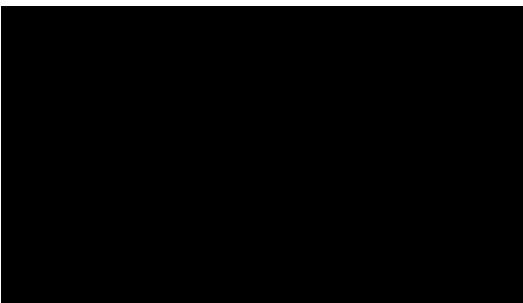
The representations and warranties contained in clauses 23.2(h), 23.2(i), 23.2(j) and 23.2(k) are made on the date of this deed and each other representation and warranty contained in this clause 23:

- (a) is made on the date of this deed; and
- (b) will be deemed to be repeated on each anniversary of the date of this deed,
with reference to the facts and circumstances then subsisting.

EXECUTED as a deed.

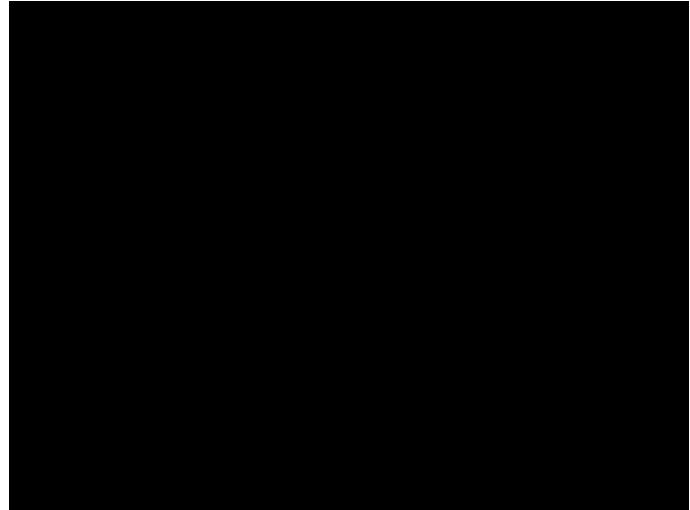
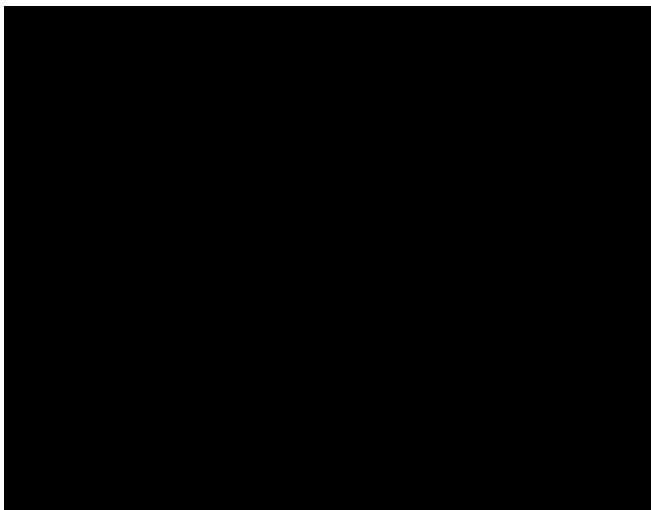
Principal

SIGNED, SEALED AND DELIVERED for
and behalf of **TRANSPORT FOR NSW**
(ABN 18 804 239 602) by its duly
authorised delegate, in the presence of:

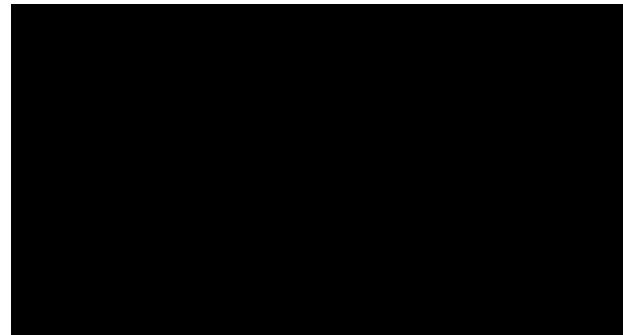
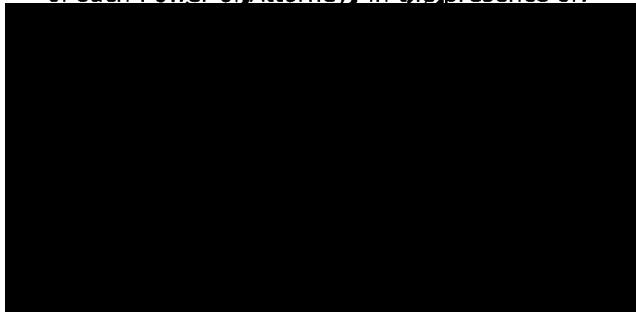


Contractor

SIGNED, SEALED AND DELIVERED for and
on behalf of **CPB CONTRACTORS PTY**
LIMITED (ABN 98 000 893 667) by its
Attorneys under a Power of Attorney dated **9**
November 2020 (and the Attorneys declare
that the Attorneys have not received any
notice of the revocation of such Power of
Attorney) in the presence of:



SIGNED, SEALED AND DELIVERED for and
on behalf of **DOWNER EDI WORKS PTY LTD**
(ABN 66 008 709 608) by its Attorney under a
Power of Attorney dated **9 September 2021**
(and the Attorney declares that the Attorney
has not received any notice of the revocation
of such Power of Attorney) in the presence of:



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